

The City of Fairhope Board of Adjustments and Appeals met on Tuesday, January 17, 2017 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Chairperson Cathy Slagle, Anil Vira, Vice-Chair; Dick Schneider; John Avent; Troy Strunk; Christina Stankoski; Harry Kohler; Jonathan Smith, Director of Planning and Zoning; Emily Boyett, Secretary;
Absent: none

The meeting was called to order at 5:00 PM by Chairperson Slagle.

The minutes of the November 21, 2016 meeting were considered. Anil Vira moved to accept the minutes as written and was 2nd by Troy Strunk. Motion carried unanimously.

Mr. Smith introduced Christina Stankoski and Harry Kohler. He stated they are the newly appointed alternates for the Board.

Mr. Vira stated he has a conflict with the Item A. He recused himself and left the room. Mrs. Stankoski and Mr. Kohler took a seat at the dais.

BOA 16.10 Public hearing to consider the request of Cloud 7-A, LLC for variances to the lot coverage and setback requirements for principal and accessory structures on property located at 220 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. Cloud 7-A, LLC is seeking multiple variances for the subject property. The first three variance requests are to the Maximum Total Lot Coverage, Minimum Front Yard Setback, and Minimum Street Side Setback requirements of Table 3-2: Dimension Table – Lots and Principal Structures in the Fairhope Zoning Ordinance. Due to the subject property being located on the Bay, the Bay side is considered the front of the lot.

The applicant is proposing significant renovations to the existing principal structure on the subject property which the Baldwin Count Tax Records indicate was constructed in 1974.

Table 3-2 requires that all principal structures in the R-2 zoning district adhere to a maximum total lot coverage percentage of 37%, a minimum front yard setback of 35', and a minimum street side setback of 20'.

As a result of the settlement of a lawsuit, the applicant owns the lot to the west that is adjacent to the subject property and fronts the Bay. The adjacent lot is approximately 87' in depth. This lot may not contain any structures, but the applicant contends 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 minimum required front yard setback of 35’.

The fourth variance request is to the Maximum Total Lot Coverage requirements of Table 3-3: Dimension Table – Residential Accessory Structures.

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

STAFF RECOMMENDATION:

Staff can support requests 1 and 2 as outlined in the applicant’s narrative due to of the precedent set by a previous case; however, due to the lack of a true hardship staff cannot support requests 3 and 4. Staff’s recommendation is to approve the front yard setback variance and the lot coverage variance for the principal structure and deny the additional requests.

Mrs. Slagle asked if each request needs to be addressed separately and Mr. Smith said it was up to the Board. Mr. Schneider asked if the property is for sale and Mark Nix, responded no, it was a rental property but it will be their residence now. Mr. Nix stated the lawsuit precludes them from building on the western parcel. Mr. Strunk asked if the first two requests are the same as the variances approved on the lot to the south for Mr. Warhurst and Mr. Smith responded yes.

Mrs. Slagle stated for the record the first request is a variance to the maximum total lot coverage allowed for a principal structure. Mrs. Slagle opened the public hearing. Having no one present to speak, Mrs. Slagle closed the public hearing. Mr. Schneider stated there seem to be numerous homes that have similar variances and he asked is it legal to deny it now if we have allowed it in the past. Mr. Smith explained the Board of Adjustments is a case by case basis. Mr. Nix stated staff supports this request and it should be simple.

Dick Schneider made a motion to accept the staff recommendation to approve a variance to allow 44.2% of Maximum Total Lot Coverage for the principal structure, due to the adjacent land owned by the applicant to the west. Harry Kohler 2nd the motion and the motion carried unanimously.

Mr. Smith stated the second request is a variance to the Minimum Front Yard Setback requirement for a principal structure. He said the applicant is proposing to build within 2” of the western property line which is considered the front of the lot because it is a Bayfront lot. Mrs. Slagle opened the public hearing. Having no one present to speak, Mrs. Slagle closed the public hearing. Mr. Schneider asked if it is possible for the applicant to sell only one of the lots and Mr. Smith stated the lawsuit ties the two lots together but they are still separate lots. Dick Schneider made a motion to accept the staff recommendation to approve a variance to allow a Front Yard Setback of 2” along the western property line for the principal structure, due to the adjacent land owned by the applicant to the west. Harry Kohler 2nd the motion and the motion carried unanimously.

Mr. Smith stated the third request is a variance to the Minimum Street Side Setback requirement for a principal structure. Mr. Smith explained the required setback is 20' and the existing structure already has a significant encroachment of 13.55' into the setback. Mr. Nix stated the shape of the lot is not perpendicular to the Bay or the street and the existing house was not built square on the lot. He said they are only asking for 2.6' more than what is already built and the corner of the house must be cut off if it is not approved. Mr. Smith stated staff agrees the nature of the request is not significant, detrimental or unreasonable. Mrs. Slagle opened the public hearing.

Gene Warhurst of 300 S. Mobile Street – He stated if Mr. Nix could build on the western lot then this would not be a problem. He said the street in question is not a street but a park and this is the right thing to do.

Having no one else present to speak, Mrs. Slagle closed the public hearing. Mr. Schneider said the request sounds reasonable and 2' will not be noticeable. Mr. Strunk stated the existing structure is already over the side setbacks on the north and south property lines. Mr. Kohler asked if this portion of the deck enclosure was included in the calculations for the lot coverage percentage and Mr. Smith responded yes.

Troy Strunk made a motion to approve a variance to allow Street Side Setback of 4.42' for the principal structure. Dick Schneider 2nd the motion and the motion carried with the following vote: AYE – Harry Kohler, Dick Schneider, Christina Stankoski, and Troy Strunk. NAY – Cathy Slagle.

Mr. Smith stated the fourth request is a variance to the Maximum Total Lot Coverage for an accessory structure. He explained there is more than adequate room on the lot to build an accessory structure and there is no hardship to warrant granting anything over the allowable 25% of lot coverage. Mrs. Slagle stated the 25% is strictly for the building footprint of the accessory structure. Mr. Nix explained the topography of the lot falls and it is dangerous to access the lot from Mobile Street. He stated the request will not impact the neighbors and he wants the additional square footage to be able to have the staircase for the second floor inside the building. He noted the square footage allowance is restricted due to the narrowness of the lot. He said this is a unique property and he has a hardship. Mrs. Slagle opened the public hearing.

Gene Warhurst of 300 S. Mobile Street – He said these issues would be eliminated if they could build on the lot to the west they own.

Having no one else present to speak, Mrs. Slagle closed the public hearing. Mrs. Stankoski asked if the request has anything to do with curb cuts and Mr. Nix answered no, they are not proposing cuts on Mobile Street. Mr. Schneider asked where the stormwater flows and Lee Verneuille answered it flows to White Avenue or the Bay. Mr. Kohler suggested redesigning the stairwell or relocating it since it is causing the square footage overage. Mr. Verneuille stated the current design keeps the height of the 2nd floor down. Mr. Kohler suggested extending the existing fence or using an elevator if security and safety are a concern. Mr. Nix stated there still must be another exit if an elevator is installed. Mr. Schneider asked what the legal ramifications are if the Board approves this request. Mr. Smith explained it would only be if the Board denies another request of the same nature. Mr. Nix stated this is a unique situation and there is only one other lot like this one and it is Mr. Warhurst's lot to the south. He noted there have been objections to the request. Mrs. Slagle said the issues come afterward when other property owners want more square footage. Mr. Smith said to compare the existing allowance to

the proposed request. He said the Board will have numerous requests for the same variance if this is approved. Mr. Strunk stated this regulation applies to every lot regardless of the width or location. He said the issue will be next month when someone else wants the same thing and we tell them no. He said Mr. Verneuille is a talented architect and he is sure a solution can be found. He stated he cannot support this request. Mr. Schneider asked if there are any other properties in the area with similar characteristics and Mr. Smith responded he is unsure. Mr. Strunk asked how the ordinance is written and Mr. Smith said the formula is lot width multiplied by required rear yard, which is 35' in this case, multiplied by 25%.

Dick Schneider made a motion to approve the request. Motion died for lack of a 2nd. Christina Stankoski made a motion to accept the staff recommendation to deny the request due to it not meeting the mandatory criteria established in the Zoning Ordinance for the issuance of a variance. Harry Kohler 2nd the motion and the motion carried with the following vote: AYE – Harry Kohler, Christina Stankoski, Cathy Slagle, and Troy Strunk. NAY – Dick Schneider.

Anil Vira and John Avent returned to the dais.

BOA 17.01 Public hearing to consider the request of Steve and Pam Riggs for a variance to the street side setback requirements for a principal structure for property located at 164 S. School Street.

Mr. Smith gave the staff report.

STAFF INTERPRETATION:

The subject property is zoned R-2 Medium Density Single Family Residential District. Mr. and Mrs. Riggs are seeking a variance to the street side setback provisions of Table 3-2: Dimension Table – Lots and Principle Structures in the Fairhope Zoning Ordinance. Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a Street Side Setback of 20'.

The subject property is currently vacant and the applicants are requesting a 10' variance to the required 20' street side setback in order to construct a single family residence. The parcel is bordered to the south side by the unopened right-of-way extension of Fels Avenue and the applicant contends the right-of-way cannot be built out due to the construction of a retaining wall by the United Methodist Church.

The typical lot size for a R-2 lot is approximately 10,500 square feet and the subject parcel is approximately 8,665 square feet. The applicant requests the street side setback bordering the right-of-way, be reduced to the typical 10' setback requirement for residential lots due to the size and the irregular shape of the lot and because of the configuration of the adjacent right-of-way.

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

STAFF RECOMMENDATION:

The application meets the mandatory criteria established in the Zoning Ordinance for the issuance of a variance and Staff recommends the Board of Adjustment approve the proposed street side setback variance due to the size and irregular shape of the parcel.

Mr. Smith stated the right-of-way is a major drainage way per Jennifer Fidler, Public Works Director, and it will never be opened so the street side provision should not apply. Mr. Riggs was present to answer any questions. Mrs. Slagle opened the public hearing. Having no one present to speak, Mrs. Slagle closed the public hearing. Troy Strunk made a motion to accept the staff recommendation to approve a variance to allow a Street Side Setback of 10' for a principal structure due the size and irregular shape of the parcel.

Old / New Business

Election of Officers – Troy Strunk made a motion to appoint Anil Vira as Chairman. John Avent 2nd the motion and the motion carried unanimously.

Anil Vira made a motion to appoint Troy Strunk as Vice-Chair. John Avent 2nd the motion and the motion carried unanimously.

Troy Strunk made a motion to re-appoint Emily Boyett as Secretary. Anil Vira 2nd the motion and the motion carried unanimously.

Having no further business, Troy Strunk made a motion to adjourn. Dick Schneider 2nd the motion and the motion carried unanimously. The meeting was adjourned at 6:41 PM.