

**The City of Fairhope Board of Adjustments and Appeals met on Monday, January 18, 2018 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

**Members Present: Chairman Anil Vira; Troy Strunk, Vice-Chair; Cathy Slagle Dick Schneider; John Avent; Harry Kohler; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.**

**Absent: Christina Stankoski**

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

The minutes of the December 18, 2017 meeting were considered. Dick Schneider moved to accept the minutes as written and was 2<sup>nd</sup> by Cathy Slagle. Motion carried with one abstention by Anil Vira.

**BOA 17.20 Public hearing to consider the request of Richard and Mary Mundy for a variance to the rear setback requirements for property located at 319 Equity Street.**

Mr. King gave the staff report.

**Summary of Request:**

The applicant is requesting a rear setback line variance to lot 1 of the McMillins Subdivision, located approximately 1/3 mile southeast of South Mobile Street at the convergence of Nichols Avenue and Equity Street. The subject property is located within an R-2 medium density single family zoning district, which requires 35' front and rear setbacks as well as 10' side setbacks. Lot 1 is generally rectangular, with slightly irregular lot lines on its northeast side bordering Lot 2, PPIN 357758. Lot 1 contains two lot lines that are contiguous with the right-of-way (ROW) at the convergence of Nichols Avenue and Equity Street. As-platted, this slight irregularity creates two front lot lines as well as two rear lot lines: the 20' front lot line corresponds to a 152.5' rear lot line, and the 118.3' front lot line corresponds to a 57' rear lot line. Approximately 69' of the 118.3' lot line is contiguous with the ROW at the convergence of Nichols Avenue and Equity Street.

The variance request desires to treat the 35' rear setback line along the 152.5' rear lot line as a 10' side setback line along the same 152.5' lot line. The *City of Fairhope Zoning Ordinance Article IX Section "C"* defines a Lot Line, Front as:

“The lot line contiguous to the right-of-way line of the street on which the lot has least dimension.”

The *City of Fairhope Zoning Ordinance Article IX Section "C"* defines a Lot Line, Rear as:

“The lot line opposite to and most distant from the front lot line.”

By definition the 20' lot line contiguous with the ROW is a front lot line and the 152.5' lot line opposite to and most distant from the 20' lot line is a rear lot line. Though only approximately 69' of the 118.3' lot line is contiguous to the ROW, the 118.3' lot line is not the lot line of the least dimension contiguous to the ROW.

The subject property's size and buildable area do not appear to be extraordinary or exceptional due to size, shape, or topography with the existing setbacks in place. Further, the subject property's topography is consistent with the nearby lots along Nichols Avenue and Equity Street. The subject property's existing as-platted setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance. The requested variance wishes to treat the 152.5' rear lot line's 35' rear setback line as a 10' side setback line. Though the convergence of Equity Street and Nichols Avenue, as well as the ROW associated with each street creates the peculiarities described above, the 20' lot line contiguous to the ROW and its corresponding rear lot line of 152.5' in length clearly meets the definition of "front" and "rear" lot lines. Staff believes that a variance allowing the setback requested is not warranted.

**Recommendation:**

It is staff's position that the rear lot line for which a setback variance is requested clearly meets the *City of Fairhope Zoning Ordinance Article IX Section "C"* definition of a rear lot line, and therefore the 35' rear setback line is the correct setback line for the subject property. As stated previously the subject property's existing setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance. Further, the existing setbacks do not appear to prevent the reasonable use of the property for a residence of similar size to nearby residences. As a result, staff recommends **DENIAL** of the request for a rear setback line variance.

Edward McMurphy was present for the applicant. He stated the property is owned by his step-daughter and his wife is the realtor. He said the neighbors do not oppose their request. He explained the configuration of the lot and the application of the setbacks will restrict the possibility of a single story house to be constructed on the lot. He requested the Board approve the south property line being reduced to 10'. He added this will also allow the house to be aligned with the adjacent homes.

Mr. Vira asked what direction the adjacent homes face and Mr. McMurphy responded they front Equity Street. Mr. Dyess stated orientation is not considered when reviewing an application. Mr. Avent said he struggled with this case but he understands the ordinance but it seems to be geared toward a corner lot in a typical subdivision. He said the lot is irregular but so is most of the Fruit and Nut neighborhood. He noted the angle of the lot would put the back yard facing the adjacent home. Ms. Slagle explained that due to the curve of the intersection of Nichols Avenue and Equity Street the houses along the street will never line up completely. Mr. McMurphy stated the applicant needs more square footage of the lot to be able to construct a single level home instead of a two story. Mr. Dyess stated wanting a larger house is not a hardship or grounds for a variance. He explained there are specific guidelines and criteria to be met for granting a variance. He said the rules and ordinances apply to everyone and a variance should be granted due to

not having reasonable use of the property. Mr. Dyess said the rules are virtually the same across the state and the country. Mr. Schneider said bigger houses equal more taxes and we should try to get the nicest house in the City. He added the regulations should not apply to these shape lots.

Mr. Vira opened the public hearing. Having no one present to speak, Mr. Vira closed the public hearing.

Mr. Strunk stated the buildable square footage is restricted with two rear yard setbacks. Mr. King said the applicants previous request for relief to the eastern setback had a favorable recommendation from staff because it could have been considered a side setback. Mr. Dyess stated the rear lot line is defined as opposite of the front lot line and the front lot line is described as the narrowest line along the right-of-way. Mr. McMurphy said this request is logical and reasonable and there has been no opposition from the neighbors.

Dick Schneider made a motion to approve the variance as requested. Motion failed due to lack of a second.

Mr. Avent said the applicant does have reasonable use and buildable area even though the lot is irregular. He stated a hardship has not been proven.

Cathy Slagle made a motion to accept the staff recommendation to **deny** the request for a rear setback line variance because the existing setbacks do not appear to prevent the reasonable use of the property for a residence of similar size to nearby residences.

John Avent 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – John Avent, Troy Strunk, Anil Vira, and Cathy Slagle. NAY – Dick Schneider.

**BOA 18.01 Public hearing to consider the request of Lance Hill for a Special Exception to allow Storage at 362 S. Greeno Road.**

Mr. King gave the staff report.

**Summary of Request:**

The applicant is requesting a special exception to allow storage units at 362 S. Greeno Road, which is the location of Fairhope Floor Covering. The storage unit facility will be located immediately west of the Fairhope Floor Covering Building. The subject property is zoned M-1 Light Industrial District. According to the *City of Fairhope Zoning Ordinance Article III, Section A.*, the M-1 zoning district is intended to provide a suitable protected environment for manufacturing, research and wholesale establishments which are clean, quiet and free of hazardous or objectionable emissions, and generate little industrial traffic. A similar storage facility, Doc's Storage, is located immediately north of the subject property and the storage facility's buildings are immediately west of Fairhope Animal Clinic. The subject property is bordered by M-1 zoning to its north, south, and west, Greeno Road to the east, and B-2 General Business District east of Greeno Road.

“Personal Storage” is an allowable use within the M-1 zoning classification as indicated in the City of Fairhope Zoning Ordinance Article III, Section B., Table 3-1 Use Table.

However, “Personal Storage” is not allowable by right and a special exception is required to allow personal storage as an allowable use. Further, Table 3-1 indicates the use is allowed “only on appeal and subject to special conditions”. The applicant is proposing to construct the storage facility immediately west of the existing Fairhope Floor Covering & Interiors facility, which will partially shield the storage facility from the view from Greeno Road, in similar fashion to the manner in which the existing Doc’s Storage facility is shielded from view from Greeno Road by the Fairhope Animal Clinic. The existing nearby storage facility as well as the nearby printing company, glass company, and an HVAC contractor are examples of compatible uses with the proposed storage facility.

**Recommendation:**

Staff recommends the Board of Adjustment **APPROVE** the proposed Special Exception for the subject property to allow a storage facility.

Mr. Hill was present to answer any questions.

Mr. Vira opened the public hearing. Having no one present to speak, Mr. Vira closed the public hearing.

Troy Strunk made a motion to accept the staff recommendation to approve the proposed Special Exception for the subject property to allow a storage facility. Cathy Slagle 2<sup>nd</sup> the motion and the motion carried unanimously with the following vote: AYE – John Avent, Troy Strunk, Anil Vira, Dick Schneider, and Cathy Slagle. NAY – none.

Having no further business, Dick Schneider made a motion to adjourn. Troy Strunk 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 5:42 PM.