

**The City of Fairhope Board of Adjustments and Appeals met on Monday, February 19, 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; Christina Stankoski; Dick Schneider; John Avent; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.**

**Absent: Cathy Slagle**

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

The minutes of the January 18, 2018 meeting were considered. John Avent moved to accept the minutes as written and was 2<sup>nd</sup> by Dick Schneider. Motion carried with one abstention by Christina Stankoski.

**BOA 18.02 Public hearing to consider the request of Bob Pope for a variance to the Front and Rear setbacks, parking requirements, and stormwater requirements for property located at 4 Beach Road.**

Mr. Dyess gave the staff report.

**Summary of Request:**

Bob Pope is seeking to add on/construct a restaurant and gift shop on the subject property. It is zoned B-3(b) Tourist Resort Commercial Services District. Each proposed use is consistent with Article III. Section B. Table 3-1: Use Table under Use categories of Service (restaurant) and Retail (gift shop). The applicant is seeking a 0' front and rear setback, a variance to the parking requirements contained in Article IV.E. Parking, Table 4-3 Parking Schedule, and a variance from Article IV. Section F. Storm water Management requirements.

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, the proposed restaurant and gift shop are allowed uses.

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' front and rear yard variance to build to each property line. The rear property line abuts the bluff. The applicant has stated that he has already obtained a front setback variance some years ago. The variance was not recorded and some uncertainty remains about the current validity of the variance. To "clean up" the uncertainly, the front setback variance request has been included in the current request.

The subject property is comprised of Parcel "A" and Parcel "B" per a 1994 survey provided with the application for variance. Parcel "A" is 45'x44' totaling 1,980 sq.ft.,

and Parcel “B” 45’x44’ also totaling 1,980 sq.ft., for a cumulative total for both parcels of 3,960 sq.ft. Parcel “A” currently contains a restaurant use which appears to be constructed to the front and rear property line. Staff is unclear how the building was permitted and has no information to determine the permitting process.

**Setback Variance:**

As stated previously, the subject property is comprised of two lots Parcel “A” 44’x45’ and Parcel ‘B” 44’x45’, for total frontage for the subject property of 90’ and rear of 90’. When applying the 20’ front and rear setback a the 44’ lot depth, a total buildable area of 4’ is allowed under the Zoning Ordinance. Obviously, this isn’t enough area to consider a property “usable”. Staff supports to the variance for setbacks.

**Parking Variance:**

As stated previously, the current restaurant located on Parcel “A” of the subject property is, and has been, using the public parking around the fountain. Again, the permitting process for this use is unclear. However, staff does not support a total variance from the parking requirements. The public parking does get constrained in this area at times.

The parking requirements are provided in *Article IV.E. Parking, Table 4-3 – Parking Schedule*, which provides the following:

***Restaurants and Bars:***

1 space for each 4 seats up to 52 seats and 1 space for each 6 seats thereafter.

***General Retail and Office establishments:***

0 to 400 square feet of floor area - 4 parking spaces

400 to 5000 square feet of floor area - same as above plus 1 for each additional 400 square feet

Because the current parking is for the public to use the pier and surrounding park areas, staff recommends that three conditions be added to any variance approval.

1. Compensatory parking, equivalent to the parking demand generated by the proposed use per Table 4-3 – Parking Schedule be provided in the Fairhope Pier park vicinity as determined by the Public Works Director.
2. Compensatory parking be installed prior to the issuance of Certificate of Occupancy (C.O.).
3. The sidewalk near the Fireman’s Hall be extended past the subject property to provide a safe pedestrian access from available parking area to the proposed use. This will also create a pedestrian network to the pier area and the proposed use. The sidewalk must be permitted through the Public Works Department as it will be located on City property.

**Stormwater Variance:**

A total variance from stormwater is very problematic and staff does not support such a variance. Various nontraditional stormwater methods can be employed i.e. exfiltration, in ground holding basins or even rain barrels, to contain and release stormwater. Staff recommends that these methods be explored. Any method of stormwater management must meet the intent of Article IV. Section F. Storm water Management regulations and approved by the Public Works Director.

**Recommendation:**

1. Staff recommends **approval** of a 20' variance to the rear and front setback.
2. Staff recommends **approval** from the parking requirements of Article IV.E. Parking, Table 4-3 – Parking Schedule **conditioned** upon:
  - a. Compensatory parking, equivalent to the parking demand generated by the proposed use per Table 4-3 – Parking Schedule be provided in the Fairhope Pier park vicinity as determined by the Public Works Director.
  - b. Compensatory parking be installed prior to the issuance of Certificate of Occupancy (C.O.).
  - c. The sidewalk near the Fireman's Hall be extended past the subject property to provide a safe pedestrian access from available parking area to the proposed use. This will also create a pedestrian network to the pier area and the proposed use. The sidewalk must be permitted through the Public Works Department as it will be located on City property.
3. Staff recommends **denial** of the stormwater variance and recommends that a nontraditional method be employed to meet the stormwater requirements with approval by the Public Works Director.

Mr. Dyess explained the question is whether the applicant has reasonable use of the property and with the setbacks applied there is only a 4' buildable area. Mr. Schneider asked if the new parking spaces would be built on City property and Mr. Dyess responded yes, the location would be determined by the Public Works Director but paid for by the applicant. Mr. Avent asked if the sidewalk would also be on City property and Mr. Dyess responded yes, there is approximately 5' between the existing parking spaces and the property line. Mr. Vira stated a zero lot line would require accessing the rear of the building for maintenance by City property. Mr. Strunk asked if townhomes are allowed in B-3b and Mr. Dyess responded no.

Mr. Pope addressed the Board saying there is 12' between the curb and the property line. He explained he is proposing a 30' two-story building with a gift shop or coffee and ice cream on the first floor and a restaurant on the second floor. He said people were not in favor of the condos but some people don't want anything. He stated he has no objections to the parking conditions. Mr. Strunk asked if Mr. Pope would restrict the uses to restaurant and gift shop and Mr. Pope responded yes. Mrs. Stankoski asked if the applicant could come back later and make it entire site a restaurant and Mr. Dyess responded yes, but the parking would still have to be met.

Mr. Vira opened the public hearing.

John Manelos of 104 White Avenue – He read a letter to the Board against the proposal. He cited concerns with potential harm and impact to the bluff and substantial detriment to the public good.

Pat Brandon of 107 N. Bayview Street – He spoke in opposition to the variance requests. He stated this proposal is at the expense of all property owners in Fairhope and petitioned the Board to deny the request for the greater good of the community.

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

Mr. Avent stated the recent changes to the definition of building height could allow a 40' building on the site. Mr. Vira asked if the height could be restricted and Mr. Dyess stated he was not sure. Mr. Strunk stated the existing building could be modified and built to 30' now. Mr. Schneider asked if there are any proposed drawings. Mr. Pope stated he does not have any drawing at this time, but it will be nice. Mr. Vira suggested tabling the application to see drawings and if the approval can be tied to drawings. Mr. Avent stated he has concerns with the offsite parking, the visual impacts to the view, and the impact to the toe of the bluff. Mr. Dyess explained it would be a regulatory taking if the property owner is not allowed to develop at all. He said the parking has to be met and he can ask legal staff if the height can be limited.

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

**BOA 18.03 Public hearing to consider the request of Robert and Kimberly Mazur for a variance to the front and rear setback requirements for property located at 374 Pecan Ridge Blvd.**

Mr. King gave the staff report.

**Summary of Request:**

The applicant is requesting a building setback line variance to lot 16 of the Pecan Ridge Subdivision, located along Pecan Ridge Blvd. approximately 0.23 miles south of Mosley Road and 0.41 miles east of County Road 13. 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 a supporting document depicting a proposed home to be constructed on the lot, showing the home's layout on the subject property with a requested continuous 25' front setback line following the west, southwest, and southern continuous property line as well as depicting a northern 10' side setback line and an eastern 35' rear setback line.

Lot 16 is generally rectangular, with a radiused southwest area in lieu of typical angular corner. The western, southwestern and southern lot line is a continuous lot line contiguous to the Pecan Ridge Blvd. right of way (ROW) and is therefore a "front" lot line.

The 2001 *City of Fairhope Zoning Ordinance Glossary* defines a Lot Line, Front as:

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

The 2001 *City of Fairhope Zoning Ordinance Glossary* defines a Lot Line, Rear as:

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

The 2001 *City of Fairhope Zoning Ordinance Glossary* defines a Lot, Corner as:

“A lot abutting two or more streets at their intersection or upon two parts of a street which form an interior angle of less than 135 degrees. The point of intersection of the street lines is the corner.”

Both the 157.8' northern property line and the 95' eastern property line are both opposites and most distant from the front lot line due to the continuous nature of the front lot line. As a result, the 157.8' lot line and 95' lot lines are both *rear* lot lines, and therefore both lot lines require a corresponding 35' building setback line. The subdivision plat for Pecan Ridge Subdivision, instrument number 2218C does not note or depict specific building setback lines for subject property. The subject property's topography is consistent with the nearby lots along Pecan Ridge Blvd. The subject property's size and buildable area do not appear to be extraordinary or exceptional due to size, shape, or topography, however the orientation of the continuous front lot line creates two rear lot lines and therefore two rear setback lines. The subject property's setback lines created by the continuous front lot line create a buildable area of approximately 2,055.16 sf. When compared to the sizes of the existing homes within 300 feet of subject property, the setbacks of subject property appear to prevent construction of a comparably-sized residence unless approval of a setback variance is granted.

The continuous front lot line contiguous to the ROW along Pecan Ridge Blvd. creates a peculiarity unique to subject property by creating two rear lot lines and thus creating 35' setbacks for the entire property. As stated previously the 35' building setback lines create a buildable area of approximately 2,055.16 sf, as calculated by ESRI ArcMap. The application for setback variance for subject property requests a continuous 25' front setback line following the west, southwest, and southern continuous property line as well as 10' side setback line in place of the 35' setback line along the northern property line, and retains the eastern 35' rear setback line. The 35' building setback lines related to the continuous front setback line and the east rear setback lines, but includes a 10' setback line along the northern property line. The allowable buildable area of this setback line configuration, as calculated by ESRI ArcGIS ArcMap, is 4,490.32 sf.

Staff believes that a variance allowing the 25' front setback requested is not warranted, however staff supports a variance allowing a 10' setback line along the northern property line, essentially creating a 10' side setback line. The supporting document included with the request for variance depicts not only the requested 25' continuous and 10' side setback lines, but also a proposed house of 3,491 sf in lot coverage. The 4,490.32 sf allowable building area created by allowing a 10' setback line along the northern property line allows construction of a comparably-sized residence to the adjacent areas and surrounding neighborhood within 300' of subject property.

**Recommendation:**

It is staff's position the existing building setbacks of subject property prevent the reasonable use of the property for a residence of similar size to nearby residences. The average residence lot coverage size within 300' of subject property is approximately 3,033.46 sf, and the allowable building area created by the existing building setbacks is 2,055.16 sf. Staff does not support the approval of a variance allowing a 25' setback line along the continuous front lot line, however staff recommends APPROVAL of a setback

line variance to allow a 10' setback line along the northern property line of PPIN 2702952. The approval of the afore-mentioned 10' setback line creates a buildable area of approximately 4,490.32 sf, which allows the reasonable use of the property for a residence of similar size to nearby residences.

Mr. King explained this is not a corner lot because there are no intersecting streets.

Mr. Bennett addressed the Board saying he thought the property was a corner lot and originally applied the setbacks as a corner lot. He explained the current house plans he would like to build will not fit on the lot with the setbacks as required.

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

Mrs. Stankoski asked staff if any letters or calls had been received regarding this request and Mrs. Boyett responded no. Mr. Schneider asked if the reduced setbacks will impede the neighbor's view. Mr. Avent said 35' should be maintained at the front. Mr. Vira asked if the applicant is satisfied with staff recommendation and Mr. Bennett responded no, the 35' setback along the front line will still preclude the house from fitting on the lot. Mr. Strunk asked what the setback is for the adjacent lot to the east and Mrs. Boyett replied 20'. Mr. Avent asked if the houses would line up if the subject property was given a 25' setback on the southern portion of the front line. Mr. King stated the recommendation allows for reasonable use of the subject property.

Troy Strunk made a motion to accept the staff recommendation to approve a setback line variance to allow a 10' setback line along the northern property line. Christina Stankoski 2<sup>nd</sup> the motion and the motion carried unanimously with the following vote: AYE – Christina Stankoski, Dick Schneider, John Avent, Anil Vira, and Troy Strunk. NAY – none.

### **Old/New Business**

2018 Agenda Deadlines – Troy Strunk made a motion to approve the 2018 Agenda Deadlines as presented. Dick Schneider 2<sup>nd</sup> the motion and the motion carried unanimously.

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 6:50 PM.