

The City of Fairhope Board of Adjustments and Appeals met on Monday, June 20, 2016 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Anil Vira, Vice-Chair; Dick Schneider; Troy Strunk; John Avent; Jonathan Smith, Director of Planning and Zoning; Emily Boyett, Secretary. Absent: Chairperson Cathy Slagle

The meeting was called to order at 5:00 PM by Vice-Chairperson Vira.

The minutes of the May 15, 2016 meeting were considered. Troy Strunk moved to accept the minutes as written and was 2nd by Dick Schneider. Motion carried unanimously.

BOA 16.04 Public hearing to consider the request of Gene and Tenley Warhurst for a rear yard setback and maximum lot coverage variance for property located at 300 S. Mobile Street.

Jonathan Smith, Director of Planning and Zoning came forward and gave the staff report.

STAFF INTERPRETATION:

The subject property is zoned R-2 Medium Density Single Family Residential District. Gene and Tenley Warhurst are seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structure in the Fairhope Zoning Ordinance.

The subject property had a principal structure on the lot, but it was destroyed by a large oak tree falling on the house during a storm; therefore, the setbacks and lot coverage for the new structure are dictated by what existed on the lot, if a new structure is built back within a year.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum rear yard setback of 35' and a maximum lot coverage percentage of 37%. The applicant would like to build 1' up to the property line with an infinity pool, which will be interpreted as being part of their principle structure (lot coverage of 39.5%). Currently, by right under the provisions of Article VII of the Zoning Ordinance, the applicants may build up to 6'2" to the rear property line. They are requesting a 1' rear yard setback for their infinity pool.

As result of the settlement of a lawsuit, the applicants own the lot to the west that is adjacent to the subject property and fronts the Bay. The adjacent lot is approximately 84' in depth. This lot may not contain any structures, but the applicants contend that if they were allowed to use the property to calculate their setbacks, they would have more than enough space to meet the R-2 maximum lot coverage percentage of 37% and the typically required rear yard setback of 35'.

The property is bordered on all sides by R-2 zoned properties.

Facts to be considered in this case:

1. By right, the applicant is able to encroach into the required R-2 setbacks, due to the provisions of Article VII of the Zoning Ordinance that allow a nonconforming structure to be built back under a nonconforming status for up to one year after a catastrophic event.
2. If the property the applicant owns to the west could be considered while determining the rear setback and lot coverage percentage, there would be more than adequate land area for the applicant's request.
3. The applicants are requesting a 1' rear yard setback for an infinity pool.
4. The applicants are requesting an approximate 39.5% lot coverage percentage for the subject property. The maximum allowed in the R-2 district is 37%.
5. There are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

STAFF RECOMMENDATION:

Under the circumstances, staff understands the applicants' rationale regarding using the lot to the west to calculate setbacks and lot coverage percentages. If the Board agrees, staff could support the requested variances, due to the adjacent land owned by the applicant to the west.

Mr. Smith added that under other circumstances the applicant could replat the 2 lots they own which would eliminate the need for this request. Mr. Schneider asked why the Board is hearing the case if there was a lawsuit that has been settled. Mr. Smith responded the lawsuit did not have anything to do with the request but because of the lawsuit, no structures can be built on the additional lot to the west of the subject property. Mr. Schneider asked about taxes and Mr. Warhurst answered the unbuildable lot is appraised as a Bayfront lot and he pays taxes on both properties. Mr. Warhurst explained he would like to combine both lots but it would violate everything both sides worked to agree on. He stated the proposed pool area was a porch on the previous house. Mr. Strunk commented the lawsuit prohibits a replat to combine the lots and if not for it, then there would not be an issue with the applicant's proposal and Mr. Smith agreed. Mr. Vira opened the public hearing. Having no one present to speak, he closed the public hearing.

Mr. Schneider stated 2 letters of opposition were received from surrounding property owners.

Troy Strunk made a motion to approve the rear yard setback and lot coverage variance as requested. John Avent 2nd the motion and the motion carried unanimously.

BOA 16.05 Request of Eleanor Ross for a variance to the required front yard setback for a principal structure for property located at 453 S. Church Street.

STAFF INTERPRETATION:

The subject property is zoned R-2 Medium Density Single Family Residential District. Ms. Ross is seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structure in the Fairhope Zoning Ordinance.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum front yard setback of 35'. The applicant is requesting to reduce the front yard setback to 27' to accommodate a front porch.

The applicant hired a roofer in February 2016 to replace the existing roof on the principal structure. A roof permit was issued by the City of Fairhope Building Department on March 14, 2016 to Boyer Brothers, Inc. The contractor completed the roof repair as permitted and also constructed an illegal porch addition. The applicant was notified of the violation and setback encroachment on March 18, 2016 by the City of Fairhope Building Official, Erik Cortinas.

The subject property is bordered on all sides by R-2 zoned properties.

Facts to be considered in this case:

1. The applicant is requesting a 27' front yard setback for a principal structure.
2. The porch addition was constructed without a permit.
3. There are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

STAFF RECOMMENDATION:

Staff recommends the Board deny the variance request due to the application not meeting the mandatory criteria established in the Zoning Ordinance for the issuance of a variance.

Ms. Ross addressed the Board saying the property has been in her family for many years and it was not her intent to violate any ordinances. She explained she wanted the house to have a little better curb appeal and the contractor offered the subject porch as a solution while he was doing the roof. She stated she would have the porch removed if she is required.

Mr. Schneider asked if the contractor will be responsible for the cost of removing the porch and Ms. Ross responded yes. Mr. Vira asked if the porch would be allowed if it were open air and Mr. Smith answered yes. Mr. Avent asked how far over the front setback is the encroachment of the porch. Mr. Smith said it appears the house was constructed on the front yard setback so the entire porch, which is approximately 8', is over the front yard setback. Mr. Smith stated recently a property owner in a similar situation was required to cut 2' off of a newly constructed porch because it was over the setback. Mr. Avent asked if the applicant had followed the proper channels and requested this could it be approved and Mr. Smith responded this request is an inconvenience, not a hardship. Mr. Schneider asked if the request is approved would it

set a precedent and Mr. Smith answered yes. Mr. Strunk stated an 8' porch would be an additional value to the house but if the requested is granted, it would become an existing nonconformity which could then be extended the full length of the house without any approval and Mr. Smith agreed. Mr. Strunk suggested the applicant make it into a pergola.

Dick Schneider made a motion to approve the front yard setback variance and the nonconformity created shall not be expanded. John Avent 2nd the motion and the motion failed with the following vote: AYE – Dick Schneider and John Avent. NAY – Troy Strunk and Anil Vira.

Having no further business, Troy Strunk made a motion to adjourn. John Avent 2nd the motion and the motion carried unanimously. The meeting was adjourned at 5:45 PM.