

**The City of Fairhope Board of Adjustments and Appeals met on Monday, September 18, 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; Cathy Slagle; Harry Kohler; John Avent; Christina Stankoski; Wayne Dyess, Director of Planning; Nancy Milford, Planner; and Emily Boyett, Secretary.**  
**Absent: Dick Schneider**

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

The minutes of the August 21, 2017 meeting were considered. John Avent moved to accept the minutes as written and was 2<sup>nd</sup> by Cathy Slagle. Motion carried with one abstention by Troy Strunk.

**BOA 17.09 Public hearing to consider the request of Bob Pope for a variance to front and rear setback requirements and a Special Exception to allow Multi-Family for property located at 4 Beach Road.**

Mr. Dyess gave the staff report.

**Summary of Request:**

Bob Pope is requesting use approval for a 4-unit multi-family condo comprised of 3 floors (parking on 1<sup>st</sup> floor and habitable floors above) and variance to build to the rear property line. The current zoning of the subject property is B-3(b) Tourist Resort Commercial Services District. This district is intended for a range of commercial and resort residential uses at appropriate locations to serve the needs of tourists. Pursuant to Article III. Section B. Allowed Uses, Table 3-1: Use Table, of the Fairhope Zoning Ordinance, a multi-family use is only allowed in the B-3(b) district on appeal and subject to special conditions. Per Article III. Section C. Dimension Standards, Table 3-2: Dimension Table - Lots and Principle Structure, the subject property required setbacks are: front 20'; rear 20'; side 0' and maximum height is 30'. The applicant is requesting a 20' variance to build to the rear property line. The subject property is comprised of Parcel "A" and Parcel "B" per a 1994 survey provided with the application for appeal and variance. Parcel "A" is 44'x45' totaling 1,980 sq.ft., and Parcel "B" 44'x45' also totaling 1,980 sq.ft., for a cumulative total for both parcels of 3,960 sq.ft. When you divide your total lot size of the parcels (3,960) by the minimum lot size which determines density (7,500 sq.ft.) the result is 0.5 units. The applicant is requesting a 4-unit condominium when the property only allows 0.5 units of density. Therefore, the subject development exceeds the maximum allowable density. In addition, the drawings submitted by the applicant in conjunction with his application for appeal and rear setback variance, shows a building height of 37'. The ordinance says the following regarding height: *Article IX Section C. Definitions and Interpretation Defined Terms - Building, Height: The vertical distance measured from the average natural elevation of the lot at the front of the building to the highest point of the roof.* Therefore, the measurement of height is to the highest point of the roof, including any architectural feature related to the roof. Therefore, the subject development exceeds the height by 7'. The applicant has requested a rear setback variance of 20' so that the subject building can

build to the rear property line. The rear property line abuts the bluff. The subject properties each are 44' in width. As stated previously, the B-3(b) district requires a 20' front and 20' rear setback. The applicant has stated that he has already obtained a front setback variance some years ago. Assuming the front setback variance is valid, the resulting lot depth area which could be used would be 24' (44' lot depth – the 20' front setback variance). The applicant has also requested to build to the rear property line through a request for a 20' rear setback variance. If the 20' rear setback variance was granted to allow development to abut the rear property line in conjunction with no side yard setback allowed by ordinance, the subject property could be built on.

**Recommendation:**

Staff cannot recommend approval of a project that exceeds the density and the building height of the zoning district in which it is located. The other issues become moot when the fundamental elements of development (density) exceeds the Zoning Ordinance. Therefore, staff recommends Denial of the appeal and variance.

Mr. Pope address the Board and gave a PowerPoint presentation of the history of the property. He said this is a two-part request for the setback variances and the condo use. He explained the Board has already granted a variance for the setbacks but it was never recorded. He stated there is clearly a hardship due to the size of the lot but the condo use is not set in stone or tied to the setback variance request. He said the property has always been commercial and condos would be the least impactful to the area and would raise the property values. Mr. Pope showed slides of his conceptual drawings for the condos. He stated he has lived here since 1972 and he plans to live in one of the condos if approved.

Mr. Vira opened the public hearing.

John Manelos of 104 White Avenue – He stated he is opposed to the request. He said the view from the shore and the water will be ruined. He said the greater interest needs to be considered and not let just one person profit. He suggested the City buy the property, Mr. Pope donate it to the City, or leave it as it is.

Shannon Tomecek of 12130 Baldwin Lane – She stated she has started a petition against this development and it already has more than 300 signatures.

Clarence McCawley of 10 Woodgrove Circle – He spoke against the proposal.

Sonya Bennett of 81 Magnolia Avenue – She stated the design is creative and wonderful but this is the wrong location for it. She said she is opposed to the project. She suggested the City purchase the property and make it better.

Jo Rude of 67 Magnolia Avenue – She said this is an iconic view and doesn't want it ruined. She is opposed the project.

Having no one else present to speak, Mr. Vira closed the public hearing. Mrs. Boyett stated she has received 8 letters in opposition and 2 letters in favor of the request.

Mr. Avent stated the applicant has disclosed everything but the plan breaks all the rules. He said the building will encroach the bluff, the density is a concern, and the multi-family use in an entertainment district. He said he thinks it is a bad idea. Mr. Strunk said the density request is too much. He stated if the hardship is due to the size then why want 4 units, 1 ok but not any more.

Cathy Slagle made a motion to accept the staff recommendation to deny both requests due to the project exceeding the density and the building height of the zoning district in

which it is located. John Avent 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – Christina Stankoski, Harry Kohler, John Avent, Troy Strunk, Cathy Slagle. NAY – none. ABSTENTION – Anil Vira.

**BOA 17.12 Public hearing to consider the request of Michael and Alice Waldrip for a variance to front setback requirements and lot coverage for a principal structure for property located at 121 White Avenue.**

Ms. Milford gave the staff report.

**Summary of Request:**

The applicant is requesting a variance to the maximum allowable lot coverage for the subject property from 37% to 39.5% and desires to extend the proposed primary structure further by 6' into the existing front setback. According to the applicant, the existing non-conforming front setback for the principle structure is 33'. The R-2 Zoning District requires a 35' front setback. The applicant is requesting a 27' front setback (an 8-foot difference).

The subject property is located in the R-2 Medium Density Single-Family Residential District: This district is intended as a medium density single family urban residential district, with lots of moderate size.

On June 1, 2017, a damaged tree fell on the principle structure and caused significant damage. The principal structure will be demolished due to the extensive amount of damage. The existing principal structure was constructed in the 1940's and is considered a non-conforming structure. In accordance with *Article VII, Non-conformities, Section B*, the existing principle structure was not intentionally destroyed and can be restored within one year from the date of the event.

The subject property dimensions are approximate 44' X 88", which is approximately 3872 sf, nearly a third of the size of the minimum lot size (10,500 sf) of an R-2 sized lot. The applicant contends there is an extraordinary and exceptional condition pertaining to this particular piece of property in question because of its size and the required setbacks with the R-2 zoning designation. Based on the setbacks for R-2 the applicant, the maximum allowable principle structure that could be built would be 432 sf in size. The current house size is approximately 900 sf. The applicant desires to expand the footprint of the existing principle structure to an approximate (51X30) 1530 sf house as shown on the proposed layout.

According to the applicant, the existing structure front setback is 33' and the existing rear setback is approximately 10' from the property line. The existing side set is approximately 7' on the west side and 6.5' on the east side. The applicant desires to maintain the 10' exist rear setback, a 7' side setback and encroach 6' into the existing front setback. This would allow the applicant a 1530 sf principle structure with a 39.5% lot coverage. The maximum allowable lot coverage for R-2 is 37% which in this case would allow for a 1433 sf house.

The adjacent properties to 121 White Avenue were constructed between the 1950's and 1970's and have non-conforming front setbacks. Staff could support the variance if the proposed subject property principal structure in located no more than midway between the adjacent structures.

**Recommendation:**

It is staff's position that the variance request has demonstrated a hardship based on the size of the lot. The applicant is requesting an increase in lot coverage for the R-2 zoning district by 2.5%, and an 8' encroachment from the R-2 zoning district front setback (a 6' encroachment from the existing front setback.) The proposed front setback is 27'. The applicant has shown a willingness to increase the current side setback by approximately 1.5' on the east side. Staff is in support of the variance due to the lot size constraints; however, staff would like the subject property front setback to be no more than mid-way (not to exceed a 27' front setback) between the adjacent properties and to be limited to a maximum lot coverage of 37% of the existing lot size.

Mr. Waldrip addressed the Board saying the property has been a rental for 41 years and he would like to rebuild it 7' closer to the front property line.

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

Mr. Avent stated the existing setbacks can be maintained and a 1300 sqft. footprint is still allowed. He said just because the applicant wants to build closer is not a hardship. Mr. Strunk asked if the existing non-conforming setbacks can be squared off to expand the footprint and Mrs. Boyett responded yes. Mr. Vira said it can be squared up. Mrs. Stankoski noted it would allow more square footage but it would need a different plan. Mrs. Slagle asked if the proposed plan can maintain the allowable lot coverage and Ms. Milford responded yes, it is 1100 sqft. Mr. Avent asked how much more would he get and Ms. Milford stated she was not sure.

John Avent made a motion to accept the staff recommendation to allow a front yard setback of 27' for the principal structure due to the size of the parcel and maximum lot coverage shall not exceed 37% of the existing lot size. Cathy Slagle 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – Cathy Slagle, Christina Stankoski, John Avent. NAY – Troy Strunk and Harry Kohler. ABSTENTION – Anil Vira.

**BOA 17.13 Public hearing to consider the request of J. Andrew and Brynne Allison for a variance to front setback requirements for an accessory structure for property located at 212B Fig Avenue.**

Mr. Dyess gave the staff report.

**Summary of Request:**

The applicants own lot 2 as shown on the survey which has no frontage on Fig Avenue. Another property separates the subject property from Fig Avenue. They wish to construct an open sided garage in the front of the property. The Zoning Ordinance defines the front of the subject property as the area between the front of the building and the right-of-way line. In this case the front of the subject property is located directly to the rear of Lot 1 which is adjacent to Fig Avenue. The Tatumville Gulley is to the rear of the subject property.

This variance is requesting relief from Article III. Section C. Zoning Districts Dimension Standards (Table 3-3), 2. Residential Accessory Structures, which requires that accessory

structures be located “behind rear building line of principle structure”. The request is to locate an open side garage (carport) in the front of the subject property.

**Recommendation:**

Due to the subject properties location without frontage and its proximity to the Tatumville Gulley, requiring an accessory structure in the rear of the property, adjacent to the Tatumville Gulley, would be detrimental and create a hardship.

Staff recommends that the request variance be approved subject to the following:

1. The accessory structure will be open sided; and
2. Accessory structure may be located no closer than 10’ from the front and side property line.

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

Mrs. Slagle asked if the driveway is unfinished and Mr. Dyess responded yes, there is an easement along the front property for access. Mr. Avent asked what gives it a hardship and Mr. Dyess answered the uniqueness of the lot not having street frontage and the location of the gulley to the rear. Mr. Avent stated the carport could be moved into the setbacks and be ok. Troy Strunk made a motion to deny the request. John Avent 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – Christina Stankoski, Harry Kohler, John Avent, Troy Strunk, Cathy Slagle. NAY – none. ABSTENTION – Anil Vira.

**BOA 17.14 Public hearing to consider the request of Chris and Elizabeth Collins for a variance to the minimum separation requirements for an accessory structure and a principal structure for property located at 22648 Alice Lane.**

Mr. Dyess gave the staff report.

**Summary of Request:**

The applicant is requesting a variance from the 10’ building separation requirement for accessory structures. The subject property is located in the R-1 Low Density Single Family Zoning District. As described in *Article III, Section A* of the *City of Fairhope Zoning Ordinance*, the intent of the R-1 Zoning District is “...intended to provide choices of low-density suburban residential environment consisting of single-family homes on large parcels of land”.

The City of Fairhope Building Department issued permit number 1701277 on August 3, 2017 for construction of a swimming pool at 22648 Alice Lane. A drawing was included as a supporting document to the swimming pool permit application depicting a rectangular residence with an accessory structure swimming pool behind the residence. A distance of 8’ was depicted separating the swimming pool and what was assumed as a porch on the rear of the residence. The building official approved the swimming pool application but noted that the separation distance “must be 10’ if not open porch”.

On August 7, 2017, a City of Fairhope building inspector visited 22648 Alice Lane and noted the results of inspection as “not approved” and further noted “assure house/pool separation is approved by C.O.F. – approx. 6’ from attached garage”. The attached garage was not depicted on the initial swimming pool permit application. The attached garage forms an “L” shape to the residence, and since the garage was not submitted with the swimming pool permit application, the required accessory structure separation from the garage was not reviewed as a part of the application review.

On August 9, 2017, a City of Fairhope building inspector re-visited 22648 Alice Lane and issued a stop work order for violation of *The City of Fairhope Zoning Ordinance Article III Section C.2.* and advised the applicant to “see planning/zoning department”.

**Recommendation:**

It is staff’s position that the variance request has not proven hardship as required by the criteria established by the *City of Fairhope Zoning Ordinance Article II.C.3.e.* as there is adequate lot space to place the swimming pool in a location that will comply with separation and setback requirements. Therefore, staff recommends the variance request be denied.

Cameron Rhodes of Southern Poolscapes addressed the Board saying they did not realize the separation requirement applied to the detached garage too. He stated the septic tank and field lines prevented the pool from being moved further to the south property line.

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

Mr. Strunk asked the difference between accessory and principal structure and Mr. Dyess stated the principal structure is the house due to the use. Mr. Avent stated the ordinance does not say 10’ of separation between accessory structures. Mr. Strunk made a motion to approve the request due to the lack of separation not being from the principal structure. Harry Kohler 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – Christina Stankoski, Harry Kohler, John Avent, and Troy Strunk. NAY – Cathy Slagle. ABSTENTION – Anil Vira.

**BOA 17.15 Public hearing to consider the request of David and Colleen Black for a variance to driveway side setback requirements for a principal structure for property located at 45 Paddock Drive.**

Mr. Dyess gave the staff report.

**Summary of Request:**

The applicant is requesting a variance from the 15’ driveway side setback requirement to allow construction of an additional driveway for subject property. The subject property is located in the R-3 High Density Single Family Zoning District. As described in *Article III, Section A* of the *City of Fairhope Zoning Ordinance*, the intent of the R-3 Zoning District is “...intended as a high-density single-family urban residential district with lots of relatively small size as compared to the preceding single-family residential districts”.

The applicant stated in the variance request their desire to construct a garage accessory structure in the back yard of the subject property to alleviate minimal existing parking and garage space in front of the principle structure. A driveway will be required to access an accessory structure garage, and the applicant asserts adequate space exists to construct a driveway between the principle structure and the existing property line. Though the subject property is in compliance with the 8' side building setbacks required, a new driveway will require a 15' side building setback to be in place. A driveway may be placed within 3' of the side property line.

**Recommendation:**

Staff recommends the variance request be approved with the following condition:

- 1) The driveway must maintain at least 3' of greenspace between the southern property line as required by table 3-3 when constructed.

Mr. Black addressed the Board saying he and his wife have lived at the subject property for 3 years and love it. He explained they have 3 cars and want to build a garage in their back yard to provide additional storage and protection for his classic car. He stated they currently park out front and want to maintain and preserve the appearance of the neighborhood. He added there is a large oak tree on the opposite end of the house which prevents them from installing the driveway on that side. Mr. Avent asked how wide would the driveway be and Mr. Black responded 10'. Mr. Avent stated that would put the 4" from the house and there is a 2' eave overhang as well. Mr. Strunk asked if driveways are included in lot coverage percentages and Mr. Dyess responded no, only rooftop. Mr. Avent asked if additional drainage will affect the neighbor and Mr. Black stated there have not been any issues to date but if something happened then it would be addressed.

Mr. Vira opened the public hearing.

Buddy Gilbert of 69 Paddock Drive – He stated he is opposed to the request. He said the property already has a driveway and a parking pad. He added the additional driveway will cause drainage issues.

Frank Rubino of 49 Paddock Drive – He stated the subject property has had water in the house previously and so has his home. He said there was a ditch between the 2 houses and he moved it so he could landscape his yard. He explained the development was designed so the driveways didn't line up or put driveways next to the bedrooms of the adjacent homes. He said the driveway will interfere with his and his wife's sleeping because they like to sleep with their windows open. He suggested cutting down the tree on the other side of the house and installing the driveway there. He added it will cost him more money to re-landscape than it would cost Mr. Black to cut down the tree.

Rich Schneekloth of 38 Paddock Drive – He said the proposal is bad for the neighborhood. He stated drainage is already an issue and an additional driveway will make it worse.

Betty Bowdoin of 70 Paddock Drive – She stated she is opposed to the request and said the applicants don't need another driveway.

Lois Marie O'Konek of 50 Paddock Drive – She stated concerns with drainage and said there are not enough storm drains to handle the water. She said allowing another driveway will change the look of the subdivision.

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

Mrs. Slagle asked if the applicant has any other ideas for the driveway and Mr. Black responded there is nothing solid. Colleen Black said they prefer not to take the large oak tree down on the north side of their house. She noted they don't need a variance to build a shed in the back yard but only for the driveway. She said they need more storage and a place for her husband's car. She added there have not been any drainage issues since they have lived there. Mr. Dyess stated there is even less room on the north side of the property to install a driveway between the house and the property line. Mr. Strunk asked if the applicant has a plan or is open to ideas. He asked if there is a pervious percentage for driveways and Mr. Dyess responded no, but the application could be tabled until a plan could be presented or the Board could limit the pervious percentage for the driveway. Mr. Strunk suggested using tire strips instead of a solid surface driveway. Mr. Avent stated he sees how the proposal meets the variance criteria but he also understands drainage and sees the issues. Mr. Kohler said there is an existing character in the neighborhood and the proposal will change the look.

Harry Kohler made a motion to deny the request. John Avent 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – Christina Stankoski, Harry Kohler, John Avent, and Cathy Slagle. NAY – Troy Strunk. ABSTENTION – Anil Vira.

Having no further business, Troy Strunk made a motion to adjourn. John Avent 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 7:19 PM.