

The City of Fairhope Board of Adjustments and Appeals met on Monday, October 16, 2017 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; Dick Schneider; Harry Kohler; John Avent; Christina Stankoski; Wayne Dyess, Director of Planning; Marcus McDowell, City Attorney and Emily Boyett, Secretary.
Absent: Cathy Slagle

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

The minutes of the September 18, 2017 meeting were considered. John Avent moved to accept the minutes as corrected and was 2nd by Troy Strunk. Motion carried with one abstention by Dick Schneider.

John Avent recused himself and left the room. Harry Kohler joined the Board at the dais.

BOA 17.16 Public hearing to consider the request of Thunder Box, LLC for a variance to the front setback requirements for property known as Lot 69 of The Waters at Fairhope subdivision.

Mr. Dyess gave the staff report.

Summary of Request:

The applicant is requesting a front setback line adjustment to lot 69 of The Waters, a Planned Unit Development located approximately ¾ mile north of State Highway 104 along State Highway 181. The subject lot is located at the western terminus of Sand Bar Lane. The Waters is located within a Planned Unit Development, case # ZC 05.06. As described in Article III, Section A of the *City of Fairhope Zoning Ordinance*, the intent of a Planned Unit Development (PUD) is: "...to encourage innovative development that meets comprehensive plan goals and is tailored to the unique constraints and conditions of a particular site. This district allows flexibility in uses, designs, and building layouts as opposed to other zoning districts to better serve community needs".

The applicant included as a supporting document an administrative replat request for lots 69-70 of The Waters, specifically requesting a re-plat of the two lots into a single lot re-labeled "69A". Lots 69 and 70 comprise the original configuration of The Waters, adopted as a PUD by the Fairhope City Council on April 25, 2005 with final subdivision approval of case # SD 06.55 on January 22, 2007.

Lots 69 and 70 are generally rectangular, with curved rear lot lines conforming to the curvature of the lake situated north of subject lots. Both lots lie along the western terminus of Sand Bar Lane. The approved plat for lot 69 reflects a turnaround area approximately 18' x 32' necessary to allow a turnaround space for service vehicles and emergency vehicles, and is required because the dead end of Sand Bar Lane contains no turnaround area. Setback requirements in the approved final plat vary depending upon lot

groupings. Lot 69 contains 30' front setbacks, 25' rear lakeside setbacks, and 10' side setbacks. When setbacks are applied, the effect of the turnaround creates a "notch" in the southwest corner of the lot's buildable area, subtracting approximately 400sf from the lot's buildable area, with a resulting buildable area of approximately 8,800sf for Lot 69 when examined individually. If lots 69 and 70 are combined and current setbacks are maintained, lot 69 would gain approximately 510 sf up to its former lot line with lot 70 above and beyond the additional area gained from the combination with lot 70.

The variance request primarily affects lot 69 and if the variance is granted a consistent 30' front setback will be in effect across lot 69 and into lot 70. The setback would be reduced from 30' to 12' for the 32.05' length of the turnaround area at the southwest corner of lot 69. Lot 69'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. As stated above lots 69 and 70 are generally rectangular, and their topography is consistent with the other lots comprising The Waters. With approximately 8,800sf of buildable area available, Lot 69's existing setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance.

Lot 69's existing setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance. Further, if Lots 69 and 70 are combined, the east portion of the new lot 69A will gain approximately 510sf formerly occupied by side setbacks. The 510sf area formerly occupied by Lot 69's side setbacks is over and above the area gained by combination with Lot 70. When examined individually, Lot 69's current buildable area with existing setbacks applied does not appear to unreasonably prevent the use of the property for permitted residential purposes. 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 turnaround area that creates the setbacks in the variance request appears to be unique to lot 69, but is a traffic circulation feature included in the preliminary and final plat approvals for The Waters and not necessarily a peculiarity of the lot's size, shape, or topography.

Staff believes that a variance allowing the setbacks requested 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.

Rance Reehl of Thunder Box, LLC addressed the Board saying they want to combine Lots 69 and 70 and stay consistent with the front setback across the newly created lot. He

said the request makes sense and will allow enough depth to design a home to suitable for the subdivision.

Mrs. Stankoski asked what is across the street from these lots and Mr. Reehl responded it is a vacant 80 acre parcel. Mr. Strunk said it seems like a reasonable request but the staff recommendation is to deny. Mr. Dyess stated the request does not meet the criteria for a variance and this setback was self-imposed when the PUD was developed. Mr. Schneider asked if there will only be one home constructed if the lots are combined and Mr. Reehl responded yes. Mr. Dyess noted a re-plat has already been submitted to staff. Mr. Vira opened the public hearing. Having no one present to speak, Mr. Vira closed the public hearing.

Mr. Schneider asked if this type of request is normally granted and Mr. Dyess responded each case stands on its own merit. Mr. Strunk stated he is comfortable supporting this request. Mr. Schneider asked if the tax base will change if this is approved and Mr. Dyess explained it would not change because the lot will still have a single family home on it.

Harry Kohler made a motion to approve the front setback variance as requested. Dick Schneider 2nd the motion and the motion carried with the following vote: AYE – Christina Stankoski, Harry Kohler, Dick Schneider, Troy Strunk, Anil Vira. NAY – none.

Harry Kohler stepped down from the dais and John Avent returned to the dais.

BOA 17.17 Public hearing to consider the request of Ernest and Tenley Warhurst for a variance to construct an accessory structure on Lot 4 of White Avenue Subdivision. The property is located on the south side of White Avenue, between 300 S. Mobile Street and Mobile Bay.

Mr. Dyess gave the staff report.

Summary of Request:

The applicant is requesting a variance to allow construction of a patio and swimming pool upon Lot 4 (PPIN 351457) of the White Avenue Subdivision. The applicant is a Fairhope Single Tax Corporation leaseholder of both Lot 4 referenced above as well as parcel PPIN 14585 located immediately adjacent to Lot 4's east side. The applicant's variance request narrative indicates a desire to replat parcels PPIN 351457 and 14585 into a single lot, and then construct upon the land previously associated with Lot 4, PPIN 351457. Lot 4 was acquired by the applicant as a result of a judgement from Baldwin County Circuit Court Case number CV-2007-900405 (attached). Case number CV-2007-900405 (Case) involved a dispute of the ownership, use, and enjoyment of lands comprising White Avenue Park. The Case's judgment included, among other things "...The said subdivision plat shall include on its face a restrictive covenant prohibiting the construction of any structures or other improvement on any new lot except (i) within the Pedestrian Easement by the City of Fairhope or Fairhope Single Tax Corporation in connection with the construction, use, or maintenance of the Pedestrian Easement in furtherance of its purposes; (ii) by a lessee from Fairhope Single Tax Corporation of a New lot in connection with the construction, maintenance, or repair of a pier or wharf over the waters of Mobile Bay and appurtenant to a New Lot, or steps or landings along or across the face of the bluff for the

purpose of access to or from the shore of said new Lot; or (iii) by the City of Fairhope or a lessee from Fairhope Single Tax Corporation in connection with efforts intended for the stabilization or erosion control of the shore or bluff of Mobile Bay. “

As a result of the judgment referenced above, construction of any structures other than the listed exceptions is prohibited. Further, the applicant previously-received a variance on June 20, 2016 reducing the side setback of PPIN 14585 from 6’-2” to 1’-0” and the home depicted in the setback variance request is currently under construction. The proposed site plan included with the subject application depicts construction of a swimming pool, pool deck, and landscaping onto Lot 4 and immediately adjacent to the 20’ pedestrian easement included in Lot 4.

The subject application does not appear to base the request for variance upon extraordinary or exceptional conditions related to the size, shape, or topography of the subject lots.

The subject application does not appear to base the request for variance upon extraordinary or exceptional conditions related to the size, shape, or topography of the subject lots. As a result, no hardship has been demonstrated based upon the variance criteria.

The subject application does not appear to reference any conditions of size, shape, or topography that are peculiar to the subject lots.

Staff believes that a variance allowing construction upon Lot 4 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 the requested variance has not proven hardship as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e. Further, staff has been advised by legal counsel that judgments related to Case # CV-2007-900405 precludes the authority of staff or the Board of Adjustments to overrule the court-ordered restrictions placed upon Lot 4, PPIN 351457. Allowing construction upon Lot 4 as requested by this variance request is in violation of the restrictions imposed upon lot 4 by the above-referenced Court Case. Therefore, staff recommends the variance request be denied.

Mr. Vira stated the referenced lawsuit created an additional parcel that each of the current adjacent leaseholders were offered to lease. Mr. Dyess said he thought the lawsuit was in regard to riparian rights. Mr. Avent stated the court decision only allows a sidewalk to be constructed on the subject lot. Mr. Strunk added it also allows access to piers. Mr. McDowell stated the property was parkland and the lawsuit was over piers being constructed from the subject properties. He explained there was a consent decree and all the parties agreed. Mr. Dyess stated staff has received multiple angry calls from residents and adjacent property owners regarding this case. Mr. Schneider stated the Board should not approve the request because it is specifically against what the court order says. Mr. Dyess stated staff does not support the request.

Gene Warhurst addressed the Board saying the decree and the Colony's constitution allows the property to be leased with all rights. Mr. Schneider asked if the case went back to court would it be approved. Mr. Warhurst stated the plat was not approved by the Planning Commission because it can't meet the Subdivision Regulations for lot size and access. Mr. Avent responded the plat has been approved and recorded. Mr. Schneider asked if the applicant knew these restrictions when they leased the property. Mr. Avent stated yes, that's why there was a variance requested for the adjacent property at 300 S. Mobile Street. Mr. Warhurst asked if the lot line could be moved to the bay or to the edge of the easement. He added he does not want any more litigation. Mr. Schneider stated there has already been one variance like this denied. He stated the applicant knew the rules and built his house to comply with them. Mr. Warhurst explained he obtained a permit to construct a pier like the adjacent property owners and received a letter from the City stating it would have to be torn down. He stated a lawsuit was filed and the judge found the parkland had reverted to the Colony. Mr. McDowell stated a pier is not part of a riparian right. Mr. Avent stated the variance request and a lot line movement is in direct opposition of the court order. Mr. Strunk asked if the case needs more legal review and Mr. Dyess stated the case can be tabled and staff can work with the applicant and the City attorney. Mr. McDowell stated there was a consent decree that everyone agreed to and now it is coming back. He said we can't uphold one part of the decree and throw out another.

Mr. Vira opened the public hearing.

Mark Nix of 220 S. Mobile Street – He stated he is in the same situation and the lots are a hardship. He said they bought the property and now pay the taxes and are responsible for repairing any damage to the lot but can't use it.

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

Mr. Dyess stated the State Lands leasing and permitting changed in 2004 and they have tried to provide a remedy so people could have riparian rights and the ability to build piers.

Dick Schneider made a motion to accept the staff recommendation to deny the requested variance due to the requested variance has not proven hardship as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e. Further, staff has been advised by legal counsel that judgments related to Case # CV-2007-900405 precludes the authority of staff or the Board of Adjustments to overrule the court-ordered restrictions placed upon Lot 4, PPIN 351457. Allowing construction upon Lot 4 as requested by this variance request is in violation of the restrictions imposed upon lot 4 by the above-referenced Court Case. Christina Stankoski 2nd the motion and the motion carried with the following vote: AYE – Christina Stankoski, Dick Schneider, John Avent, and Anil Vira. NAY – Troy Strunk.

Charles Lowery of 9 White Avenue – He stated he does not want any additional obstructions to the view of the bay with a pool or a fence.

Having no further business, Dick Schneider made a motion to adjourn. Troy Strunk 2nd the motion and the motion carried unanimously. The meeting was adjourned at 6:10 PM.