



**City of Fairhope
Board of Adjustment and Appeals
5:00 PM
City Council Chambers
June 18, 2018**

Karin Wilson
Mayor

Council Members

Kevin G. Boone

Robert A. Brown

Jack Burrell, A.C.M.O.

Jimmy Conyers

Jay Robinson

Lisa A. Hanks, MMC
City Clerk

Michael V. Hinson, CPA
City Treasurer

1. Call to Order
2. Approval of the May 21, 2018 minutes
3. Consideration of Agenda Items:
 - A. BOA 18.08 Public hearing to consider the request of Brian and Gretchen Dixon for a variance to the side setback requirements for property located at 307 Equity Street.
PPIN #: 14336
4. Old/New Business
5. Adjourn

161 North Section Street

P O. Drawer 429

Fairhope, Alabama 36533

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Board of Adjustment

June 18, 2018

Case: BOA 18.08 307 Equity Street

Project Name:

Variance Request –
307 Equity Street

Property Owner /

Applicant:

Brian and Gretchen
Dixon

General Location:

Approximately 3/8 mile
West of S. Section St.
Along Equity Street

Request:

Variance request of 2.9'
Side Setback

Project Acreage:

0.31 acres (13,435 sf)

Zoning District:

R-2 Medium Density
Single Family

PPIN Number:

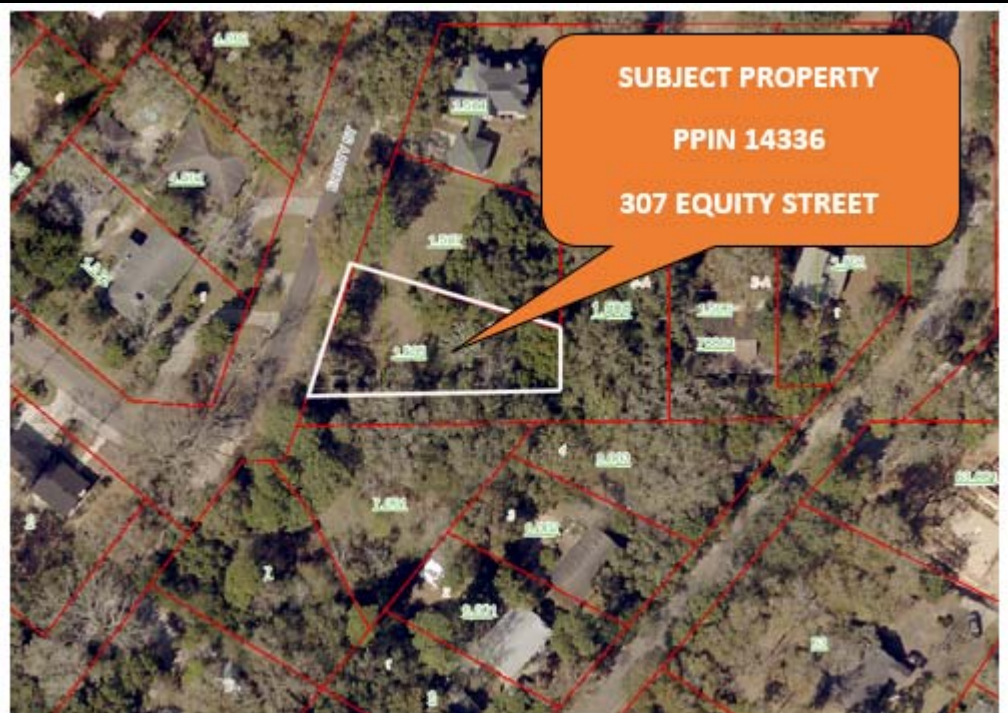
14336

Report prepared by:

J. Buford King
City Planner

Recommendation:

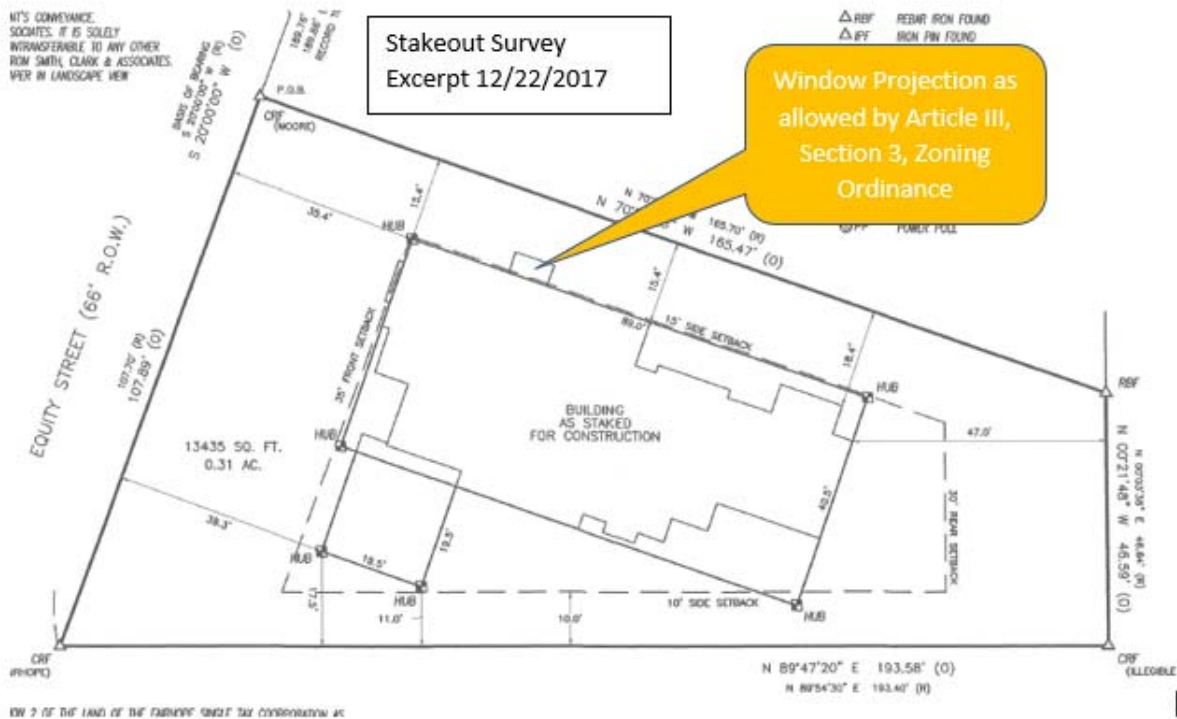
Denial



Summary of Request:

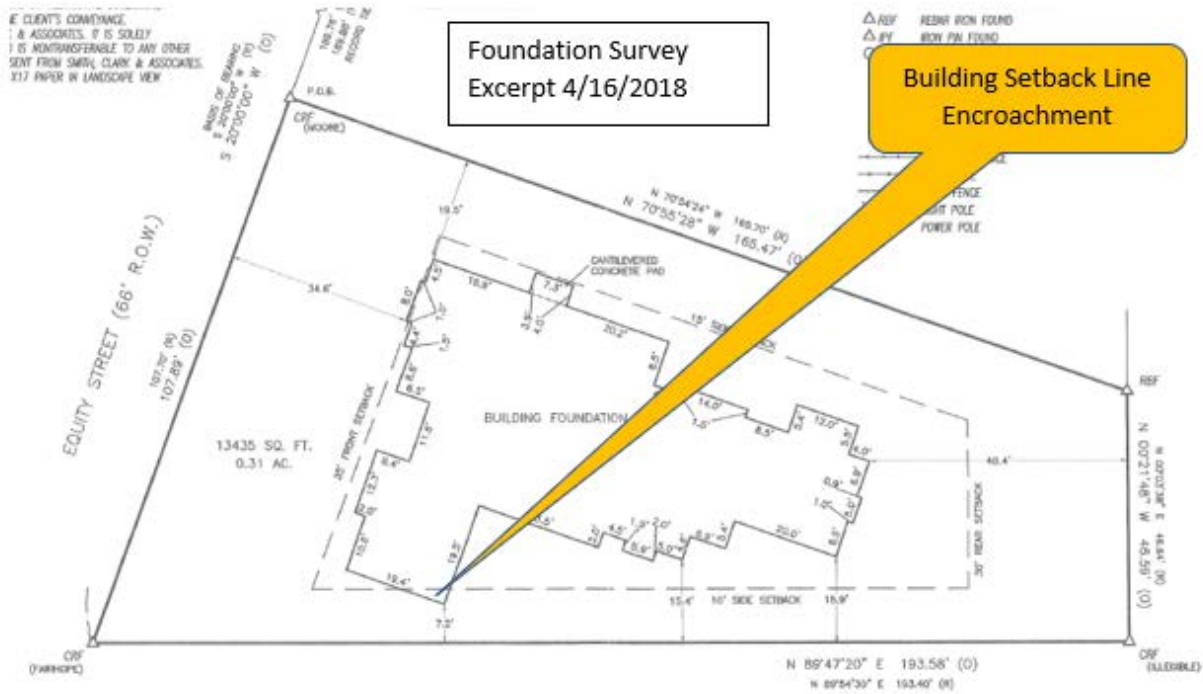
The applicant is requesting a side setback variance related to the property located at 307 Equity Street. The subject property is zoned R-2 Medium Density Single Family Residential District and includes the following building setbacks: front – 35', rear – 35', side – 10' and side street – 20'.

A building permit was issued for the subject property and during construction the applicant discovered the concrete slab for the home under construction on the property was not constructed as shown on the stakeout survey dated 12/22/2017. An excerpt of the stakeout survey is shown below:



As noted above the home to be constructed on the subject property includes a window projection across the side building setback line that is allowable by Article III Section 3 of the Zoning Ordinance. Otherwise, the proposed home falls within the building setbacks of the property.

The applicant furnished a foundation survey as an additional supporting document dated 4/16/2018 which indicates the actual placement of the proposed home's concrete slab. The orientation of the slab's as-placed located the northern window project inside the side building setback line on the property's north side rather than across the setback line, and as a result a carport/garage encroaches upon the side building setback line on the property's south side by approximately 2'-10". The building setback line variance requests the allowance of the 2'-10" encroachment, and an excerpt of the foundation survey is indicated below:



Comments:

The City of Fairhope Zoning Ordinance defines a variance as follows:

Variations: A modification of the strict terms of the relevant regulations in a district with regard to placement of structures, developmental criteria or provision facilities. Examples would be: allowing smaller yard dimensions because an existing lot of record is of substandard size; waiving a portion of required parking and/or loading space due to some unusual circumstances; allowing fencing and/or plant material buffering different from that required due to some unusual circumstances. Variations are available only on appeal to the Board of Adjustment and subject to satisfaction of the standards specified in this ordinance.

The Board of Adjustments is authorized to grant variance through Article II.A.d(3) which says the following:

d. Duties and Powers: The Board shall have the following duties and powers:

(3) Variations - To authorize upon appeal in specific cases variance from the terms of this ordinance not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

Prior to granting a variance, the Board shall find that:

(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;

(b) The application of this ordinance to the particular piece of property would create an unnecessary hardship;

(c) Such conditions are peculiar to the particular piece of property involved; and,

(d) Relief, if granted, would not cause substantial detriment to the public good or impair the

purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.

The Ordinance provides guidance for variance requests through the following criteria:
Article II.C.3.e.

Criteria – (1) An application for a variance shall be granted only on the concurring vote of four Board members finding that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;***
- (b) The application of the ordinance to this particular piece of property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance.***
- (c) Such conditions are peculiar to the particular piece of property involved; and***
- (d) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.***

When a variance is granted by the Zoning Board of Adjustment it has the following effect:

Article II.C.3.g.

Effect of Variance - Any variance granted according to this section and which is not challenged on appeal shall run with the land provided that:

(1) The variance is acted upon according to the application and subject to any conditions of approval within 365 days of the granting of the variance or final decision of appeal, whichever is later; and

(2) The variance is recorded with the Judge of Probate.

Analysis and Recommendation: Variance Criteria

(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

Response: The subject property is a parallelogram lot generally rectangular in shape approximately 13,435 sf in size. The shape of the lot is not particularly uncommon and is greater than the minimum 10,500sf lot size required for R-2 zoning. The lot has no visible extraordinary or exceptional topographical conditions.

(b) The application of the ordinance to this particular piece of property would create an unnecessary hardship. Personal financial hardship is not a justification for a variance.

Response: The subject property's setbacks do not prevent the reasonable use of the property for residential purposes. The stakeout survey indicates the proposed home fits within the building setback lines.

(c) Such conditions are peculiar to the particular piece of property involved.

Response: The parallelogram shape of the lot is not uncommon within the Fairhope Planning Jurisdiction and is not necessarily peculiar to the subject property.

(d) Relief, if granted, would not cause substantial detriment to the public good and impair the purpose and intent of this ordinance; provided however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance.

Response: Staff believes that a setback variance allowing the encroachment not warranted and the stakeout survey clearly depicts the proposed home within the building setbacks of the property. As a result, no relief is recommended.

Staff Recommendation:

Staff recommends that this variance be **DENIED** as no hardship created by the subject property's size, shape, or topography has been proven as required by the criteria established by the *City of Fairhope Zoning Ordinance Article II.C.3.e.*

Prepared by:
J. Buford King
City Planner

Site Photos



Looking east from Equity Street



Northern property line looking east



Window projection inside setback line



Carport/garage encroachment on setback line