

**SAVANNAH ZONING BOARD OF APPEALS**

**ARTHUR A. MENDONSA HEARING ROOM  
112 EAST STATE STREET**

**MARCH 28, 2006**

**2:30 P.M.**

**REGULAR MEETING**

**MINUTES**

**MEMBERS PRESENT:**

**Mickey Stephens, Chairman  
James Byrne, Vice-Chairman  
John P. Jones  
Timothy Mackey  
Paul Robinson**

**TECHNICAL STAFF PRESENT:**

**Tom Todaro, City Inspections Department  
James Blackburn, City Attorney**

**MPC STAFF PRESENT:**

**Jim Hansen, Secretary  
Deborah Burke, Assistant Secretary**

**RE: Call to Order**

Mr. Stephens called the March 28, 2006 meeting of the Savannah Zoning Board of Appeals to order at 2:30 p.m.

**RE: Minutes**

1. Approval of SZBA Minutes – February 28, 2006

**SZBA Action: Mr. Byrne made a motion that the Savannah Zoning Board of Appeals approve the regular meeting minutes of February 28, 2006. Mr. Jones seconded the motion and it was unanimously passed.**

**RE: Request For Reconsideration or Withdrawals**

**RE: Petition of Michelle Methot, For  
Anita Kuhau  
B-060227-88766-2  
2309 Jefferson Street**

The petitioner is requesting approval of a 3.15 foot side yard setback variance to the five (5) foot side yard setback requirement; a 1.50 percent lot coverage variance to the 60 percent lot coverage allowed; and a 1,020 square foot lot area variance to the 3,000 square foot lot area minimum required by Part 8, Chapter 3, Article K, and Section 5.6.5 of the Savannah Zoning Ordinance in order to construct a single family residence. The subject property, located at 2309 Jefferson Street, is zoned TN-2 (Traditional Neighborhood).

**Mr. Hansen** recommended that the above-mentioned petition be continued to the next regularly scheduled meeting on April 25, 2006 because the petitioner failed to pickup their posting signs. He said upon a visual inspection by Staff and the Board the signs were not properly posted.

**SZBA Action:** Mr. Byrne made a motion that the Savannah Zoning Board of Appeals continue the petition to the next regularly scheduled meeting on April 25, 2006. Mr. Jones seconded the motion and it was unanimously passed.

**RE: Continued Petition of Edmond C. Burnsed  
B-060131-40567-2  
319 – 323 East 31<sup>st</sup> Street**

The petitioner is requesting approval of a lot area variance of 4,413 square feet from the 8,800 square feet minimum lot area required, and a variance to allow lot coverage of 65.64 percent as opposed to the 60 percent lot coverage allowed by Part 8, Chapter 3, and Article K of the Savannah Zoning Ordinance in order to construct a mixed use commercial/residential development. The subject property, located at 319 – 323 East 31<sup>st</sup> Street, is zoned TN-2 (Traditional Neighborhood).

**Mr. Hansen** stated that the petitioner has requested that the above-mentioned be continued to the next regularly scheduled meeting on April 25, 2006. He said at the last meeting the Board directed the petitioner to meet with the City's Historic Preservation Officer to ascertain whether or not there might be a change or modification to the plan which would more closely be in conformance to the Historic Guidelines. He said that meeting recently took place and the petitioner was in the process of modifying their application and request that it be continued to the next meeting.

**SZBA Action:** Mr. Byrne made a motion that the Savannah Zoning Board of Appeals continue the petition to the next regularly scheduled meeting on April 25, 2006. Mr. Robinson seconded the motion and it was unanimously passed.

**RE: Continued Petition of Eli P. Karatassos  
B-060131-40392-2  
102 & 110 West 36<sup>th</sup> Street**

The petitioner is requesting approval of a 1,528 square foot lot area variance from the 6,000 square foot minimum lot area required by Part 8, Chapter 3, and Article K of the Savannah Zoning Ordinance for each of two separate parcels in order to construct two (2) residential units on each lot. The subject property, located at 102 & 110 West 36<sup>th</sup> Street, is zoned TN-2 (Traditional Neighborhood).

**Mr. Hansen** stated the above-mentioned petition was heard by the Board on February 28, 2006 and a motion was made to continue the petition until the next meeting (March 28, 2006). He said in the intervening time the petitioner met with the City's Historic Preservation Officer and Staff. He said the petition was revised to the extent that they no longer need any variances, therefore the petitioner requests that the petition be withdrawn.

**SZBA Action:** Mr. Byrne made a motion that the Savannah Zoning Board of Appeals withdraw the petition as requested. Mr. Jones seconded the motion and it was unanimously passed.

**RE: Consent Agenda**

**RE: Petition of Mark A. Thomas  
B-060227-49398-2  
2409 Bull Street**

The petitioner is requesting approval of an application to establish a lounge in accordance with the requirements of Part 8, Chapter 3, Article K, and Section 5.8.2 of the Savannah Zoning Ordinance. The subject property, located at 2409 Bull Street, is zoned TC-1 (Traditional Commercial).

**Summary Of Findings:** All of the conditions necessary for granting the requested use permit to establish a lounge at 2409 Bull Street appear to be met.

**RE: Petition of Henry DeLaney, Jr., For  
St. Paul Christian Methodist Episcopal Church  
B-060227-88940-2  
213 West 32<sup>nd</sup> Street**

The petitioner is requesting approval of an application to establish a youth group home in accordance with the requirements of Part 8, Chapter 3, Article K, and Section 5.6.2 of the Savannah Zoning Ordinance. The subject property, located at 213 West 32<sup>nd</sup> Street, is zoned TN-2 (Traditional Neighborhood).

**Summary Of Findings:** All of the conditions necessary for granting a use permit for a group home within the TN-2 district appear to be met.

**Mr. Scott Kelly (205 West 33<sup>rd</sup> Street)** asked if the organization would be regulated? He also asked who will be responsible for the organization continuing as proposed by petitioner and it not extending to a more complex facility that may house individuals that need more advance care or services?

**Mr. Hansen** stated he felt the Board was trying to respond to Mr. Kelly who indicated that he had questions about the above-mentioned petition. He said if in fact there are people in the audience who are opposed then petition should be moved from the Consent Agenda and placed on the Regular Agenda to be heard.

**SZBA Action:** Mr. Byrne made a motion that the Savannah Zoning Board of Appeals move the Petition of Henry Delaney, Jr., For St. Paul Christian Methodist Episcopal Church, B-060227-88940-2 from the Consent Agenda to the Regular Agenda. Mr. Jones seconded the motion and it was unanimously passed.

**RE: Petition of Benjamin Gowens  
B-060227-89074-2  
714 East 34<sup>th</sup> Street**

The petitioner is requesting approval of a one (1) foot side yard setback variance on each side from the five (5) foot side yard setback requirement, and a nine (9) foot rear yard setback variance from the 25 foot rear yard setback requirement of Section 8-3025 of the Savannah Zoning Ordinance in order to construct a single family residence. The subject property, located at 714 East 34<sup>th</sup> Street, is zoned R-4 (Four-family Residential).

**Summary Of Findings:** All of the conditions necessary for granting a one foot side yard setback variance for each side, and a nine foot rear yard setback variance appear to be met.

**RE: Petition of Orren Wilson, For  
B-060227-89543-2  
224 A & B Jefferson Street**

The petitioner is requesting approval of a 340 square foot lot area variance and a 917 square foot lot area variance from the 3,000 square foot minimum lot area requirement of Part 8, Chapter 3, Article K, and Section 5.6.5 of the Savannah Zoning Ordinance in order to split an existing lot in order to create two separate parcels. The subject property, located at 224 A & B Jefferson Street, is zoned TN-2 (Traditional Neighborhood).

**Summary Of Findings:** All of the conditions necessary for granting the lot area variances requested appear to be met.

**RE: Petition of Cowart Coleman Group  
Gerry Cowart  
B-060227-89653-2  
30 West York Lane**

The petitioner is requesting approval of an application to increase the garage door width to 16 feet from the 12 foot maximum allowed by Section 8-3030(13) d. of the Savannah Zoning Ordinance. The subject property, located at 30 West York Lane, is zoned B-C-1 (Central-Business District) and is located in the National Historic Landmark District.

**Summary Of Findings:** All of the conditions necessary for granting the requested variance appear to be met

**SZBA Action: Mr. Byrne made a motion that the Savannah Zoning Board of Appeals approve the Consent Agenda as amended. Mr. Robinson seconded the motion and it was passed. Mr. Jones was opposed to the Petition of Mark A. Thomas, B-060227-49398-2.**

**RE: Regular Agenda**

**RE: Petition of Henry DeLaney, Jr., For  
St. Paul Christian Methodist Episcopal Church  
B-060227-88940-2  
213 West 32<sup>nd</sup> Street**

Present for the petition was Reverend Graham.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of an application to establish a youth group home in accordance with the requirements of Part 8, Chapter 3, Article K, and Section 5.6.2 of the Savannah Zoning Ordinance. The subject property, located at 213 West 32<sup>nd</sup> Street, is zoned TN-2 (Traditional Neighborhood).

**Findings**

1. Part 8, Chapter 3, Article K, and Section 5.6.2 of the Savannah Zoning Ordinance allow Group Care Homes within the TN-2 district subject to approval by the Zoning Board of Appeals. The petitioner is proposing to establish a youth group home at 213 West 32<sup>nd</sup> Street.
2. The subject parcel, measuring 39 feet wide and 62 feet deep, is currently occupied by a single family residential structure. The existing structure will be renovated to provide for the group home setting. No further description has been provided, and the number of proposed resident has not been provided.
3. The TN-2 district lists two standards that must be met before a group home in the district can be issued a certificate of occupancy:
  - a. **Each group care home shall have a full-time resident manager.**
  - b. **A group care home shall not be located within 1,000 feet of another group care home, institutional group care or congregate care home.**
4. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals shall hear and decide upon requests for permission to establish uses based upon a finding by the Board that:
  - a. **The proposed use does not affect adversely the general plans for the physical development of the city, as embodied in these regulations and in any Master Plan or portion thereof adopted by the mayor and aldermen.**

The proposed use does not affect adversely the general plan for the physical development of the city. The subject property has been designated for residential use, however, a group home can be allowed.
  - b. **The proposed use will not be contrary to the purpose stated for these regulations.**

The proposed use is not contrary to the regulations.
  - c. **The proposed use will not affect adversely the health and safety of residents or workers in the city.**

No adverse affects are expected or anticipated.
  - d. **The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

The proposed use will not likely be detrimental to the use or development of adjacent properties. No objections have been raised by area residents or property owners.
  - e. **The proposed use will not be affected adversely by the existing uses.**

The proposed use will not be affected adversely by the existing use. The site is currently occupied by a single family residence which will be renovated to for the use requested.

- f. **The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of said use.**

No site plan information has been submitted with the request for the use permit. If permission to establish the group home is granted, the petitioner will be required to submit a site plan for consideration by the appropriate review bodies in order to receive the necessary certificate of occupancy. Adherence to the appropriate development standards will be required at that time.

- g. **The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation, or type of physical activity.**

It is not anticipated that the proposed use will create either a hazard or a nuisance.

- h. **The standards set forth for each particular use for which a permit may be granted have been met.**

At this point in time, no variances from the development standards of the district have been requested. No site plan has been submitted. If the proposed development is found to be in non-compliance with district regulations upon submittal, the petitioner may request relief from the Board of Appeals at a subsequent hearing.

### **Summary Of Findings**

All of the conditions necessary for granting a use permit for a group home within the TN-2 district appear to be met.

**Mr. Kelly** asked if there would be an organization regulating this home to see to that the establishment continues as the petitioner proposed and not extend to a more complex facility that may house individuals that needed advance care such as drug abuse or delinquency?

**Mr. Hansen** stated the youth group home will be required to meet the provisions as setforth by the State of Georgia. He said that must occur prior to issuance of any Certificate of Occupancy and must remain in effect for that. With regards to expansion or any other such use, he would like to defer to the petitioner.

**Reverend Graham** stated the group home will be licensed by the State and monitored by the State of Georgia.

**Mr. Robinson** asked how many youths will the group home serve?

**Rev. Graham** stated 8 young ladies between the ages 12 to 17.

**Mr. Robinson** asked if 8 was the maximum number for this size group home?

**Rev. Graham** stated yes.

**Mr. Byrne** asked if the individuals would have other complex problems such as drug addiction or those sorts of problems?

**Rev. Graham** stated no.

**Ms. Sharon Thomas** stated she was currently a resident at this location. She said she became a tenant in October 2005. She said she was not aware of anything going on. She said she has three children and a disabled husband. She said no one notified her that the home was going to be for delinquent children. She said when she moved in the home as a rental she was in an emergency for housing and had to save a lot of money to move in. She said her three children could not play outside because there was no backyard or an area for children to play. She said on the left hand side of the house was a home for transitional men who have committed crimes and are on parole. She said she have to keep her children close to her at all times. She said the house she lives in she felt was in shambles and cold. She said there are repairs that needed to be done but have not been done. She said her three sons sleep in one room. She said she could not use the back bathroom because it had big holes in the floor.

**Mr. Stephens** asked what was her opposition?

**Ms. Thomas** stated if he was going to use the home as a group home then where will she and her three children live because again she was not notified that this was taking place.

**Mr. Stephens** stated her concerns were not within the Board's purview. He said what was before the Board was the use. He said he felt that was something that should have been worked out between her and her landlord.

**Ms. Thomas** stated she was also concern because of the transitional center being next door that housed approximately eight men. She said across the street there were four houses that was not a positive environment.

**Mr. Jones** asked if her lease agreement was month to month?

**Ms. Thomas** stated yes.

**Mr. Jones** stated the requirement according to HUD housing regulations was with month to month lease the landlord is required to give 30 days notice for the property to be vacated. He said if there was something happening across the street that was not under the petitioner's control then he has nothing to do with that. He said the petitioner could only be held accountable for properties that was under St. Paul Church. He asked how long has she lived at the property?

**Ms. Thomas** stated 6 months.

**Ms. Rhonda Vonlerdy** stated she is a present tenant at one of the houses in the area. She said she never received any notification asking her to leave within 30 days. She said when they moved into the house under the present personnel she hoped to be there for at least one year. She said they renovated the house and found that after 6 months they would have to move. When viewing the home prior to renting, it was under a model and they were promised that it

would be finished prior to moving in. She said when they moved in they noticed that nothing had been done since they made their deposit. She said every room contained broken discarded furniture. In addition, the walls had not been finished painting. She said it took three weeks to get the hot water fixed, as well as three months to get the heat and air conditioning fixed.

**Mr. Stephens** asked if she could stick to the facts of the petition with regard to the group home.

**Ms. Vonlerdy** stated she was providing facts about the personnel that currently operate the housing who would be the same personnel that would also operate the group home. She said she felt if the conditions were not met on rental, how would they be met just because they were going to put children in there who could not speak for themselves.

**Mr. Byrne** stated he felt the problems some of the neighbors were addressing was more of a lease hold issue. He said those issues could be addressed in Magistrate Court. He said he would like to hear input with regard to the transitional center that would be next to the group home. He said he also wanted to know what impact they felt it would have on the neighborhood.

**Ms. Vonlerdy** stated this neighborhood never sleeps. She said drugs run rampant and unchecked. She said the neighbors that live in the house behind her are up late at night and up early in the morning. She said the neighbor that lives canter corner is also a bad environment. She said the other house also has transitional men that are disruptive to the neighborhood. She said there was also a vacant house that was boarded up and being used as a dump for trash.

**Mr. Stephens** asked Staff if he could address the transitional center?

**Mr. Hansen** stated in the staff report it mentioned that one of the requirements that was necessary to establish this particular use is that there not be another type of group home within 1,000 feet of the proposed use. Unfortunately, they did not know in the City where all of the transitional houses or group homes are. He said the City does not have a register. He said what he has stated in the report is that prior to the petitioner obtaining the necessary Certificate of Occupancy they will have to prove to the City that they meet the requirements. He said this was the first that he was made aware of that there was in fact a transitional or group home of some sort in the immediate neighborhood. He said if the petitioner could not meet the requirements they will not be issued a Certificate of Occupancy.

SZBA Action: Mr. Byrne made a motion that the Savannah Zoning Board of Appeals continue the petition until the next meeting. Mr. Robinson seconded the motion.

**Mr. Mackey** stated he wanted to be clear as to what the continuance was going to do because he felt there was another point put on the record that there is no record of how many group homes or transitional homes there are in the City. He asked how should that be handled? He said he felt it would be a step in the right direction if a letter could be sent to either the Mayor or City Attorney to get direction as far as what the Board could do to set the stage for the future.

**Mr. Hansen** stated at the Board's direction, he could draft a letter for the Chairman's signature to send to the Mayor or appropriate City officials. He said he felt it was something of concern for it not only affected this particular piece of property but potentially would have the same ramifications on other group homes that may come in not only to this area but any area within the City of Savannah. Unfortunately, as he mentioned at the moment there is no current record of where all of these types of facilities are located.



**Mr. Mackey** asked if there was a license that had to be applied for to get this type of facility or do they all come before the ZBA?

**Mr. Hansen** stated no. He said some are allowed by right and some come before the ZBA. All of these types of facilities, however should have a valid Certificate of Occupancy. He said the City should be able to determine where these types of facilities are, but at the moment there is no comprehensive record.

**Mr. Mackey** asked Mr. Byrne if he would amend his motion?

**SZBA Action:** Mr. Byrne made a motion that the Savannah Zoning Board of Appeals continue the petition until the next meeting (April 25, 2006) with the understanding that a letter be drafted to the Mayor or City Council. Mr. Robinson seconded the motion and it was unanimously passed.

**RE: Continued Petition of Wiley A. Wasden, III, For  
National Wireless Construction, LLC (NWC)  
B-060127-49684-2  
12915 White Bluff Road**

Present for the petition was Wiley Wasden, III, Attorney.

**(Transcription of the meeting tape for this petition)**

**Mr. Wasden:** If I may since we – prior to the last meeting sent notice of a request and an objection to participation respectfully of any member who was on the MPC that voted on this petition at the MPC level serving as a decision maker or participant on the Boarding Zone of Appeals. That was the reason this meeting was passed last time. We have subsequently at the request of the City Attorney submitted a letter detailing our objections in that regard and would request a ruling on that before we go forward with the motion so that the record will be complete. Thank you.

**Mr. Stephens:** Mr. Blackburn.

**Mr. Blackburn, City Attorney:** Let me address the general subject matter. As he said he addressed his initial request to the Secretary of the Board and to the Director of the MPC who did forward it to me and it was discussed briefly at the last meeting. I requested that if there was any legal authority to submit the legal authority and that I would putting on my hat as City Attorney I would give an opinion. Such a letter was submitted and I must state with all due respect that it did not address the subject matter and the reason perhaps for that was not lack of research by the attorneys but that just is no real law in this State on that subject matter. I did – my office did some research also and did not come up with any controlling or any authority really of – to require a recusal. Now, likewise the additional problem you must face and that is in, in my opinion and I so advise Council would have to be addressed to the individual member that could not be addressed to the, the Board and as a matter-of-fact, was not addressed to the Board. The issue was raised. So, in my opinion and I have to say I state this as my opinion, not as an adversary but as the procedural under which you operate. Let me point out that there are five members for the Board of Zoning Appeals. There – it is established by the Zoning Ordinance, it is an integral part of the procedure under the Zoning Ordinance. At under – further under the Zoning Ordinance this particular section is administered by the Planning Commission

and the Planning Commission staff. The Planning Commission serves in effect as the Zoning Administrator in this particular type of case for the, the towers. The Zoning Ordinance provides that appeals from a decision of the Zoning Administrator or an agency serving as the Zoning Administrator come to this Board. And, so the burden is upon the, the appellant to show this Board that the Zoning Administrator or in this instance the Planning Commission made a mistake or made an error or was wrong in what they did. The law also sets up that this is a public hearing that you look at the record but you could also – and you of course obviously have to look at the record, but that you could hear additional evidence and, and the public is allowed to make a - their presentation and present evidence to you.

Now, that Ordinance also provides as a matter of law and it always has since, since its inception nearly fifty years ago that one member of the Zoning Board of Appeals be a sitting member of the Planning Commission that's to have the continuity between the two. Well that's always been the law and that is the case. Now, the request of the appellant is that the sitting member of the Planning Commission not be allowed or recuse himself. I won't say not be allowed because in my opinion and the opinion I am going to give you is that is a personal decision by that member if he in fact feels in anyway that there could be a conflict. Now, in addition to that we have the peculiar situation in which a former member of the Planning Commission who was on the Commission at the time this issue was heard termed expired. He's no longer a member of the Planning Commission. But he was appointed, a completely separate appointment as a citizen member of this Board. So, those are the two members that Mr. Wasden is talking about. And he has requested and I am not sure exactly who it's addressed to and nor am not being critical because I am not sure because I am not sure that there's – that this Board could do anything about it. I think it has to be addressed to the individual members to whether or not they choose to recuse. Now, and - you have in front of you a letter that was written citing what is cited as authority for it. I must in all candor state and I certainly have told Mr. Wasden's office that the recitals in the letter I do not think are on point or appropriate and I will only use one thing in there and that is the recital was referenced to the text of the zoning and planning law. Those and especially that one and I have a copy of it with me addresses itself to a financial interest or a personal interest by the member of this Board. And – I do not think there's any allegation or any suggestion that there is a personal interest or financial interest. A personal interest mean like owning property or a family owning property or something of that nature. And certainly nothing of that nature is suggested. It's only having heard it in another context. My own research indicates and the only case that, that we found and I will cite it for them has to do with a Board of Education in selecting a school site where the Court in Wright versus Monroe County Board of Education, 148 Georgia Appeals 845 which is a 1979 case. The Court in writing in that case says even if – even the Court of judicial conduct were applicable by members of a local Board of Education analogous to you presiding at a hearing over the selection of a new school, can, the cannons were not violated where there was no allegation that any of the Board members had either a financial or personal interest in the outcome of the controversy or that there decision was otherwise motivated by private concerns. Even though and here is the key point – even though they were reviewing there own initial decision. But, that is the only law I found in Georgia on the subject. So, even in reviewing there own decision the case law is that unless they had a personal interest, unless there is some reason, yet as I said I've – I agree that it is a personal decision of the two members. I think Mr. Mackey has a stronger reason to serve because he is required by Ordinance to serve because he's a member of the Planning Commission. Mr. Jones, is the other one mentioned and he can make a personal decision as to whether or not he should recuse. But, I'm, I'm assuming and they may or may not agree with what I have stated with reference to who has to make the decision. But I am not aware of any bylaw or any law that says the Board can say you got – you – you recuse. My opinion I give to them as a individual member will have to make his own mind.

**Mr. Wasden:** And let me just to perfect the record since Mr. Blackburn has raised it, I will like to put on the record that we are at this time then requesting specifically and individually to Mr. Jones and Mr. Mackey that they respectfully recuse themselves so that there is no question as to whether the request went to the Board or to the individuals, it went to all of them. Thank you.

**Mr. Byrne:** That, that actually is one of my questions. I mean – are you asking us to vote on whether they should recuse themselves or is it just –

**Mr. Stephens:** No, we can't do it.

**Mr. Byrne:** Yea. I mean is this just directed towards them as a –

**Mr. Wasden:** That, that is an interesting question. We're not, we're not specifying the method by which you have to make this decision. I assume that's provided for in your rules. We're simply pointing out that we think under the law that we cited in our letter and I am not going to argue that with Mr. Blackburn that, that Mr. Mackey and Mr. Jones respectfully not be allowed to participate in this decision.

**Mr. Stephens:** Alright, based on the opinion from Mr. Blackburn we will let that, let that be left up to the individual members if they want to recuse themselves in the case of the petition or not.

**Mr. Mackey:** Mr. Chairman, with all do respect to the audience and the members who are present and Counsel. Being a sitting member of the Metropolitan Planning Commission at the time that the particular petition was heard by the Board, being a former Chairman of the Metropolitan Planning Commission, being a former Chairman of this Board, being appointed by the City Council as a member of the MPC just for the record I have absolutely no intent, no intention whatsoever in recusing myself on this decision. I have absolutely no personal interest, no financial interest in this project. And I will vote with respect to the opinion that I've heard rendered by our, our City Attorney, Mr. Blackburn who I value his opinion and his judgment. Also, I value the opinion and judgment of Mr. Wasden. But, I will have to side with Mr. Blackburn who represents the City of Savannah and Council. So, Mr. Chairman, just for the record, I have absolutely no intention, will not, shall not, am not recusing my vote. Thank you.

**Mr. Stephens:** Thank you Mr. Mackey. Mr. Jones.

**Mr. Jones:** Mr. Chairman, having been the longest serving member in the history of the Metropolitan Planning Commission, having been the first African American to Chair the MPC, and having serve on the MPC over 20 years I think in that time I have been very fair and impartial in all of my decisions and now that I'm on the Zoning Board of Appeals, I still have the same attitude. There have been subjects that I disagreed with but after hearing from the petitioners and others I have changed and voted for. I respect Mr. Blackburn as one of the finest lawyers we have in these United States of America. And he said that there is no law requiring that I recuse myself from voting on this issue. On this same company I have voted for some of their petitions for towers and I have voted against some. That's my opinion after listening to both sides. And I will continue as long as I am a member of the Zoning Board of Appeals to do the same. Listen to both sides and then I will vote my conviction. I have no interest in no Cell Towers or anything else. In fact, I don't even get any income on retirement from the City of Savannah, the County of Chatham. I am an independent individual and I have no financial interest in anything that they bring up. So, I will vote my conviction. Period.

**Mr. Stephens:** Thank you Mr. Jones. Mr. Wasden.

**Mr. Wasden:** Thank you. May it please the Board this is an appeal of a decision by the Metropolitan Planning Commission involving the placement of a cellular tower off of Whitebluff Road behind a Church next to the property of Savannah Country Day School. It is our position as the party appealing the decision of the MPC that the MPC erroneously denied that petition on two grounds. One legal and one factual. Like to start briefly discussing the legal ground upon which we believe the Metropolitan Planning Commission erred. The law states clearly that a stealth tower shall be permitted in zoning districts that permit the structure of the tower as designed to be allowed. And in this case the structure of the cellular tower is a flag pole. And I'll show you some pictures in the few minutes. But this is a – for those of you who may not have been on prior Boards that discuss this matter this is a, a cellular tower that is literally built to resemble a flag pole and can actually fly a flag, if necessary. The law further states that stealth towers are referred to as what you define in your ordinance as alternate tower structures. An alternate tower structure in your code includes flag poles. The law states that flag poles are allowed in any zoning district. And the law further does not place any height restrictions on flag poles. As a result, we believe it was a legal error to not allow this flag pole design to be utilize for a stealth tower. Because of this we believe the MPC Staff correctly recommended approval of this tower at the MPC level. However, the MPC overruled them as I stated previously on one ground of legal error as I just pointed out. The MPC then made two factual errors in rendering their decision. The first was that they determined that the flag pole was too tall. Now, we talked briefly a moment ago about the fact that the law does not limit the height of a flag pole, but yet the MPC found that this particular flag pole was too high and not compatible with the area of where the pole is being placed, which is behind a church and next to Savannah Country Day School with its attended ball fields sky lighting and other power poles.

The second ground upon which the MPC overruled there staff and found against our client is that there was another tower less than a mile away that quote "offset poor call quality" cited by us in our application. I'd like to address the second ground – factual ground first and that is the statement in the decision of the MPC that the – we can utilize a tower which was located in Coffee Bluff to solve quote "our poor call quality." That is not what we argued to the MPC. It is not an issue of poor call quality. It is an issue of the fact that the tower at Coffee Bluff and the towers on Abercorn are the two closest related towers to where we're talking about. And there is a swathe of land and area between those two towers that doesn't have poor call quality. It has no call quality unless you are outside holding your cell phone up over your head. In other words, there is an area that will be served by the tower that we're proposing that will solve a problem right now if you're not being able to use your cell phone in your call or you're not being able to use your cell phone in your home, or you're not being able to use your cell phone unless you're literally standing outside holding it up in the air. That is the purpose for the tower that we're proposing and it is the reason and the testimony was setforth under Tab I believe 10 in the MPC materials that we need this tower. It's not a call quality issue. It is a ability to call from not standing outside holding a cell phone up. And the area that this will, that this will solve the inability to get call unless you were standing outside is Savannah Country Day, LaVida Country Club, and surrounding areas of the Windsor Forest subdivision. Interestingly, what is not put in the decision, I don't believe, is that this tower, it was in the staff report, there is a rule that says you can only put towers so many feet apart. And this tower is not too close to either of the other towers. It is not too close to Coffee Bluff and it's not too close to Abercorn. So there is no violation of the rule that cell towers have to be a certain distance apart.

The last issue I want to talk about was the objection of the MPC to the 150 foot tall flag pole not being consistent with the existing streetscape and development pattern. The area where this

flag pole is going up is behind a Church off of Whitebluff Road, a busy road. It is behind a nonresidential building, the Church. It is next to and abuts Savannah County Day School. In fact we've moved it as close as we can move it to the Country Day School line which it'll be 40 feet from their property line. I took the liberty just to sort of discuss with you stealth and non stealth towers. I've taken some photographs of other towers that are located in the Savannah area first. These are towers that are located in different areas of the City so you can get an idea of what a non stealth tower looks like. I then took some pictures of towers that were close to the subject area in which we propose placing our tower. This picture is of a piece of property that is less than 2 miles from our property site. This is a tower that is at the intersection of Whitebluff and Tibet. And this is a tower that is – thank you – within 1½ miles from where we propose our tower. Now, let me show you some other towers that have been built exactly the way we propose build this tower. That's, that's a cell tower made to look like a flag pole.

**Mr. Robinson:** How high is that?

**Mr. Wasden:** 150. Same height as this one. This is another example of another tower. And here's another example. This is stealth and this is non stealth. Now, we've also as part of our proposal had simulations made of this flag pole in this location. Let me see if this helps or not. Just a minute. No that doesn't help. This is difficult to see in this particular picture. Alright, I'm getting the hang of this technical. Alright, here we go. There is the tower. That's what it will look like from Whitebluff Road. This is what it will look like – this is a northerly view from Greenbriar Lane, approximately 510 feet from the site. And this is what it will like from a southerly view from Merrydale Drive and Cedar Grove Road, approximately 775 feet from the site. Our point and the reason that we believe the Metropolitan Planning Commission erred is that this flag pole in this location is not incompatible with the existing streetscape and development. It is not incompatible with the ball fields, the football field, the stadium, the lights, and the power poles that are in the abutting property at Savannah Country Day School. It is not incompatible with the traffic and the street and the Church that it is located primarily behind. And built as a flag pole as shown in these photographs it is not in compatible, in fact it's better than the other poles and power stations and cell towers in this area. As a result, it is our belief that there was no adequate factual ground upon which the MPC could make an arbitrary decision that 150 foot flag pole was not compatible with this area. As a result, we have asked through our appeal to the Board of Zoning Appeals that you find that the MPC made an error of both the fact and law and that you – you overrule them and grant our application. And I just got one other picture I was just handed. Yates, I had it going and now you've messed me up. Well, I'll just hold it up. It's okay. It's –

**Mr. Stephens:** You can just hand it up to the Board.

**Mr. Wasden:** Sure, that will be great.

**Mr. Stephens:** Mr. Wasden.

**Mr. Wasden:** Yes sir. Unless there are any questions, I'm done.

**Mr. Stephens:** Yea. I have a question. In the previous – in the previous time National Wireless came I think you represented them on another tower here.

**Mr. Wasden:** I was here once before on the St. Pius site.

**Mr. Stephens:** Why is this tower so much taller than the one at St. Pius?

**Mr. Wasden:** Well, first of all it's covering a greater geographic. St. Pius tower was not meant and my technological fellows here might be better to explain it, but my understanding was the problem with St. Pius was not coverage but volume. Is that – if I'm wrong correct me because I don't want to mistake.

**Unidentified:** The St. Pius site was meant to cover in building coverage in a smaller area in midtown. This tower is meant to stretch coverage half way down Coffee Bluff Road. This, this tower is meant, meant to essentially cover for a couple of miles. The other tower was meant to – was meant to fit into a grid where the cell – the average distance between towers was a mile or less.

**Mr. Mackey:** Mickey, he's got to give his name for the record.

**Mr. Stephens:** Oh, please give your name for the record.

**Unidentified:** I'm sorry, my name is Greg Knight, RF Engineer for Cingular Wireless here in Savannah.

**Mr. Stephens:** Are there any questions for Mr. Wasden.

**Mr. Wasden:** Anything else. Yes sir.

**Mr. Robinson:** I'm not real – I'm not familiar with stealth towers and I can't tell from the images, are there guide wires at all?

**Mr. Wasden:** No sir.

**Mr. Robinson:** Just self.

**Mr. Wasden:** It is. And it actually I guess it actually holds four carriers. In other words, this pole when it goes up will have on it not only Cingular but three other phone companies so that there is not a proliferation of Cellular One wants a tower, Verizon wants a tower, American Tower wants a tower. These things are built so that they can all go on one tower which cuts down on the number of towers.

**Jonathan Yates, Attorney, National Wireless:** If I may add, the big difference Mr. Wasden showed you the photos, there is one key difference, on the non stealth our equipment is outside the pole, attached to the pole. When we go to the stealth design that Mr. Knight designed, all the equipment is contained inside the pole so from the exterior appearance you don't see any of our cell equipment. It's all hidden inside the pole. And what I passed up and I'm sorry I put Mr. Wiley, Wiley off a beautiful job, that's a similar facility. It was just approved by some neighbors to the north of Town of Archdale, NC. I brought it because it's very similar. It's identical height, and what we did in Archdale was we went on the little league park there so very similar as the playing fields of the Church. There we went on the playing field of the Archdale Trinity National Little League Association and that town found it to be absolutely stealth. They had a very similar stealth requirement to City of Savannah. But in their opinion, a passerby would not see equipment out 10 or 12 feet. But instead they would see a flagpole on a little league field. So, it was the closest example I had to what was proposed here and feeling much like we did in Archdale by hiding the equipment inside we meet the definition of stealth.

**Mr. Robinson:** What is say the circumference of the pole at the ground level and at the top?

**Mr. Yates:** That particular pole, Sir, will start the ground level and of course the ground level we will be also stealthing where we're going to have a, a masonry structure surrounding it with a mansard roof. The part that is covered will be about 48 inches. It tapers up to the top to about 26 inches with nothing coming off. If you looked at the other poles that Mr. Wasden showed you there are about 10 to 12 feet in each side where we have brackets coming out over the arms of the equipment. And just from the streetscape looking back even the Church building which is not a tall building obscured it. But all there'll be at top roughly 26 or 28 inches with all the equipment inside.

**Mr. Mackey:** Mr. Yates.

**Mr. Yates:** Yes, Sir, Mr. Mackey.

**Mr. Mackey:** How are you today?

**Mr. Yates:** I'm great. How are you doing Sir? Good to see you.

**Mr. Mackey:** Question for you – are there any limitations to your stealth tower with respect to residential developments or residential area?

**Mr. Yates:** In what respect Sir. We, we actually tried to deploy and that's a good question, I thank you Mr. Mackey – what we tried to do – this stealth and I will talk quite simply – this stealth we don't – do not get as, as good as coverage because Mr. Knight is having to compress all his equipment inside the pole versus having it spread it where he can get the maximum gain. So, consequently if Mr. Knight had his brothers in designing a system he'd avoid stealth because he had to do more pros. We employ stealth when we're going closer to residential because we find it more amenable even though if you look at the residential nearby it is all above ground. Not only power, but Telco. Both SEPCO and Bell South are running above ground as you saw that one photo, you have to look through the wires to see my pole. But yes Sir stealth is offered as a solution because we are at the dilemma now Mr. Mackey where folks are using the phones 24 / 7. When I first starting working for Cingular Wireless, it was not called Cingular Wireless, it was called Bell South Mobility. Why? Because it was for mobile phones. Mobile meaning in your car. Now, we're finding with 220 million Americans have cell phone over 80 percent of the country folks want to be able to use that phone 24 / 7 so we have to go and your ordinance allows it. Savannah was forward thinking, not all cities were. Savannah when they adopted their ordinance was very forward thinking knowing that we would come to using residential and so they allowed us to go into residential if in fact we would compress our equipment and hide it in something else. And that's why we feel we meet the ordinance. And that's why it is there to cover those residential neighborhoods, to cover the day school, and that's why we're employing the stealth facility in that location.

**Mr. Mackey:** Okay, Mr. Wasden mentioned volume. And as I remember it early on during the discussions with respect to this particular petition there was issue of coverage and capacity, so, so, so which are we talking.

**Mr. Wasden:** I was talking about St. Pius with the volume.

**Mr. Mackey:** Well, well, - okay - well thank you for the correction. So, are we talking coverage or capacity here?

**Mr. Yates:** Really a little bit of both. It's going to be able to get the coverage where it's needed. In addition, it'll provide Mr. Knight with the necessary capacity for all those rooftops around there. And the key again, if you look at your definition of what is stealth and where stealth is allowed, it is stealth. You're not the first Board to wrestle with this. You saw the pictures from Hilton Head where we went inside a, - it was Hilton Head Plantation where you saw that first flag fluttering above and a lot of folks, the compromise that your ordinance makes is they say that we recognize that you're going to have to cover residential rooftops but if you go into residential don't do the poles like Mr. Wasden showed you with that 12 foot array. Compress your equipment. Put it inside. Put it inside of a pole. The one thing we can't get around is Mr. Knight has a line of sight technology. The pole has to be above the trees, has to be high enough to be visible, and he has to have the height to cover the area he's trying to intend because your ordinance is also clear. In your ordinance it asks us to use the least number of poles possible. So, versus coming in with things that are too small to cover an area you don't want poles at every corner. What Mr. Knight did after reading your ordinance was do a design where he can cover that area, cover the capacity, and connect to his existing equipment.

**Mr. Mackey:** I've got one last question Mr. Chairman if I can. I just want to ask you a question Mr. Yates. Although, a few years ago Elizabeth Hockey came before the MPC representing American Tower.

**Mr. Yates:** David Hockey. Yes.

**Mr. Mackey:** And, let me ask a question. At that time, you know they told the residents and informed the residents because it was quite a stir about that although those are not the principals that you represent, but I do have a question for you. We were told that there were four, they already had probably verbal contracts for lack of a better term four piggy backers for that tower. Now, my question to you is this, any of those concerns or principals that agreed to go on that tower at that time - are any of these - are we dealing with the same principals today.

**Mr. Yates:** Well actually Coffee Bluff has been an extremely successful example of how collocation works. There are presently three carriers hidden in the pole. Coffee Bluff was on a SEPCO substation some 5,000 feet away. Again, the City code for separation is 2,500 feet. So, 5,000 feet away they did about 170 foot I believe it turned down - 170 foot was to look like a utility pole because it was on a SEPCO substation. And, yes Sir they designed it before three of the spaces are taken and they feel very sure by the end of the year the fourth space should be taken and it might even be they look into seeing someone could go at a lower level to see what they could work out. Yes, Sir. Thank you for bringing that up. Coffee Bluff has been wildly successful in that collocation works. There were sensitivity from the Coffee Bluff community. American Tower designed what was a stealth utility pole, not a flagpole because it was placed on the SEPCO substation and yes Sir there are three carriers in at presently all broadcasting.

**Mr. Mackey:** Alright that's not my question.

**Mr. Yates:** Yea.

**Mr. Mackey:** My question to you was, are we talking about the same collocators that are on that pole that wanted to come on your pole? That's the question.

**Mr. Yates:** Presently, Cingular has not elected to use Coffee Bluff. And we, we - you have here in the Savannah market seven licenses -



**Unidentified:** Eight.

**Mr. Yates:** Eight. You have a total of eight people that are licensed to broadcast that's designed for four and we're designed for four.

**Mr. Mackey:** You still have not answered my question. Understand my question. Here is my question –

**Mr. Wasden:** Let me help.

**Mr. Yates:** At this point, No. At this point, No.

**Mr. Mackey:** Here is my question. Let me ask you again.

**Mr. Yates:** Or is anyone going to duplicate the site?

**Mr. Mackey:** Absolutely.

**Mr. Yates:** Not at this point, No.

**Mr. Blackburn:** Mr. Wasden, raised and said that there were two points, factual and legal. The initial application that you have before you that was filed for the Whitebluff area asked for two things: 1) was a cell tower and 2) was a variance. Now, the reason for that if you do new construction without setbacks and complying with the zoning law, you must have a variance. Now, under the cell tower – Telecommunications Tower Ordinance you can what is known as a stealth tower. A stealth tower by its varied definition is that you can't – it's hidden. It's not openly out like building a building some where. Now, the Planning Commission as the administer of this ordinance denied it for ample grounds and reasons. Several that the Planning Director will come and address you on, as well as the, the – your Staff, the Secretary of this Board in there report. Number one, what is presented is not stealth. There's nothing in this area that matches it. None of these places identified and the zoning is different. But there is no flagpole in this area or anywhere 150 feet tall.

**Mr. Byrne:** Mr. Blackburn, can I ask you a quick question.

**Mr. Blackburn:** Let me finish.

**Mr. Byrne:** Because – can I ask you just one quick question, Sir. This, this site is not going to have a flag flying from it, is that right? Or maybe I'm asking the wrong -

**Mr. Wasden:** That is up to the MPC Staff. If they tell us they want a flag, we'll put it up. If they don't we won't. It's up, up to the recommendation.

**Mr. Byrne:** That is kind of what – stealth – is stealth a naked flagpole? Or, is stealth one where you have a flag flying from it? And I guess that's kind of –

**Mr. Yates:** I can assist with that Sir because there is a little confusion raised by Mr. Blackburn -

**Mr. Byrne:** I better let Mr. Blackburn –

**Mr. Mackey:** Yea, Mr. Chairman –

**Mr. Byrne:** I'm sorry.

**Mr. Blackburn:** May I, may I proceed and then they can argue all they want to.

**Mr. Byrne:** Yea, I'm sorry.

**Mr. Blackburn:** And, Mr. Thomson can proceed. But the, the MPC denied it and they didn't need a variance. They would have needed a variance for this had they been able to build a quote "flagpole" of any height. But – so they did not get a variance. They denied it because it was a separate structure that met no stealth requirements. And Mr. Thomson will address that for you. Now, the other point, that he will address is this: and he said as a matter of law that it was denied. But let me point out what the law is: the Planning Commission has every legal right under Federal Circuit Court opinions to listen to the residents of that neighborhood and they can testify and they did testify before the Planning Commission. There are nine houses on that, that street there that look right at this and there is no other structure like it and they testified that aesthetically it was very unpleasing and that it depreciated it there property values to have it right there. It was not stealth. It's very visible. It's seen and no other one like it anywhere in the area and they objected to it. And the Federal Court has said that's a ground that they had and I can furnish you a copy of the opinion which the MPC had that – and the testimony is in the record where the residents there objected to having this cingular standing and I don't mean ... (inaudible) (Ha! Ha!) - standing pole out there by itself as a separate structure that blends in with nothing. It certainly isn't stealth. And the MPC so found and they found that it, it was not appropriate for the neighborhood as they would have required a variance for them to be able to build this out by itself. Since it is not, - if it's stealth, it blends. What does this blend with? Nothing. And, and Mr. Thomson will address the, the MPC's findings and the – as to why they made that decision.

**Mr. Yates:** If I could just before just quickly clarify. Stealth, by your definition and by every definition of every County and City that's adopted it, which is most of the country means not that the pole is not visible, it can't be. It's a line of sight technology. The pole has to be visible. What stealth means is that the receive and transmit equipment in the air and on the ground cannot be visible. Not that the structure that house it isn't invisible because Mr. Knight's technology and the type technology licensed to the seven others by the Federal government doesn't allow for that. What stealth means quite simply and if you look at your ordinance and look at ordinances around the country, it simply means the transmit equipment, the received equipment up in the air and the ground component have to be hidden from public view. So we cannot have a invisible cell tower or stealth tower. Stealth, simply means the equipment of Mr. Knight and his three competitors cannot be seen. If this tower is allowed to be built the stealth facility, Mr. Knight's equipment and three of his competitors will not be visible. That is what stealth is. A lot of times – and that's an easy confusion, but keep in mind the, the facility itself is not stealth, the equipment hidden inside of it is stealth, concealed, and camouflage which is the definition of stealth.

**Mr. Byrne:** But it's, it's a little bit more than that isn't it. I mean, it's, it's not just that, that the you don't have dishes and antennas hanging off it. It's like you're trying to make it look like something other than a cell phone tower, is that right.

**Mr. Yates:** Absolutely. And that's, that's why I, I brought for a Wiley at the end and I shouldn't have put them at the end because he had such a wonderful presentation. What we just did in

Archdale which is identical and I know Archdale is a couple of states away, but it is identical and they were wrestling with the same thing and they could see that a flagpole on a little league base – maybe a flagpole would not work in the back – in – right, right in the back of some other uses in the town, but on a little league play, play field it made sense. As you see in that photo, it was the Allstar game last year and they were singing the National Anthem. Unfortunately, it was last year, so we had to photo simulate it so they were facing away from the flag. We're, we're in an identical situation here. The Church and several of the elders of the Church are here with me today. This is where the children play. This is where they have organized sports and this flag will also flutter over the trees onto the playing fields of Savannah Country Day. It is appropriate. It, it is as appropriate as it can be. If you look around the State of Georgia, many, many Church, Churches have either the flags in front or behind the sanctuary building. Some places it wouldn't be appropriate, maybe in the middle of an apartment complex they don't typically have a big flag. Institutional uses such as Churches, absolutely do. Keeping in mind to the football stadium at Country Day. It'll be visible from the football stadium, football stadiums around the country have flags. That's what we worked with and on behalf of National Wireless, I just want to say we worked on this for almost 2½ years. We worked very closely with Tom Thomson and his Staff. Our first couple of ideas were not – didn't really fly with Tom but we continued to work and I have to thank Tom and Charlotte Moore they helped us design. They, they didn't tell us what to do but they gave us recommendations and we kept submitting until we got it right. Until we could – where they could feel strongly enough. And I want to say in Savannah you have good staff and tough staff, they don't let anything slide. It means a lot to us and it has been the policy of NWC we don't go to the MPC without Staff recommendation or approval. We feel that's unfair to Staff, it's unfair to MPC to hear a petition that the Staff, the hired professionals did not feel we meet the ordinance. We feel we meet the ordinance. If the City father's feel that the ordinance should be changed that's another thought. But all we can do is come and look at your rule book. Mr. Knight looks at the rule book, I look at the rule book, and we try to come with a design that meets the rules at the time of application. Thank you.

**Mr. Byrne:** Thank you, Sir.

**Mr. Jim Hansen:** Mr. Chairman, if I might we seemed to be just a little bit out of order with this particular presentation. Generally, Staff comes first, but nonetheless if I might let me discuss this ever so briefly. Our Staff presentation today is also going to be somewhat out of the ordinary. I'm going to provide you with some factual information based upon the recommendation of the MPC, followed by Charlotte Moore, followed by Mr. Tom Thomson both of whom will provide you with additional information based upon the MPC record. But the request that we have before us today is in fact a request by the petitioner to approve a general development plan in order to construct a 150 foot cell tower telecommunications antenna more appropriately to call at a property 12915 Whitebluff Road. On the screen to your right is in fact the site of the proposed location. My pencil delineates Whitebluff. This is the Church property. The cell tower would be located in appropriately this location. The second picture provides you a shot from the parking lot behind the Church. Again, the cell tower would be located in approximately this location.

**Mr. Robinson:** Jim.

**Mr. Hansen:** The –

**Mr. Robinson:** Jim, can you go back to the first image and point out Country Day because I am not oriented right. Where is Country Day on there? Is that their ball field?

**Mr. Hansen:** Yea.

**Mr. Robinson:** Okay.

**Mr. Hansen:** The ball field, their football stadium, etc. This is Country Day. Again, the cell tower location would be in approximately this location. Whitebluff is out here. The pencil is pointing south. This is the – again the picture taken from the parking lot that is to the rear that is to the west of the Church building. The – Savannah Zoning Ordinance requires that the MPC consider and approve all general development plans that are submitted for telecommunications tower in accordance with the requirements of section 8-3031 of the Savannah Zoning Ordinance. The applicant did in fact submit the necessary information to the MPC upon due consideration by that Body at a regular meeting on the 6<sup>th</sup> of December 2005. The MPC voted to deny the petitioner's request. If you'll indulge me Mr. Chairman for a moment I would like to read in fact the entire decision as stated by the MPC. That is quote "the stealth facility will have a flagpole design to obscure antenna. However, the proposed dimensions of the pole and the lap of a flag suggest a structure other than a flagpole, whereas a tree line exist along a northern and western property lines to somewhat obscure the facility from those properties. The facility will be in full view of the residential properties to the south. And even with the trees, the pole would extend above the tree line which is a height that has not been exceeded by traditional flagpoles in the area. The proposed design is not consistent with the existing streetscape and development pattern of the area as required by section 8-3197, 4 – G of the Savannah Zoning Ordinance. The American Tower site located less than a mile from the proposed National Wireless Construction site may off-set "poor call quality" cited by the applicant." The Zoning Ordinance also allows and requires that appeals from the decision of the Planning Commission must be made to the Zoning Board of Appeals. The applicant did in fact file for a timely appeal to this Body. That appeal was first heard by this Body one month ago. This Body did continue that case to today's hearing. A complete record of the proceedings of the MPC were forwarded to the Board for review along with the staff report. Staff in its summary of findings found that there appears to be no error in the decision of the MPC in denying the site plan for a proposed telecommunications facility to be located on the subject site. I would like to now call on Ms. Moore, Mr. Chairman to amplify some of these comments and statements of the MPC.

**Mr. Stephens:** Thank you Mr. Hansen. Ms. Moore.

**Ms. Moore:** My intent is to go through the MPC's decision and – in making their decision. What'll I'll do is basically go through the presentation that Staff gave and then identify the reason for the MPC decision. The request from the petitioner was for a general development plan in an R-6 district. R-6 is one-family residential. And at the same time there was also a request from Cingular Wireless to construct an, an antenna on this particular facility. Now, the Zoning Ordinance does specify areas where telecommunications facilities are allowed and by right they are allowed in the following district. And all the B's indicate these are business districts. The I's indicate industrial district. Some are allowed by right, some are allowed by Zoning Board of Appeals approval and in some cases in PD's, Planning a development so the MPC can approve monopoles. And a monopole is, let me show you this graphic, this would be an instance of a monopole with the intent is being visible from the air. And then also the ground equipment may or may not be visible in the case of the City of Savannah. Sometimes chainlink is allowed provided that it's in a wooded area. In other cases, a wooden opaque fence would be required. In this particular case the applicant and let me say one other thing – there is another instance where towers or telecommunications facilities are allowed by matter of right. And that would be in the IL and IH districts and the petitioner did show what a guide or lattice tower appeared like. And typically you find lattice towers or guide towers either out in rural areas or

industrial areas because the property is zoned R-6 the telecommunications facilities desired by the applicant was not allowed as a matter of right. There are three instances when telecommunications facilities can be allowed within a residential area. And that is when it's one, a stealth design. A municipally owned site. Or three, accessory to a principle use that has a historic need for a tower and that would be like a police station or a fire station. The only instance or criteria that applied to this particular facility was that it had to be a stealth design. And here is the definition of stealth that appears in our Ordinance. And it is that it has to be concealed, camouflage, wireless telecommunications facilities designed such that the facilities have the appearance of a structure other than a telecommunications facility. And facility is really a key word because it's not just the antenna, antennas that have to be concealed it has to be the entire facility. And as you see down here that means the entire – basically the equipment that comes along with the tower site as well. So, going back to this graphic as you can see here the antennas would have to be hidden to be stealth and the ground equipment would have to be hidden as well. And then also and I'll get into this, this in just a moment is that the tower itself would have to be consistent with the development pattern or the character of the residential area.

This is a graphic of the petitioner's proposed facility. It is 100 foot tall what appears to be a flagpole and that's what the petitioner is indicating it to be. Around the base of the flagpole is – would be the ground equipment. The ground equipment is hidden by this concrete masonry block that you see here and it's approximately 11 feet in height. And then right here is a masonry – is a mansard roof to give it some architectural relief. This particular development or site is located on a Church property on Whitebluff Road between Greenbriar Drive and Vernonburg Avenue. It's on the west side. And this is actually two parcels of land that you see here. This is the Church. Whitebluff Road is located in this area within the trees and the proposed site is located in this corner of the property that you see back here. This is a site plan for the applicant. This is the Church that you see here. The yellow line here represents an easement to the leased area. This is a leased area. And this easement would allow access to the site. And then again here is another easement here. I believe that's about 20 feet along the western property line and the intent of that easement is for a, a utility. The neighborhood in which this is located is called Colonial Oaks. It is not a historical area. And the uses that you see adjacent to this piece of property includes Savannah Country Day. This is the baseball field here. Recreational field. Savannah Country Day property here as well. This is west and we have residential to the south and as well as to the east of the property.

The petitioner at the time of the original application provided us with some composite maps and these maps are required by the application by ordinance. And those composite maps indicate whether or not – or what type of coverage the petitioner presently has. And this is Cingular's coverage. Again, National Wireless is the petitioner – the tower – the, the carrier – or excuse me the business that will construct the tower and then Cingular would like to provide an antenna. This is location here of the proposed tower and as you can see the white area show either no coverage or very poor coverage. The blue indicates where pedestrian coverage is available. Green, would be in vehicle coverage. Yellow, residential and red commercial. And the red – commercial indicates the best – or the most desirable coverage. What it does, does not appear on this particular composite map is the American Towers site which is located not quite a mile away. I do have a radius map. Let me show you this here. This is the radius map, which is also required by the petition. This location here indicates the desired site and then this location here indicates the existing American Towers site. And going back to that composite map the petitioner does not show that site on this map. And of course it doesn't have to show those sites in which it does not presently have a, a – antennas. However, they did provide an updated map or a map showing if they did indeed get this particular facility approved that their

coverage would improve. So, as you can see the pedestrian and vehicle, residential and commercial coverages is do – do improve with this tower site. However, one of the concerns of MPC was that no information was provided showing what type of improved coverage would occur, if in fact they did locate on the American Towers site. There was a memo provided to us from Cingular indicating that they had weak coverage in the area. Not – that there wasn't any coverage at all, but that it was weak. And as a result customers were experiencing poor call quality and dropped calls. So, again no information was provided to show that collocating on the American Towers site would improve their situation.

There are some development standards that do apply for all telecommunications towers. And what I would like to do is go through each criterion. The applicant did not have any variances. There is a separation requirement between towers and there can be no towers within 2,500 feet of each other and in this case there aren't. There cannot be any towers located within 300 feet of a protective roadway and in this case there are no protective roadways within 300 feet. The applicant did meet all of the setback requirements. Within the other districts that I showed you the business and industrial, typically the height of the tower is the setback from the property line, in this stealth facilities do not have a setback. They do exceed as you can see the front yard setback which is 70 feet from the centerline of the road and they far exceed that. From the side yard, the requirement of the zoning district is 5 feet. There facility is approximately 35 feet from the side yard. Excuse me. And from the rear yard they're approximately 135 feet away, so they do comply with setback requirements. Height, the height issue within zoning districts does not apply to telecommunications facilities. Again, going back to the chart that I showed you the height is determined by the districts for it's allowed as a matter of right. Certain structures are not, are not limited by height and that does include flagpoles and that was reviewed by the MPC and that way given that this was proposed to be similar to a flagpole that, that the height was – did not apply. There are some designing requirements – design requirements of the facility and what the applicant propose is putting some wax myrtles around the base of the site in order to soften the look of this particular masonry block that was surrounding the equipment. They do comply with signage requirements. Accessory structures are allowed provided they are in conjunction with the tower, the antennas, so they do comply with that.

Some additional criteria include materials and color. The tower that you see here has to be a galvanized steel or grey material. It has to be neutral in order to blend in with the surroundings and the applicant is proposing that it be grey. And lighting is not required. This is not a 200 foot tall tower, so lighting is not required by the Federal Aviation Administration and we were given information indicating that – that it was not. This particular facility also would incorporate four antennas or four different wireless providers on this particular tower or pole and so - they do meet that requirement. There is one criterion that stood out to the MPC and I do want to show you that. In given its nature in a residential area this particular criterion here says *telecommunications facilities located within residential zoning districts within recognized historic areas or- here we go – on vacant lots adjacent to recognized historic areas shall be of a stealth designed and camouflaged in such a manner to be consistent with the existing streetscape and development pattern.* And this is where the MPC felt that the applicant did not demonstrate this. Stealth again, going back to that definition that we see here is something that is camouflage – concealed, camouflaged, wireless telecommunications facilities that have an appearance of a structure other than a telecommunications facility. And here is an example of one such structure. This is – in the middle that you see here, this is actually the telecommunications facility and as you can see the height of the tree, the diameter of the tree is very consistent with the trees around it. Here is another instance of a concealed facility. It's actually – it appears to be a light pole and the diameter is such that it really resembles a light pole. And here is another instance of, of – here is a flagpole and you can see its location. It says welcome to Waterloo.

Its location also suggests that it is a – that this particular flagpole belongs in this location. As you can see from the petitioner's location in this area, flagpoles are very atypical – they are not typically located in rear yards. They're usually in front of a civic building, a Church, a school, a commercial area. They maybe behind a baseball field. I think there was a photo that was passed around that showed, that showed a stealth flagpole in this area. But this particular facility is located in the rear yard. It will be visible to the residential property owners within this area. And as such it does not suggest really a flag – an appropriate location for a telecommunications facility. The height of the pole 150 feet. The diameter approximately 5 feet at its base really suggests something other than a flagpole and as such MPC feels that it's not consistent with the existing streetscape or development pattern. And they also indicated that, that they felt that the poor call quality cited by Cingular Wireless could perhaps be offset by, by collocating on the American Towers site, but no such information was provided.

**Mr. Stephens:** Thank you Ms. Moore.

**Mr. Wasden:** I want to make one correction while it's still fresh in everybody's mind. This is Tab 10 to your appeal booklet which was information provided. This is exactly what – I need to get this – this is exactly what was just said wasn't provided, which is a statement setting forth that if we were to put on the tower at Coffee Bluff that it would leave a slot of approximately point 5 miles wide to a proposed coverage area. The site that would have only pedestrian coverage which is what I told you earlier about standing outside holding it over your head. That area includes Savannah Country Day School, LaVida Country Club and parts of Windsor Forest. So, there was a study done as to whether the American Tower site would work. And as I've said earlier and has shown here, it would not.

**Mr. Thompson:** Good afternoon Mr. Chairman, Board members. My name is Tom Thomson, Executive Director of the MPC. Appreciate your patience on a long staff presentation today. I'm coming up on the, on the, on the tail end of this to give some information to you that relates the reasons the MPC Board cited as their - the reasons for denying this application to a recent court case and what the court said about this very thing. And, I'm a little bit redundant with some of what you've seen but I think you'll see the context when I'm, I'm completed. I'm going to focus in on two parts of the MPC decision and I think it's on your report. But – the, the part that says the proposed dimensions of the pole and the lack of a flag suggest a structure other than a flagpole, so that's one part. And the other part is – well just reference about the American Tower site off of Coffee Bluff Road which is located relatively nearby and whether or not the applicant adequately justified that, that location there wouldn't work. Although they state this we've had many times where we've reviewed tower locations and ask the applicant to do more than just say it in a letter. But demonstrate it somehow and, and provide the technical backup. I think what the Board felt at the time was they did not have that. The case that I'm referencing, referencing is the United States Court of Appeals Second Circuit Omni Point Communications the Plaintiff versus the City of White Plains New York the Defendant. And basically, the tower provider wanted to put up a tower. It was located on a golf course disguised as an Evergreen Tree. And the tower would rise to about three times the height of the tallest nearby Evergreen Tree, so there would be this large tree sticking above the other tree line. And local residents testified that the tower would be widely visible. The Board – the White Plains – City of White Plains Board there resolution denying the tower location was focused on three things. And I'm going to talk about two of them, but I'll mention all three here. Number one, adverse visual impact, primarily based upon the testimony of the neighbors concerns about visual – being able to see it and the affect on their property values. And then point two was the, the affect on their property values. And point three, was lack of public necessity. I am going to focus on the first and the last one in my presentation. But to jump to the end the appeal process the court

concluded that there was substantial evidence to support the Board's decision. And the court held that the neighbors aesthetic concerns could constitute compelling evidence for the Board – or City Council in this case. So, MPC heard public testimony from neighbors. They indicated a concern about the visual impact of that tower on their property and in this case the Court ruled that that testimony could provide for compelling evidence for the City Council to base its decision on – and you'll probably hear some, some neighbors today. Regarding public necessity, I am not going to go into all the details of the case, but they actually found that the City used the wrong standard, but when the court applied the correct standard which in this State was public necessity standard, a utility must show that its new construction is a public necessity and that it is required to render safe and adequate service. And there are compelling reasons, economic or otherwise which make it more feasible to build a new facility than to use an alternate source for the facility. And I, I don't know what Georgia law is on that regard maybe Mr. Blackburn can help, but this is a example of what MPC Board considered. Thus, the court went on to say to establish necessity, Omni Point had to demonstrate that there was a gap in cell service and that the building – the proposed tower – and that building the proposed tower at the golf course site was more feasible than other options and the Board ruled that they didn't have that information or sufficient justification for that.

I just want to reference the same map that, that a couple of maps that Charlotte did and Charlotte I may need technical help with, - if I can't do this. This map Charlotte showed you was the proposed cingular coverage area and the tower location that's proposed is right here and the Coffee Bluff tower which is not shown here, is right here. I guess you can leave those sitting there. And I guess my, my point here again back to the MPC decision is that we don't feel there was adequate information given to prove that the other site would not work adequately.

**Mr. Robinson:** What is that distance?

**Mr. Thomson:** Between the two tower sites, Charlotte you got that circle there – less than a mile. You want to throw that up there and just – this, this circle is one mile and the, the American site is right on the edge there, so 5,000 feet approximately – maybe. And this, this diagram shows the existing coverage and there is shown a hole on the cingular coverage right there. Now, Greg this is not scientific. And it will vary because they may not be the top point on this pole, but you know – I cut out the little area from the previous slide right here and I put it on a little overlay and I'm trying to drop it down more less correctly on top of the, the Coffee Bluff tower location. And you do see there's, there's still an open area there, but I guess the question I would ask, would adjusting power height something on the other towers in the area close that gap or some other technique that could be used there. I don't think that's, that's been explained enough. So, the two points I wanted to make in referencing the court case is that, that public - or the residents view of the impact can be considered at least in my laymans language as part of – the justification for the decision and that to reemphasize that we don't believe the applicant has demonstrated fully that there isn't an alternative way to provide this coverage and service. And with that Mr. Chairman I, I think our staff and presentation is finished unless you want to come in the rear Mr. Blackburn.

**Mr. Stephens:** Thank you Mr. Thomson.

**Mr. Blackburn:** I, I only want to point out one thing and then of course the public is entitled to be heard also, that at the MPC they were heard and these residents – there is a site line on that Greenbriar with all nine homes that this is obviously not stealth in the sense of residential area what the ordinance requires. So, the MPC was certainly within its discretion. It sure didn't abuse any discretion in making an administrative decision.



**Mr. Stephens:** Okay, Mr. Blackburn. At this time do we have anybody to speak against the cell tower. If so, we ask you to come forward. Sign in and Mr. Blackburn –

**Mr. Robinson:** He's waiting for the people to speak against it.

**Mr. Stephens:** Let me swear you all in at one time and then we can start with the first person.

**Mr. Jones:** Sign the book.

**Mr. Stephens:** Yea. Sign the book and let me swear you - Yea, sign the book and then I can swear you all in at one time. Now, let me ask you because of the long day and we do have other cases before us and we do have people waiting behind this particular petition let's keep our comments as brief as possible. Let's just everybody raise our right hand. I need to swear you in and then you can sign in afterwards. Do you swear to the tell truth, the whole truth, and nothing but the truth?

**Public:** I do.

**Mr. Stephens:** Thank you. Alright, those who haven't signed in, please sign in. Please state your name.

**Ms. Ruby Hines:** My name is Ruby Hines and I'm resident of – on Greenbriar for nearly 25 years or better. And as they was speaking they was talking about the stealth tower and also about the property that is going to be placed on which is so close to our backyard. And the reason why we're against it is because we're coming out of our backyard. We can, we can go into our backyard and look right at the stealth tower whatever pole they're going to put there. It is so close to our fence. And there – it is not near Country Day where they stating that it would be near Country – it won't be near Country Day but it will be so close to our fence our yard is joining to their property. It's just a fence separating our property and there property. And where this will be I have been there - since I've been there I have never seen the Church bring those – bring the kids in that, in that area because it's all wooded. It's all grass, wooded no trees to hide this. It is – it is so full of woods and bushes that don't even play. Once I saw them and that was last year for the first time on this property ever played there, so it couldn't be used as a flagpole or a play area because they never played there. And another thing I'll like to address is that when Church is over - from the time they're at Church they go home. We have to view this thing daily. Everyday, in our sight. It will be visibly seen because there is no trees. There is nothing to hide this. They very seldom cut the grass. It is – we have asked them over and over to clean this property. If you take a look it is really bad. It is bad and it's not appropriate and we don't want it in there. We're asking that you would deny it.

**Mr. Stephens:** Thank you.

**Mr. Byrne:** I have a question for you Ms. Hines. I'm sorry, just real quick. How would you feel – what's your opinion on how this would affect if this were approved – if it were how would it affect your property values. You've lived there you said 25 years.

**Ms. Hines:** Exactly.

**Mr. Byrne:** How would it affect your property value?

**Ms. Hines:** It would affect my property because it's so close and anyone that would purchase this property will evaluate the fact that with the stealth tower is doing so close to they fence in our backyard. And I don't want – I would love not to have it there because I have children that plays out there and I never seen no one out there in that field. No one out there in that field. And I don't want it because I don't it to affect our property at all.

**Mr. Byrne:** Thank you M'aam.

**Ms. Hines:** You welcome.

**Mr. Stephens:** Again, let me reiterate. Let's keep our comments as short as possible because there are quite a few people up here to speak against it and we have other cases pending. Please state your name.

**Mr. Herman Mack:** My name is Herman Mack and I live on Greenbriar Drive. Out there in our area I never heard at least one say they was residents at the time. All they said was Church and Country Day. But that is in our front yard. Front and backyard. Country Day is at the end of our street. And I mean absolutely – he said you couldn't get a cell phone through, that's a tale. I mean I use mine everyday, inside, outside. And it's really going to be a destruction. I mean after if you can't recognize and talk to the residents about something to try and get some of their input then you don't even need to be there. They wouldn't put it on there place. Mr. Wasden wouldn't put it on Wilmington Island on his spot. And that's it. As far as the property values, yes it'll go down. Nobody want the radio towers around them with all the radiation and everything that's going to be there. The average house on that block is over \$100,000. It will go down to about 50 if they stick that sucker in there.

**Mr. Stephens:** Does anybody have any questions of Mr. Mack. Thank you Mr. Mack.

**Ms. Ivy Richardson:** Hello, my name is Ivy Richardson. I am oppose to putting this tower in our area. I live on 20 Greenbriar Drive. I have called the City to have the Church clean up that property because when I walk out my back door I look directly at the property. So, I can agree with my neighbor in reference to the condition of the property. One of my concerns that I put down was the impact upon the residents and also our value – our property value. Another concern that I put was - that I addressed was the compression of the design of the present tower because they have compressed it in such a way and being a mathematician and designing such component as that if you can redesign that to put it in the back under the auspice of a United State American flagpole then you can take your present towers redesign it, expand it so it can serve the areas in which you wish to serve. Thank you for hearing me. I do oppose.

**Ms. Delores Mack:** I'm Delores Mack. I live at 23 Greenbriar Drive. I'm a resident there and I have been there for 20 years. I am opposing what your plans are. What I had planned to say has already been said. And I hope you all will take that into consideration. Thank you.

**Mr. Stephens:** Thank you Ms. Mack.

**Mr. Henry E. Harris:** I'm Henry E. Harris and I live at 12909 Whitebluff Road. Before anything was put there even the Church and Greenbriar, I was there before that and anything that comes in the area that going to lower the property of anyone, I am opposed to that. And behind the Church where it is and just like the Attorney for the City has said he named eight or nine

houses, but from the wooded area coming down towards Coffee Bluff Road I counted eighteen houses that would be in the open for it. So, I'm opposed of the residence in that area myself.

**Mr. Stephens:** Thank you Mr. Harris.

**Ms. Eleanor Green:** Hello, my name is Eleanor Green. I am opposed to – I'm opposed to the stealth towers. I do have a petition list for those homeowners who are opposed to it and also a letter opposed to it. They said everything I needed to say. But one thing they never talked about was what the level of wind that this pole can take that we needed to know about. They also didn't talk about if a wind does come and break this down, how does it break down. Does it break down? Does it fall down on our houses? Or, does it just break down in different ways of breaking down, like does it fall. These are some of the things we were hoping they would discuss with us. Okay, you said about the data. My main thing, I'm against it. I do have pictures where you can see the houses all the way to the pole. The house is right here that pole will be sitting right here. We can just walk out our door and look right it. I am opposed to the stealth tower.

**Mr. Stephens:** One question, have any – have anyone from the wireless company come to the neighborhood and talk to any of the residents.

**Resident:** No.

**Ms. Green:** No. We have been here twice and they haven't tried to come to the neighborhood and maybe have meeting. Not even the Church called and tried to have a meeting with us about the stealth tower.

**Mr. Stephens:** Thank you.

**Mr. Jones:** Mr. Chairman.

**Mr. Stephens:** Mr. Jones.

**Mr. Jones:** Would you, would you give your petition to Mr. Hansen.

**Mr. Green:** Yes I will.

**Mr. Jones:** And any other letters that you have dealing with it.

**Mr. Wasden:** I have just three brief issues if I may. First, I don't understand the difficulty with this idea that about the American Tower site. The only evidence in the record is Tab 10 to our appeal in which a study is done and the outcome is listed. And while I appreciate the non scientific cutting and pasting, the fact is that as far as this record is concerned that is the only evidence that deals with this issue and it is directly on point to the complaints that are being made. Secondly, this pole was built and, and we have covered this I think in another hearing, this pole was built to withstand winds of 120 miles an hour. If the pole actually breaks, it doesn't fall off. It's built specifically so that it folds down in half and swings. That's why there is no requirement that there be on a 150 foot pole a 150 foot setback because the pole is not going to blow over in the wind. It is built in high force hurricane winds to break and hold so that that doesn't happen. And thirdly, I, I don't doubt that the citizens believe what they're saying when they get up here and tell you what they told you. But I would suggest to you that it is not credible to say that putting a flagpole up 40 feet from a high school field and football stadium is

such a dramatic act that it is going to drive property values down. It is not lit like the football stadium. It makes no noise like the football stadium. It is only one flagpole as opposed to eight light poles. And I suggest to you that it is not credible to say that putting a flagpole up 40 feet from those fields are in some way going to drive the property values down. Thank you.

**Mr. Stephens:** Thank you.

**Unidentified Resident:** That's another thing, all are bedrooms on Greenbriar Drive in the back are master bedrooms. What kind of sound does it drive?

**Mr. Wasden:** It makes no sound. There is no sound at all.

**Mr. Stephens:** Alright, thank you.

**Mr. Bill Seffner:** My name is Bill Seffner. I'm an Elder of the New Life Fellowship Church which we've been talking about.

**Mr. Stephens:** Mr. Seffner, have you signed in and then I'll swear you in and then we'll – do you swear to tell the truth, the whole truth, and nothing but the truth.

**Mr. Seffner:** I do.

**Mr. Stephens:** Thank you.

**Mr. Seffner:** I just want to make two issues here. First of all, if my Pastor could have been here he'll tell you about having to walk around outside the Church to make his cell phone work. Not all the time, but many times as well as other people that have come to our church. The property behind our Church, we have it cut by one of our men once a month. We have improved it greatly and right now we're negotiating for a soccer field for the Georgia Soccer Association to build a soccer field back there. And so those two issues, I just want to present before you to get the – this argument on a leveled playing field. We, we find that it would be no obstruction to us even though like the lady said we're just there maybe two or three times a week. We're there all the time and I can appreciate that. But we also find, find that this would be a - all of our congregation about 80 percent of them have cell phones I'm sure as well as hundreds of others in the neighborhood. And we definitely need some service – better service some way. Thank you.

**Mr. Stephens:** Thank you, Sir.

**Mr. Mackey:** So, so Mr. Chairman.

**Mr. Stephens:** Yes, Sir.

**Mr. Mackey:** It's just, just a – it's just a question of – it's for the record, this isn't about a soccer field. And this is about the cell tower. And this, this Board has no knowledge of anything with regard to a Georgia something soccer field. I wanted to put that on the record Mr. Chairman. If, if, if I – if – at your pleasure if there is no other comment from the public to the hearing and Staff, or from the Attorney's I'm, I'm ready for a motion.

**Mr. Blackburn:** Let me make one final comment. Under the ordinances of the City of Savannah the MPC is charged with the responsibility of administering this to look into all of it.

The – under a set of written rules which included and the ordinance itself tries to address as Ms. Moore pointed out to you there a little different rule in industrial area, business area, but this is residential area. Every resident along that street is, is up in arms about it. And perhaps she said maybe not with good cause but it's their house. It's their castle. Now, the Planning Commission when – as Mr. Thomson pointed out to you went into great detail in seeking what the facts are and trying to accommodate under the ordinance. But bear this in mind as testimony before the Planning Commission and your job is only to determine if they made a mistake. If they abused their discretion. If they didn't do the right thing. It's a very harsh remedy to overturn them and say that they abused their discretion. And they're charged with that responsibility. They certainly went into it as you can see in great detail in trying to study it and they determined it didn't meet the requirements of a stealth. It's not a flagpole. Let's face it. Everybody knows it's not a flagpole. The residents know it's not a flagpole. It's not a stealth. It's a separate tower that sits in a residential neighborhood. And we submit of course the Planning Commission submits that they heard everything you've heard and they made the proper decision. They do it everyday in trying to make these decisions in the best interest of the community under the law. And we would suggest that the Board should sustain the findings of the Planning Commission.

**Mr. Stephens:** Thank you Mr. Blackburn. At this time the Chair will entertain a motion.

**Mr. Mackey:** Mr. Chairman, if, if I'm in order, I'd like to offer a motion that this Board – the Zoning Board of Appeals for the City of Savannah sustain the denial of the General Development Plan for a 150 foot cell tower for the reasons outlined mainly that the proposed design is not consistent with the existing streetscape development pattern, but, but again for the record that we sustain the and affirm the decision that no discretion was abused that was offered and rendered by the Metropolitan Planning Commission.

**Mr. Jones:** Second.

**Mr. Stephens:** I have a motion and a second that we sustain the decision of the Metropolitan Planning Commission. All those in favor.

**Mr. Robinson:** Are we going to have more discussion?

**Mr. Stephens:** Got a question.

**Mr. Robinson:** I am sort of conflicted on this. I just – I don't want to make a - I am going to vote for the motion, but I want to make a couple of comments. I am conflicted because I know the area and I am in the area quite often and quite often have the experience of not being able to make a cell phone call or have a cell phone call dropped. Although, Mr. Thomson made what might be called a non technical presentation, I think somewhere there there's some credibility that needs to be explored. The, the, the other thing is from what I can see in here MPC did not make an error, so that's my -

**Mr. Stephens:** Alright, we have a motion and a second. All those in favor

**The Board:** Aye.

**Mr. Stephens:** Opposes. Alright, we – if – it's been affirm that the - we affirm the decision of the MPC. This is unanimous. Alright, we move to our regular agenda.

**RE: Petition of Deborah Daniels, For  
New Jerusalem Holiness  
B-060227-88441-2  
S.E. Corner of Homer Avenue & Cobb Street**

Present for the petition was Deborah Daniels.

The petitioner is requesting approval to establish a use (church) and is seeking a waiver of the standard that churches be located on a collector street or greater pursuant to the requirements of Section 8-3025 of the Savannah Zoning Ordinance. The subject property, located at the southeast corner of Homer Avenue and Cobb Street, is zoned R-6 (One-family Residential).

**Findings**

1. Subject to approval by the Zoning Board of Appeals, churches are an allowed use within the R-6 zoning classification. The New Jerusalem Holiness Church is proposing to establish and construct a church within the Summerside neighborhood at the intersection of Homer Avenue and Cobb Street.
2. In addition to the request to establish a use, the petitioner is also seeking a variance from the requirement that churches be located on a collector street or greater. All of the streets within the immediate area are classified as local streets.
3. The subject property, though oddly shaped, contains approximately 1.33 acres. The site is currently vacant, though much of the land is heavily vegetated.
4. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals shall hear and decide upon requests for permission to establish uses based upon a finding by the Board that:
  - a. **The proposed use does not affect adversely the general plans for the physical development of the city, as embodied in these regulations and in any Master Plan or portion thereof adopted by the mayor and aldermen.**

The proposed use does not affect adversely the general plan for the physical development of the city. Churches are, subject to approval by the Board of Appeals, an allowed use in the R-6 zoning classification.
  - b. **The proposed use will not be contrary to the purpose stated for these regulations.**

The proposed use is not contrary to the regulations.
  - c. **The proposed use will not affect adversely the health and safety of residents or workers in the city.**

No adverse affects are expected or anticipated.
  - d. **The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.**

The proposed use will not be detrimental to the use or development of adjacent properties. The surrounding area is mostly residential, although the property does abut the Seaboard Coast Railway. Churches can be a compatible use in a residential setting.

**e. The proposed use will not be affected adversely by the existing uses.**

The proposed use will not be affected adversely by the existing use. The site is currently vacant.

**f. The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of said use.**

The parcel is approximately 1.33 acres in size. No site plan information has been submitted. If permission to establish the church is granted, the petitioner will be required to submit a site plan for consideration by the appropriate review bodies.

**g. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation, or type of physical activity.**

It is not anticipated that the proposed use will create either a hazard or a nuisance. It is anticipated that the facility will see limited usage, two times per week on average.

**h. The standards set forth for each particular use for which a permit may be granted have been met.**

At this point in time, no variances from the development standards of the district have been requested. No site plan has been submitted. If the proposed development is found to be in non-compliance with district regulations upon submittal, the petitioner may request relief from the Board of Appeals at a subsequent hearing.

5. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

**a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

Though oddly shaped, the subject parcel is considered a standard lot. The combined parcel contains approximately 1.33 acres.

**b. The application of these regulations to this particular piece of property**

**would create an unnecessary hardship.**

Strict application of the regulations of the district would not cause an unnecessary hardship. The property could be used for residential purposes without the necessity of variances. Because the Ordinance requires churches to be located on a collector street or greater, the petitioner is in need of a variance in order to construct as is proposed.

**c. Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are not peculiar to the subject property.

**d. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of this chapter.**

Relief, if granted, would most likely not cause substantial detriment to the public good. The site configuration will allow ample space for enhanced vegetation and buffering. Moreover, limited usage is anticipated for the development.

### **Summary Of Findings**

All of the conditions necessary for granting use approval to establish a church and to vary the requirement that said use be located on a collector street or higher appear not to be met.

**Mr. Byrne** asked if it was correct that no site plan had been submitted?

**Mr. Hansen** stated yes, but also none was required at this point to be submitted.

**Mr. Jones** stated the requirements for this was that the facility be located on a collector street.

**Mr. Hansen** stated yes a collector or an arterial street.

**Mr. Jones** stated this street ended on a cul-de-sac at the railroad, so it was no collector street.

**Mr. Hansen** stated that was correct and it was classified as a local street and that was why the petitioner has requested the variance from that particular provision. If the Board approves this application, the approval would be for (1) the establishment of the use and (2) waiver or variance that it be located on a collector street.

**Ms. Deborah Daniels** stated there are two entrances to the street in question. She said where they proposed to build the church was on the back end and away from the main street. It was her understanding that they did not have to submit a site plan at this point.

**Mr. Byrne** asked where would the people park attending the Church?

**Ms. Daniels** stated they submitted for ten parking spaces because it is one parking space per 8 people, therefore with ten spaces they had more than enough. She said the residents in the area were in walking distance.

**Mr. Jones** stated when he looked at the site one of the streets ended and was not opened for vehicular traffic. The cul-de-sac ended at the railroad. He said they indicated that they have ten



parking spaces and the law required for facilities like that 1 parking space for every 8 seats. He asked how many seats would they have in the Church?

**Ms. Daniels** stated 125 to 150 seats, but she has not received the final stats from the architect.

**Mr. Jones** stated if they have 125 seats and 8 parking spaces for each seat they would be short on their parking.

**Ms. Daniels** stated the size of the lot was adequate enough that they would have a problem with being compliant to add to the parking.

**Mr. Jones** asked what was the size of the lot?

**Ms. Daniels** stated there were five lots that were 30 X 150.

**Mr. Jones** stated by his figures they would still be short on their parking and would have to park on the street.

**Ms. Daniels** stated they would have enough room. She said they only put the proposed parking on the wider side of the Church, but they have enough room to add on to the back. She said she felt there was enough square footage for the parking. She said you could also access the Church from Homer. She said on the end where the Church was further down the house that was there was approximately right there and the other part of the street did not have any residences.

**Mr. Robinson** stated their plans would have to be designed by an architect and also approved by the City Inspections Department.

**Mr. Mackey** stated he understood there has always been a proliferation of Churches. However, he was concerned that it was a narrow street and he was not sure that it was a good fit. He said he felt that it was almost like trying to do a cookie-cutter job in putting a Church in there. He said he was concerned about the residential. He said he just did not know if this was the best fit for this swatch of land.

**Mr. Byrne** asked if the Board approved the petition if it could be conditioned upon the petitioner submitting a site plan and the Church being in compliance? He said he understood if not, the petitioner could always come back to the Board ask for a variance according to the Staff report.

**Mr. Hansen** stated yes, and as he stated in the Staff report a site plan was not required of the applicant at this particular point in time. However, as it has been discussed the petitioner, if the Board approves the use would be held to the development standards of the particular district and of Churches in general. If it turned out that the petitioner could not provide all the necessary parking then the choices would be (1) they could reduce the size of their facility to reduce the number of parking spaces required or (2) they have the ability to come back to the Board to seek a variance of the parking. Although he appreciated the parking concerns a site plan was not a requirement. He said they were strictly talking about whether or not this was the appropriate location to establish this particular use and if it was appropriate that this use be established on a local residential street rather than a requirement of a collector or arterial.

**Mr. Byrne** stated he understood that the Board's ruling was not bound by precedent and that the Board review petitions on a case by case basis.

**Mr. Hansen** stated yes. He said each case before the Board should be considered on its on merit. He said there should be no such thing as precedent. In this particular case the Board was dealing solely with the one Church. He said it was true that the code required that these types of uses be located on collectors and arterials. It was also true that they could cite many examples throughout the City where they were not. It was also true, although he just made this statement that the Board does not consider precedent, this Board has in fact considered similar types of cases and frankly has ruled both ways. However, the Board was charged with the merits of this one particular case.

**Mr. McKelsey Welch (1100 Block of Homer Avenue)** stated he was not opposed to the Church, but he was concerned about the parking. He said he has been a resident in the area for 20 years. He said there was one way into the area and one way out (Clay Street). He said he felt there was not enough parking.

**Ms. Daniels** stated they also have the option to purchase another lot which would could help to eliminate the concerns with regard to the parking.

**Mr. Mackey** stated the parking was the issue but it was not the ultimate issue. He said the ultimate issue was the use on this particular parcel of land. He said in his mind, he has not seen that the use was best suited for this parcel of land in terms of size and scale.

SZBA Action: Mr. Jones made a motion that the Savannah Zoning Board of Appeals deny the petition as submitted. Mr. Mackey seconded the motion. The motion tied 2 – 2. The motion failed 2 – 3. Opposed to the motion were Mr. Byrne, Mr. Robinson, and Mr. Stephens.

SZBA Action: **Mr. Byrne made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted based upon a finding that the use permit sought and the variance requested will not be detrimental to the public good. The approval was conditioned upon the applicant submitting a site plan for review by the required regulatory bodies. Mr. Robinson seconded the motion. The motion tied 2 – 2. The motion passed 3 - 2. Voting in favor of the motion were Mr. Byrne, Mr. Robinson, and Mr. Stephens. Opposed to the motion were Mr. Jones and Mr. Mackey.**

**RE: Petition of Edwin Torres  
B-060227-88592-2  
354 Felt Drive**

Present for the petition was Edwin Torres.

The petitioner is requesting approval of a six (6) foot side yard setback variance to the ten (10) foot side yard setback requirement of Section 8-3025(d) of the Savannah Zoning Ordinance in order to construct a garage onto an existing residential structure. The subject property, located at 354 Felt Drive, is zoned R-10 (One-Family Residential).

### **Findings**

1. Section 8-3025(d) of the Savannah Zoning Ordinance requires a minimum ten foot side yard setback for detached residential structures. The petitioner proposes to construct a garage addition onto an existing home. The petitioner is requesting a six foot side yard setback variance to accommodate the same.

2. The subject property is considered a standard lot within the R-10 zoning classification. The parcel is approximately 110 feet wide and approximately 450 feet deep.
3. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:
  - a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

The subject property is a standard lot within the R-10 zoning district. The parcel has 110 feet of frontage on Felt Drive.
  - b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Strict application of the regulations of the Zoning Ordinance would not create an unnecessary hardship. It appears that the parcel is of ample size to accommodate the proposed garage addition.
  - c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are not peculiar to the particular piece of property involved.
  - d. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Savannah Zoning Ordinance.**

Relief, if granted, would not likely cause substantial detriment to the public good. The lots in the immediate neighborhood are generally oversized and have relatively large setbacks.

### **Summary Of Findings**

All of the conditions necessary for granting a six foot side yard setback variance appear not to be met.

**Mr. Robinson** asked Staff if this was one of the sites that did not have a sign posted?

**Mr. Hansen** stated Staff visited the site on two separate occasions and he did not see a sign posted. He said according to the Zoning Administrator the sign was picked up from the City. He said he felt this may be a question for the applicant.

**Mr. Torres** stated he posted the sign, but the children in the area may have removed it.

**Mr. Mackey** asked Mr. Hansen if according to the regulations it said that it was up to the petitioner to maintain the sign?

**Mr. Hansen** stated yes.

**Mr. Mackey** stated if was being said that the sign was not posted for its entirety in the proper time frame. He asked if that was correct?

**Mr. Hansen** stated yes, in so much as that at least on the two occasions that he personally visited the site one of which was approximately eight days ago, Monday previous with Mr. Robinson there was no sign visually present at that point in time.

**SZBA Action:** **Mr. Mackey made a motion that the Savannah Zoning Board of Appeals continue the petition until the next regularly scheduled meeting to allow the petitioner to post the site as required by the regulations. Mr. Robinson seconded the motion and it was unanimously passed.**

**RE: Petition of Richard Sams  
B-060227-89295-2  
911 Hamilton Court**

Present for the petition was Edward Sams.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a seven (7) foot rear yard setback variance from the 25 foot rear yard setback requirement of Section 8-3025 of the Savannah Zoning Ordinance in order to construct an addition on to an existing single family residence. The subject property, located at 911 Hamilton Court, is zoned R-4 (Four-family Residential).

### **Findings**

1. The petitioner intends to construct an addition onto an existing single family residence. The subject property, though considered a substandard lot within the R-4 zoning classification, is none-the-less, a buildable parcel. The lot measures 60 feet wide and 89 feet deep.
2. Development standards within the R-4 classification require a minimum 25 foot rear yard setback. The finished structure proposed to be built by the petitioner measures 35 feet by 42 feet, with a 4 foot by 6 foot front porch. As proposed, construction of the building would require a seven foot rear yard setback variance. The minimum front yard setback, side yard setbacks and lot coverage requirements have been met.
3. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

- a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

The subject property is a substandard lot within the R-4 zoning district. Typical single family detached development in the district requires a minimum lot width of 60 feet, and a minimum lot area of 6,000 square feet.

- b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Strict application of the regulations of the Zoning Ordinance would not create an unnecessary hardship. Although the lot is only 89 feet deep, a building envelope of 2,200 square feet could be used.

- c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are peculiar to the particular piece of property involved.

- d. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Savannah Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good. The lot size and proposed structure to be built are typical of other developments within the neighborhood and immediate area.

### **Summary Of Findings**

All of the conditions necessary for granting a seven foot rear yard setback variance appear not to be met.

**Mr. Sams** stated they felt the house was an eyesore to the neighborhood. He said the original property was 107 X 60, but when they brought the street through it took most of the property away from the house. He said they would like to add 12 feet on the rear for an addition which would leave approximately 18 feet on the rear. He said they felt the addition would improve the neighborhood.

**Mr. Todaro** stated the tax map was not an accurate portrayal for Felt Street. He said the petitioner's lot was substandard in depth.

**SZBA Action: Mr. Byrne made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted based upon a finding that granting the variance requested would not cause substantial detriment to the public good. Mr. Robinson seconded the motion and it was unanimously passed.**

RE: **Petition of Patrick Shay, For  
Beacon Builders, Inc.  
B-060227-89388-2  
544 Liberty Street**

Present for the petition was Patrick Shay.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a variance to allow lot coverage of 82 percent as opposed to the 75 percent lot coverage allowed by Section 8-3025 of the Savannah Zoning Ordinance in order to construct a mixed use development. The subject property, located at 544 Liberty Street, is zoned R-I-P-B (Residential, Medium Density).

### **Findings**

1. Development standards contained within Section 8-3025 of the Savannah Zoning Ordinance limit lot coverage in the R-I-P-B district to 75 percent. The petitioner proposes to construct a mixed use commercial/residential project on the subject site and is requesting a variance to allow lot coverage of 82 percent. The proposed design provides for required off-street parking in enclosed garage facilities.
2. The subject site is located on the northeast corner of Houston and Liberty Streets. Access to the rear of the property is provided from the Perry Street Lane. The parcel is rectangular in shape and has 90 feet of frontage on Houston Street, and 151 feet of frontage on Liberty Street. The property contains approximately 13,590 square feet.
3. Whereas the subject site is located within the Savannah Landmark Historic District, the petitioner will be required to receive approval from the Historic District Board of Review for building height and mass.
4. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

- a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

There are no extraordinary or exceptional conditions regarding size, shape, or topography. The parcel is considered a standard lot within the R-I-P-B zoning classification.

- b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

The application of these regulations to this particular piece of property would not create an unnecessary hardship.

- c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are not peculiar to the subject property. However, it is noted that the petitioner recently down zoned the property voluntarily and that the site previously contained a commercial use that occupied nearly 100 percent of the lot.

**d. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Savannah Zoning Ordinance.**

Relief, if granted, would not likely cause substantial detriment to the public good or impair the purposes and intent of the Savannah Zoning Ordinance. The building footprint of the proposed structure is substantially smaller than that of the building which previously occupied the site.

### **Summary Of Findings**

All of the conditions necessary for granting the requested lot coverage variance appear not to be met.

**Mr. Shay** stated they were requesting a 7 percent relief from 75 percent to 82 percent. The justifications were that the higher lot coverage was consistent with the other development along the eastern side of Liberty Street much of which is commercial. He said the proposed property was zoned the same as the others along Liberty in a commercial use category that ironically did not allow residential development. When they brought the project to MPC, they asked what zoning categories would allow for the residential to be developed. The zoning classification that they decided on was RIP-B zone. The building located on this site until it was demolished about 5 years ago covered 100 percent of the site and was known as the Ever Ready Garage. He said the adjacent residential development in the area to their measurements and from examination of area photographs appeared to have a lot coverage that was equaled to or in excess of that which the applicant seeks today. The current owner down zoned from PBG to RIP-B with the belief that there could be relief from the 75 percent lot coverage requirement based upon similar projects in other areas of the downtown Historic District. He also stated that the proposed design provides off-street parking for all the residents of the proposed project. He said they would be below grade and out of sight.

He stated one of the things he felt was archaic about the open space requirement in the RIP zone was that the open space was almost always devoted entirely to street level paved parking. He said they felt this project should not be punished for going to the extra expense of putting the parking for the residents one level below grade, therefore out of sight. He said there would also be additional open space for the residents on the roof of the building in the form of roof decks. He said the sum total of all the open space meant that they would not need a variance. And it was his understanding that it was not clear in the Zoning Ordinance whether open space that was on the roof could be made to count. He said if you thought about it, they have 100 percent below grade parking, so that would be open space if it were at grade and then they have in total open space including the roof decks that would be more than 25 percent of the property. He said he felt it was also important to note that the effort that the MPC has undertaken over the past several years to try and look at the zoning codes in general and find areas like this that were archaic, no longer congruous with the actual development pattern has identified this area and all the area along the Liberty Street corridor as being traditional commercial areas for planning purposes. Under that standard, as currently proposed, the appropriate development was main street, commercial development pattern encouraged. Desirable characteristics included shallow setbacks, lane access, and pedestrian orientation. Businesses have lower

parking requirements and greater lot coverage than those found in modern commercial areas. He said that was according to the Tri Centennial Plan community agenda report that was recently published.

He said the plan that was submitted to the Historic Review Board earlier showed a higher intense use. He said they met with the neighbors and been through a series of public hearings to get the property down zoned from PBG to RIP-B they went through a zoning hearing before the MPC in which the neighbors were all notified. He said they went before City Council in which the neighbors were notified again and there was no opposition. He said it was unanimously approved by MPC and City Council. He said they have had two meetings with the Historic Review Board as well as inviting those who were interested to come to his office and review the plans. He said they could not mitigate every single one of their individual concerns, but they have gone along way in compromising to try and mitigate some of the concerns that were brought to their attention at their time.

He said in summary, he felt there were four reasons why this was consistent with the standards for a variance. He said there are exceptional and extraordinary conditions pertaining to this particular piece of property because of its size and location. He said it was unusual in the Historic District to have a parcel as large as this that was already assembled into one piece. He said the location was also of specific concern because now you have a site that was located on Liberty Street, a street that has a very high traffic count and was identified both in the Historic District zoning ordinance height map and the Tri Centennial Plan as being something that was intended to be a commercial street. With regards to the application of this standard to this particular piece of property would create an unnecessary hardship by holding the property owner to a higher standard than other properties in the vicinity. To make this particular property owner have less lot coverage than the other properties that were in the immediate vicinity indeed throughout the Historic District, it was his understanding that there were a lot of variances that were granted to this lot coverage standard. With regards to relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of this Chapter, since the proposed use would allow a compatible use to be developed on a blighted urban site that formerly housed a light industrial use. He said they also felt that because of the style of the apartments that this would not only allow pedestrian oriented development but would also allow for all the housing to be ADA accessible.

He stated some concerns they heard from the residents was because this development would have the garage doors on Perry Lane that it might cause a traffic burden. He said there were about 30 parking spaces available for the residents and another 10 or 15 proposed for the commercial use (less than 50) if every single one of those cars came and went twice a day the traffic count that would be added to the lane would still be about 100/cars a day. By comparison Liberty Street has a traffic count of about 14,200 and the lane at 30 feet in this area was wider than the west bound drive lane of Liberty Street which allowed cars and parking in that area.

**Mr. Jones** stated what they were proposing was that they would have off-street parking under the apartments for the tenants.

**Mr. Shay** stated yes.

**Mr. Mackey** asked if he said during his presentation that this has been to the MPC and City Council?

**Mr. Shay** stated yes.



**Mr. Mackey** asked if he also said that it been to the Historic Review Board?

**Mr. Shay** stated yes.

**Mr. Mackey** stated at the City Council and Historic District Board of Review level if there was any sentiment from the neighbors as to objections.

**Mr. Shay** stated yes at the Historic District Board of Review which was the last stop they made. One of the objections was to the lot coverage. He said what they decided to do was to come before the Zoning Board of Appeals and present their case for the lot coverage variance. He said at the Metropolitan Planning Commission it was roundly applauded as well as at Savannah City Council.

**Mr. Mackey** asked how did the Historic Review Board dispose of it?

**Mr. Shay** stated it was continued. He said they decided not to get a final determination until they could before the Zoning Board of Appeals and resolve the issue of the lot coverage.

**Mr. Lawrence Lee (President of Downtown Neighborhood Association)** stated their main argument would be that the ordinance requires 75 percent, 25 percent balance for green space and built space. He asked why could not follow that? He said there was no reason they could not get 75 percent out of it. He said Mr. Shay was a talented architect. He said they felt the petitioner could find that 75 percent could be achieved on the lot. He said new neighbors who have come into the infilled property built there have bought in with the understanding that their investment would be protected by adherence to the Review Board, MPC and ordinances of this City. The green space they have was 75 percent and in order to protect their investment they would ask that the surrounding contain that same amount. The Historic Review Board has not recommended a variance as mentioned by Mr. Shay. He said that issue was still there with regard to the size, form, and mass of the building as well as the lot coverage. He said values and tax revenues were up and people were moving into the City. He said there was a nice balance of green space and building space. He said instead of looking for ways to get around the ordinance, the petitioner should be challenged to find a way to comply with the ordinance. He said the building was going to be there a long time and he would urge the Board to get it right at the beginning.

**Mr. Mackey** asked what was his feelings with regard to the size of building that preceded the vacancy of the lot?

**Mr. Lee** stated the lot has been vacant as long as he could remember.

**Mr. Mackey** stated he asked that because in item C it says that the conditions are not peculiar to the subject property. However, it is noted that the petitioner recently down zoned the property voluntarily and that the site previously contained a commercial use that occupied nearly 100 percent of the lot.

**Mr. Lee** stated that could be true, but he just did not remember. He said they felt it was a big building and offensive to the neighbors that live immediately adjacent to it. He said exciting things have happened in Crawford Square in the last year or two. He said felt this was a legitimate request on their part that the existing ordinance of 75 / 25 percent be adhered to.

**Mr. Byrne** asked if the issue was that you could not see the green space or that there is no green space? He said what he felt the petitioner was saying was that they did not know where that fits in and obviously, Mr. Shay was assuming that it did not fit in and therefore requesting a variance. He said assume it does fit in and was a garden.

**Mr. Lee** stated not having heard that issue before and he believed they have asked that question before if there would be green space on the roof. He said today was the first time he has heard the response of yes there would be. He said he felt the problem was that not everyone on the street could see it. The green space was to benefit everyone. He said while it might adhere to some standard of pedestrian traffic, he did not think it allowed for ground cover or drainage or things that green space normally do.

**Mr. Robinson** asked if it was green space as addressed by the ordinance or was it lot coverage?

**Mr. Todaro** stated it was building coverage. He said the building the roof could not exceed 75 percent of the lot. The 25 percent was not necessarily green space. It was something other than having a roof on it. It could be sidewalks, a garden but it was not a green space. He said even if it was not a garden (25 percent of open space) that could be walled in which the height limit in the Historic District is 11 feet on a fence. He said that would also have to go to the Historic Review Board as well.

**Mr. Jones** stated on Abercorn there was an Italian restaurant. He said on the roof it has all this green space and at one time the bar room on Jefferson Street opened on Waters Avenue in front of where the cookie place was now and on their roof they have shrubbery, trees and so forth. He asked if that was considered green space?

**Mr. Todaro** stated no, not from a calculations standpoint.

**Mr. Jones** stated this basically would be the same thing. He said they would have the green space on the roof.

**Mr. Todaro** stated the City did not count those trees towards the tree and landscaping quality points if they were on the roof. He said it was just extra.

**Mr. Stephens** stated the Board was not here about the green space. He said the Board was here about lot coverage variance.

**Ms. Carmen Redmond (537 East Perry Street)** stated Mr. Shay said when the neighbors got notice of the fact that he was going to improve the zoning behind them they did not have any objections to it. She said they thought that with the RIP-B that he was going to have to have 25 percent green space on the property. She said they live in new construction and there have been two different developers who have developed new construction on Crawford Square and both of them did historical background and tried to place property that was compatible with the historic property that already existed on Crawford Square. She said the property behind was going to be too large. She said part of the reason he (Mr. Shay) wanted the 100 percent was because the footprint of that property would be the footprint which would go up. She said no where in the ward do you have 4 story on the lane. She said he got the better zoning and now he wanted both. She said she felt it was visually incompatible. She said also going 100 percent on the lot was not compatible with the rest of the area. She said she has a roof top deck, but no where was it considered a part of the 25 percent of green space that they have on their lot. She

said the neighbors asked Mr. Shay specifically about what would happen on the third floor because they would be looking down. She said the building would be about 1½ story taller than what they were, which was a real concern. She said they hoped that one way to constrain the building and not make it so large was by keeping the 25 percent in place. She said they hope the Board would deny their request for a variance.

**Ms. Laurie Swanner (516 East Perry Lane)** stated they have a house and courtyard with a front. She said with the lanes there was no sidewalks or walking space. She said the lanes are sometimes used as a cut through. She said she understood the petitioner was saying that that section of the lane was wider, but she felt not significantly. She said there was no walking area and you have to be able to access the houses from the rear. She said from her residence she would have to look at the proposed building. She said the petitioner showed that her green space was paved parking space, which was not true. She said the residents all have courtyards which were not paved and could not be used for parking. She said it was mentioned that they voluntarily changed the zoning. She said no one asked them to change the zoning. She said the petitioner went in and asked for zoning changes because it would show more profit. She said they received those zoning changes and now they want to be able to develop in a way that would show more profit and they did not want to adhere to the rules of that zoning. She said they felt the petitioner wanted it both ways. She said the petitioner also mentioned that this was archaic as compared to modern commercial areas. She said this was not a modern commercial area. She said this was the Historic District of Savannah.

**Mrs. Laura Pottsworth** stated she and her husband recently built three row houses on Perry Street. She said they built their project and followed the guidelines closely and wanted to do the project right. She said there are some beautiful green spaces in Savannah which is one of the traditions and make the Historic District beautiful. She said she hoped that the 75 percent, 25 percent lot coverage is applied in this situation and that the guidelines are not waived for one developers purpose.

**Ms. Beatrice Archer (Ward Captain for Crawford Ward – 231 Houston Street)** stated she felt the proposed project was too big and it was not right.

**Mr. Tom Werth** stated him and his wife built recently in this area. He said he would like to see that future construction follow the guidelines that were laid out by the City for good reason. He said it was not fair to look at this area in the commercial context that was being seen at this moment. The commercial places across the street were up for sale. He said they probably would be torn down and built again. He said current people who are planning to build there are building residential. He said he felt the project needed to be looked at as part of Crawford Ward. He said he would like to see that rules and guidelines be adhered.

**Mr. Mackey** stated he mentioned that he would like for it to maintain the guidelines of the City. He said he carefully asked Mr. Shay if it received the blessings of the City and the answer was yes. He asked if there was something contrary to or that he was missing in terms of it going to City Council?

**Mr. Werth** stated he could say at the Historic Review Board there were not many people in favor of it. He said he felt when it was presented to City Council that it had more to deal with the changing of the zoning. He said no one was going to build a garage there anymore or 4 story of manufacturing.

**Mr. Shay** stated the Historic District Zoning Ordinance does not regulate lot coverage. He said that was an issue that should not have been brought before the Historic Review Board but was and present some controversy. He said they have made attempts to reduce the scale of the building and the lot coverage in response to the criticism. He said the Historic District zoning ordinance says 4 story for this piece of property was permitted. He said what they have done to mitigate some of the concerns was step back a portion of the building to three story which would only be 6 feet higher than the top of the roof pitch of the adjacent street. He said the development pattern of the area measuring from the outside where the fences are, the open space was about 17 percent. The adjacent properties do have hidden courtyards, which was the norm in the downtown area and there were some that had beautiful side gardens. He said they were not there because they were required to be there, but there because people chose to put them there. The prior zoning for this area was light industrial and the Ever Ready parking garage used to be located on this lot. Voluntarily, the petitioner chose to have it zoned RIP-B which was a zoning that allowed commercial development. He said there were many commercial uses in the immediate area and Crawford Ward. He said the context was Liberty Street and not Crawford Square. He said the proposed project was in Crawford Ward but not on Crawford Square. He said one of the reasons the developer wanted to do this kind of project; retail with apartment style condominiums above and parking below the street was because with land values becoming what they were in the Historic District, it was no longer going to be possible to do townhouse type development and bring it to market for under \$750 to upwards of a 1½ million dollars. You could find examples of this by E. Shavers Book Sellers. He said what the developer wanted to do was to do apartment style living so that some of the apartments could be brought to market for under \$300,000 and that the average was much less than \$750,000. He said if they did not allow apartment style living to be developed on a going forward basis in the Historic District then they would become a community based entirely of multi-millionaires.

**Mr. Byrne** stated Mr. Lee asked a question of why it could not be developed with 75 percent lot coverage. He asked if he could explain why they could not do this?

**Mr. Shay** stated it was possible to design a building that only had 75 percent lot coverage. But, it would be unfair to make this property meet that standard when the other new development that was in the area and the historic development pattern in that area did not meet that standard. What they were doing was trying to develop something that was approximately the same amount lot coverage as the development that was in the immediate vicinity and less in some cases. Most of the development in the area that have lower lot coverage, the open space was either invisible from the street because it was a walled in courtyard or surface parking. He said he felt that his clients should not be punished for going to the extra expense of submerging the parking below ground and out of view.

**SZBA Action:** **Mr. Mackey made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted based upon a finding that the relief granted will not cause substantial detriment to the public good. Mr. Jones seconded the motion and it was unanimously passed.**

**RE: Other Business**

**Mr. Hansen** stated he would like to request that the Board appoint Deborah Burke as Assistant Secretary to the Board of Appeals. He said the Board has had a history of having more than one Secretary in the event the Secretary was not able to be present.

**SZBA Action:** Mr. Jones made a motion that the Savannah Zoning Board of Appeals appoint Deborah Burke, Assistant Secretary to the Zoning Board of Appeals. Mr. Byrne seconded the motion and it was unanimously passed.

**Mr. Hansen** handed out a memo to the Board that addressed Mr. Mackey's concerns regarding childcare centers. He said it will be placed on a future agenda.

**Mr. Byrne** asked that it not be placed on April's agenda because he will be out of the country.

**RE: Adjournment**

There being no further business to come before the Savannah Zoning Board of Appeals the meeting was adjourned 6:15 p.m.

Respectfully submitted,

Jim Hansen,  
Secretary

**JH:ca**