

The City of Fairhope Board of Adjustments and Appeals met on Monday, December 18, 2017 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Troy Strunk, Vice-Chair; Cathy Slagle; Dick Schneider; John Avent; Christina Stankoski; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.

Absent: Chairman Anil Vira and Harry Kohler

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

The minutes of the October 18, 2017 meeting were considered. Dick Schneider moved to accept the minutes as written and was 2nd by John Avent. Motion carried with one abstention by Cathy Slagle.

BOA 17.18 Public hearing to consider the request of Kenneth Lee for a Special Exception to allow a restaurant at 552 N. Section Street.

Mr. Dyess gave the staff report.

Summary of Request:

The property owner and applicant is Kenneth Lee. He is seeking approval for a special exception for a restaurant pursuant the Zoning Ordinance, Table 3.1. According to the use table, a restaurant is in the use category of “service.” A restaurant is in the service category and is only allowed in the B-1 district as a special exception. It should be noted that this special exception request is for an existing restaurant (Original Ben's Jr. BBQ) which was given its initial business license in December of 1986. The 2006 Comprehensive Plan recognizes the existing land use in Section 2.2 on page 8. It is described as “commercial pockets supply the immediate neighborhoods with goods and services.” The subject property is in an area of North Section which falls into the category of a “commercial pocket.” The use is existing and this special exception application is only for approval of the use. The special exception approval process is contained within the zoning ordinance and is therefore consistent with standards, goals, and intent of the zoning ordinance. The subject property and restaurant use is located on a triangular shaped property, not suitable for any residential use. A pocket of commercial uses has historically existed in the vicinity. The current use has existed at the subject property for many years and presumably has adequate infrastructure. This application for special exception does not include new development. Staff is not aware of any issues or deficiencies with other laws and regulations of the City, or of other jurisdictions. The use is existing and the special exception application does not permit new development. Any new development must be done in compliance with current setbacks and other applicable regulations. The use has existed for many years and appears to be a viable use for the property. The existing use is in a “commercial pocket” on a property which is irregularly shaped and not suitable for a residential use or a larger commercial use. This “commercial pocket” was established many years ago well before the comprehensive plan. In addition, the current zoning map for this area recognizes the existing use as

commercial. Staff is not aware of any additional terms or conditions outside of applicable standards of the zoning ordinance.

Recommendation:

Currently, the restaurant use is non-conforming which restricts improvements. After reviewing the criteria for a variance/special exception staff recommends that the special exception be **APPROVED**.

Mr. Avent asked if the business was in operation prior to the zoning and Mr. Dyess responded he was not sure but he believed so. Mr. Lee stated the restaurant has been in business for over 40 years.

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

Mrs. Stankoski asked if a bar could be opened at this location and Mr. Dyess explained this request would allow a bar as part of a restaurant but not a stand alone business.

Cathy Slagle made a motion to accept the staff recommendation to approve the Special Exception to allow a restaurant. Dick Schneider 2nd the motion and the motion carried with the following vote: AYE – Christina Stankoski, Cathy Slagle, Dick Schneider, Troy Strunk, John Avent. NAY – none.

BOA 17.19 Public hearing to consider the request of PolySurveying of Mobile, Inc. for a variance to the side setback requirements for property located at 233 Divot Loop.

Mrs. Boyett gave the staff report.

Summary of Request:

The applicant is requesting a side setback variance related to Lot 108 of the Quail Creek Estates, The Villas, Phase VI subdivision. The subject property is located at the south end of Club Drive, at 233 Divot Loop. The Quail Creek Estates, The Villas, Phase VI subdivision was approved on September 4, 2007, case number SD 07.33. The subject property is zoned R-3 High Density Single Family Patio/Garden Home Residential District and was approved with the following setbacks: front – 20', rear – 15', side – 10' one side only, and side street – 10'. On October 30, 2017 a building permit was submitted for the subject property. The submittal was reviewed for compliance and a building permit was issued on September 20, 2017. During a routine sheathing inspection by the Building Department, the inspector noted the structure appeared to encroach into the setbacks. Upon further examination, the front northwest corner of the building was found to be over the setbacks by 2.9'. The applicant is requesting a 2.9' side setback variance for the subject property. The subject property is a pie-shaped lot approximately 15,088 sq.ft. in size. The shape of the lot is not particularly uncommon and the lot is the largest in this phase of the subdivision. The lot has no extraordinary and exceptional topographical conditions. The subject property's setbacks do not prevent the reasonable use of the property. The pie-shape of the site is not uncommon within the Fairhope Planning Jurisdiction and is not necessarily peculiar to the subject piece of

property. Staff believes that a setback variance allowing the protrusion is not warranted, and therefore no relief is recommended.

Recommendation:

Staff recommends that this variance be **DENIED** due to no hardship has been proven as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e.

Brett Orrell of PolySurveying of Mobile, Inc. – He said the 10’ setback is not specified as to which side it has to be and he contended the overall setbacks are more than what is required. He noted the house is smaller than what is allowed and sits further back from the front building line. He explained this is an honest mistake and there was no malice intent. He stated there is 11’ between the existing structure and the house to the west so the fire code requirements are being met. He stated he is asking for relief for himself and the homeowner.

Mike Hayes of MDH Construction – He stated he has never had something like this happen before. He said it was caught after the house was under construction and they are asking for leniency.

Mr. Schneider asked what would it hurt to allow this and Mr. Dyess stated the request does not meet the criteria for a hardship. Mr. Dyess explained this is a self-imposed hardship and even though he understands the plight, to allow this will diminish the integrity of the process but he will respect the decision of the Board.

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

Ms. Slagle asked what will happen if the request is denied. Mr. Orrell said the option aren’t good. He said the corner of the bedroom would have to be cut off or the entire building will have to be torn down. Mr. Hayes stated the bedroom will be useless if the corner must be cut off. Mr. Avent said he respects staff and their position but the Board is here to offer solutions when the black and white rules don’t work. He said he read the plat and it is not clear regarding the setbacks. He noted the subject structure is still 11’ from the structure to the west and 27’ from the structure to the north. Mrs. Boyett stated if the variance is approved it will restrict the adjacent property and cause a hardship for them. Mrs. Stankoski asked what the neighbor had to say and Richard Good, the applicant, stated the neighbor has only commented that they like the design of the house. Mr. Avent acknowledged that approving the variance would be taking a right from the neighbor but the Board is looking at the greater good. Mr. Strunk said he is against tearing down the structure or making it unusable. Mr. Schneider said this is a small mistake. Mr. Strunk suggested there be a condition that no future expansion shall be allowed. Mr. Hayes added the wall could be fire rated.

Dick Schneider made a motion to approve the variance request to allow a 2.9’ side setback variance on the west side of the subject property with the following condition:

1. The exterior wall on the west side of the property shall be fire rated.

John Avent 2nd the motion and the motion carried unanimously with the following vote:
AYE – Dick Schneider, Christina Stankoski, John Avent, Troy Strunk, and Cathy Slagle.
NAY – none.

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 adjustment 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. The applicant provided supporting documents depicting the existing survey of the lot as well as a proposed survey requesting treatment of the 35' rear setback on the southeast side of the property as a 10' side setback line. 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 into 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 distance 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. Further, the existing setbacks do not appear to prevent the reasonable use of the property for a residence of similar size to nearby residences. The layout of the ROW at the convergence of Nichols Ave and Equity Street creates a number of peculiarities that are unique to subject property. The Nichols Ave ROW increasingly turns to the southeast as it approaches Equity St., cutting across an existing driveway for the lot with PPIN 22291. It is possible, but unknown to staff that this ROW routing was intended to place a large existing oak tree in the ROW. In addition, the convergence of Nichols Ave and Equity St. occurs as a 90-degree curve rather than an intersection, and as a result the ROW at the convergence is irregular in the manner in which the ROW makes the curve of the two streets at the convergence. The ROW along Equity St. travels southwest, makes a sharp turn to the west, and then turns southwest again to intersect with the Nichols Ave ROW. This irregularity creates two

lots lines for the subject property that are contiguous to the ROW. The existing survey for subject property treated both lot lines as front lines and as a result two 35' rear setback lines were platted to subject property. Staff believes that a variance allowing the setback requested is warranted. The variance requested wishes to treat a rear 35' setback line as 10' side setback line. The existing 57' rear lot line does not appear to meet the *City of Fairhope Zoning Ordinance Article IX Section "C"* definition of rear lot line, and therefore relief is recommended to be granted. The requested setback line would add approximately 648sf to the buildable area of the lot but this relatively small increase in the buildable area would not cause substantial detriment to the public and impair the purpose and intent of the *City of Fairhope Zoning Ordinance*.

Recommendation:

It is staff's position that the location of the ROW at the convergence of Nichols Avenue and Equity Street, combined with the slightly irregular shape of the lot creates a peculiarity unique to subject property that resulted in additional rear lot line and corresponding 35' rear setback to be platted for the lot. Therefore, staff recommends the variance request be approved to allow the as-platted rear setback along the 57' lot line to be treated as a side lot line with a 10' setback.

Knox McMurphy of Ashurst Niemeyer – She explained the subject lot was previously one lot and was subdivided into two lots. She said the lot is currently under contract but the setback will not allow the desired house plan to be constructed on the lot. She stated the applicant wants to build a one-story home and would like it to match the existing neighborhood. She stated they would prefer to have the south property line setback reduced to 10'. Mr. King stated this is not the request that was advertised and the case will have to be tabled and re-advertised if the applicant wishes to change their request. Mr. King explained the regulations are very clear on the definitions of front and rear property lines. He said staff will not be able to support the proposed change to the request.

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

Mr. Avent said he agrees with staff's interpretation and the definitions but he thinks geometrically the new request lines up with the adjacent structures and the lot is irregular. He added the request before the Board is not what the applicant wants and if it is changed then it will have to be re-advertised.

Cathy Slagle made a motion to table the request to the next meeting for re-advertisement. John Avent 2nd the motion and the motion carried unanimously with the following vote: AYE – Dick Schneider, Christina Stankoski, John Avent, Troy Strunk, and Cathy Slagle. NAY – none.

BOA 17.21 Public hearing to consider the request of Community Bank Coast for a variance to the side setback requirements for property located at 200 N. Greeno Road.

Mr. King gave the staff report.

Summary of Request:

The applicant is requesting a side setback variance related to lot 1 of the Greeno Professional Village Planned Unit Development (PUD). The Greeno Professional Village PUD was approved April 8, 2002, case number ZC 02.01. The subject property is located at the eastern intersection of Edwards Avenue and Greeno Road, located approximately 1/4 mile north of Fairhope Avenue. The subject property is currently under consideration for a site plan review, case number SR 17.03 as well as a PUD amendment, case number ZC 17.17. Both the site plan review and PUD amendments have been approved by the Fairhope Planning Commission and each case is awaiting review by the Fairhope City Council for final approval. Cases SR 17.03 and ZC 17.17 are related to the construction of a new Community Bank location, an allowable use within the Greeno Professional Village PUD. The subject request for variance is related to the driveway side setback on the north side of the property and the allowable overhang of the proposed drive-thru canopy. Lot 1 of the Greeno Professional Village PUD is generally rectangular, with a protrusion fronting upon Edwards Avenue that creates an "L" shape. The existing private access road traversing Greeno Professional Village enters the "L" shape, makes a sharp 90-degree turn to the east, another 90-degree turn to the north, and then continues through the Greeno Professional Village before intersecting Gayfer Avenue. The bank building will be situated in the rectangular region of the subject property with the remaining areas utilized for parking. A bank drive-thru will connect to the existing access road on the northeast side of Lot 1 and re-connect to the access road on the southwest side of Lot 1. The variance request desires "relaxation" of the *City of Fairhope Zoning Ordinance Article III, Section C.3*, which states: "*No part of a yard or other open space required for any building for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building. Every part of a required yard or court shall be open to the sky, except for permitted accessory structures and the ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves, provided the projections shall not extend more than two feet beyond the yard area requirements.*" The proposed Community Bank's drive-thru canopy extends beyond the 2'-0" yard area (across the setback line) allowance for ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves. A driveway side setback line is created by the inclusion of a drive-thru for the Community Bank at a length of 15'-0" as specified in the Greeno Professional Village PUD ordinance. As-submitted, the face of column distance to edge of canopy is 7'-4 3/8", and then 7'-6 3/8" from the edge of canopy to the property line for a total of 14'-10 3/4" ~15'-0" from the face of column to the property line to comply with the driveway side setback requirement of the PUD. The 7'-4 3/8" canopy protrusions exceeds the 2'-0" allowance of *City of Fairhope Zoning Ordinance Article III, Section C.3*. The subject property's size and buildable area do not appear to be extraordinary or exceptional due to size, shape, or topography with the required setbacks in place. Further, the subject property's topography is consistent with the nearby lots comprising the Greeno Professional Village and the setbacks required by the PUD do not appear to prevent construction or use of the Community Bank structure without approval of a setback variance. The subject property's existing setbacks do not appear to prevent construction or use of the Community Bank structure or its use as a banking facility without approval of a setback variance. Further, the setbacks required by the Greeno

Professional Village PUD do not appear to prevent the reasonable use of the property as a bank as all three drive-thru lanes will be functional without approval of a setback variance. The layout of the subject property forms an “L” shape but contains a rectangular area that accommodates the Community Bank structure without a side setback variance. The “L” shape of the site is not uncommon within the Fairhope Planning Jurisdiction and is not necessarily a peculiarity unique to the subject piece of property. Staff believes that a setback variance allowing the additional drive-thru canopy protrusion is not warranted, and therefore no relief is recommended that would cause substantial detriment to the public and impair the purpose and intent of the City of Fairhope Zoning Ordinance.

Recommendation:

It is staff’s position that though the requested variance is an understandable and logical request, no hardship has been proven as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e. Therefore, staff recommends the variance request be denied.

Mr. Avent asked if the site plan still must go to the City Council and Mr. King answered yes, but this is a stand alone request and will not affect the site plan request. Mr. Avent asked if this request will amend the PUD ordinance and Mr. King responded no. Neil Polen of Dale Partners Architect – He explained the entire PUD has not been built as it was designed. He said the lot has been difficult to design and any relaxation would help. Mr. Schneider asked if 4’ would keep the elements off the customers and Mr. Polen responded yes anything is better than 2’. Mrs. Slagle asked if they have considered redesigning the interior of the building and Mr. Polen responded yes, exhaustively. Mrs. Stankoski asked if there have been any opposition from the adjacent property owner and Mrs. Boyett stated staff has not received any comments. Mr. Avent asked if the drainage requirements will be met and Mr. Polen responded yes.

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

John Avent made a motion to approve the request as proposed. Christina Stankoski 2nd the motion and the motion failed with the following vote: AYE – Dick Schneider, Christina Stankoski, and John Avent. NAY – Cathy Slagle and Troy Strunk.

Having no further business, John Avent made a motion to adjourn. Christina Stankoski 2nd the motion and the motion carried unanimously. The meeting was adjourned at 6:29 PM.