

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: Anil Vira, Chairman; Harry Kohler; Christina Stankoski; John Avent; Cathy Slagle; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.

Absent: Troy Strunk, Vice-Chair and Dick Schneider

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

The minutes of the April 16, 2018 meeting were considered. Cathy Slagle moved to accept the minutes as written and was 2nd by Harry Kohler. Motion carried with abstentions by John Avent and Anil Vira.

BOA 18.05 Public hearing to consider the request of Terri Carlton, on behalf of MLC Properties, LLC, for a Special Exception to allow a restaurant at 759 Nichols Avenue.

Mr. Dyess gave the staff report.

Summary of Request:

Terri Carlton, MLC Properties, is requesting a restaurant use, allowed on appeal, for the property located on 759 Nichols Avenue. The subject property is zoned M-1 Light Industrial District which does not allow a restaurant use pursuant to Article III. Section B. Table 3-1: Use table. However, the subject property is also located in the Medical Overlay District pursuant to Article V. Section H. A restaurant use is allowed on appeal in the Medical Overlay District. The subject property currently contains an existing restaurant (Warehouse Bakery). The construction and remodel of that business began in July of 2015. The current application for appeal is an addition of a restaurant use on the subject property. A restaurant use is allowed in the Medical Overlay District on appeal pursuant to Article V.H.3.C. The Comprehensive Plan makes several references of supporting Thomas Hospital due to its economic generator status. The subject property is in the same block and purportedly does a large volume of business with hospital staff and visitors. This interaction helps support the hospital and its related uses. The Comprehensive Plan provides no further detail for this area. The subject property is in the Medical Overlay District and is a supporting use to the hospital and is therefore in keeping with the intent of the ordinance. The majority of the area is zoned M-1 with uses consistent with M-1. A restaurant currently exists on the subject property (Warehouse Bakery). An additional restaurant will not affect the character. The use in the same block as the hospital and supports and serves staff and visitors to the hospital thereby reducing travel times and volumes on local roadways.

Recommendation:

Staff recommends **APPROVAL** of the appeal to establish a restaurant use at 759 Nichols Avenue.

Mr. Kohler asked if there have been any concerns from the residents behind the subject property and Mr. Dyess responded staff has not received any. Mr. Vira asked if the special exception will run with the property and Mr. Dyess responded yes. Mrs. Carlton asked if the other allowable uses in the M-1 district and the Medical Overlay District will still be allowed and Mr. Dyess answered yes.

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

Mrs. Boyett stated there are three letters of support in the Board's packet. Ms. Slagle asked if the special exception is only for a portion of the property and Mr. Dyess responded no, it will be for the entire parcel. Ms. Slagle asked if a buffer is required or proposed between the residences to the rear and Mrs. Carlton stated the parking lot is between the building and the property line.

John Avent made a motion to accept the staff recommendation to approve a special exception to allow a restaurant use at 759 Nichols Avenue. Christina Stankoski 2nd the motion and the motion carried unanimously with the following vote: AYE – Anil Vira, Harry Kohler, Christina Stankoski, John Avent, and Cathy Slagle. NAY – none.

BOA 18.06 Public hearing to consider the request of Michael LeBatard, on behalf of Dana and Edward Hammele, for a variance to the front and side setback requirements for property located at 107 Kiefer Avenue.

Mr. King gave the staff report.

Summary of Request:

The applicant is requesting a building setback line variance to the lot at 107 Kiefer Avenue, located along Kiefer Avenue approximately 200 feet east of the intersection with Bayview Avenue. 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 and 20' street side setbacks. The existing home's living area is approximately 1,325 sf as reported by the Baldwin County Revenue Commission, however the allowable buildable area created by the existing lot's R-2 Zoning District setback lines creates a buildable area of approximately 862sf and as a result the existing home is an existing non-conformity. Though subject property is a seemingly a generally rectangular lot, examination of its features and application of R-2 medium density single family residential setback lines reveals a number of exceptional or extraordinary conditions due to the lot's size and shape. Though the existing home on subject property is oriented toward Kiefer Avenue, the lot frontage is technically oriented toward the alleyway behind (north) of subject property. The north property line is approximately 23' wide, and the south property line is approximately 61' wide. The lot area of subject property is approximately 56% the minimum lot size required by R-2 zoning districts. Application

of R-2 35' front and rear, 10' side, and 20' street side setbacks to subject property results in a buildable area of 862.17sf, considerably smaller than the existing home on the subject property. The west property line of subject property is at an angle that creates a peculiarity unique to subject property by creating a partially-triangular shape to the lot and thus applying partially-triangular setbacks lines to a lot already much smaller than the minimum lot area of a typical R-2 zoning district lot.

Recommendation:

It is staff's position the existing building setbacks of subject property create an unnecessary hardship by applying setbacks to a 5,609sf lot normally applied to a 10,500sf lot. Further, the angled western property line creates a peculiarity unique to subject property that applies triangular setback lines to a rectangular property.

The applicant is advised the subject application did not address the existing accessory structure on the property, and subject application does not consider any work other than maintaining the existing non-conformity of the existing accessory structure. The drawings included as supporting documents depict an apparent accessory dwelling constructed as a second floor to the accessory structure, which is not permissible in R-2 zoning districts. Further, subject application does not contemplate the breezeway shown on the supporting documents, and the applicant is encouraged to consult with the Building Official regarding the breezeway prior to submission of building plans, as the subject application does not request a variance related to lot coverage. In addition, "balconies" referenced in the supporting documents must meet the requirements of Article III, Section C.3. of the zoning ordinance and must not extend more than two feet beyond the yard area requirements.

Staff recommends **APPROVAL** of setback line variances as follows:

1. 24' rear setback in lieu of 35' rear setback (the existing home is oriented to the lot's rear).
2. 6' side street setback in lieu of the 20' side street setback on the west side of subject property.
3. 8' side setback in lieu of the 10' side setback on the east side of subject property.

Mr. Avent asked if the garage is existing and Mr. King responded yes, it is an existing non-conforming structure. Ms. Slagle asked why the house is facing the rear and Mr. King explained the orientation of the house does not matter.

Mr. LeBatard stated the garage is existing, but the owners may add an office above it in the future.

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

Cathy Slagle made a motion to accept the staff recommendation to approve the setback line variances as follows:

1. 24' rear setback in lieu of 35' rear setback (the existing home is oriented to the lot's rear).
 2. 6' side street setback in lieu of the 20' side street setback on the west side of subject property.
 3. 8' side setback in lieu of the 10' side setback on the east side of subject property.
- John Avent 2nd the motion and the motion carried unanimously with the following vote:
AYE – Anil Vira, Harry Kohler, Christina Stankoski, John Avent, and Cathy Slagle.
NAY – none.

BOA 18.07 Public hearing to consider the request of Bent Stewart, on behalf of Julia Merrick, for a variance to the side setback requirements for property located at 13 Via Maria.

Mr. King gave the staff report.

Summary of Request:

The applicant is requesting a building setback line variance to lot 13 of Trentino, a Planned Unit Development (PUD). Lot 13 is located along Via Maria approximately 1,100 feet north of the Trentino entrance along Parker Road. The Trentino PUD requires 15' front setbacks, 20' rear setbacks, 5' side setbacks, and 15' side street setbacks. Maximum lot coverage as a function of the PUD is 65%. The applicant provided a floor plan as a supporting document depicting a proposed 64'-10" wide home to be constructed on lot 13. However, lot 13 includes a 10' landscape easement in addition to the setback lines described above, effectively creating a 15' side setback on an 80' wide lot. The variance application requests the proposed home be constructed upon lot 13 across the 5' east setback line up to the landscape easement, with the landscape easement becoming a de facto 10' side setback for lot 13's east side. The 5' side setback line on the west side of the lot will not be affected by this application, and if approved the effect of the variance will be to set the east side setback line to 0'. The applicant provided a letter from the Trentino Property Owner's Association stating the Trentino Architectural Review Committee concurs with the subject application. Subject property is a rectangular lot and does not appear to contain exceptional or extraordinary conditions due to the lot's size, shape, and topography. Subject property is a component of the Trentino PUD and the landscape easement included on lot 13 is a reflection of the intent of the PUD at its creation circa 2002. The landscape easement on the lot is above and beyond the setbacks already required for the lot and is not necessarily a hardship imposed by the PUD ordinance but rather a feature of the PUD. Subject application appears to reflect the evolution of the desires of the PUD. There are six (6) landscape easements occurring within the Trentino PUD, and therefore the landscape easement on subject property is not peculiar to subject property. Staff believes that a variance allowing the requested 0' east side setback as described in the summary of request is warranted for subject property. No change of use is requested by subject application the approval of the setback variance described herein is not believed to be a detriment to the public good and impair the purpose or intent of the zoning ordinance. Further, the existing 10' landscape easement will serve as a de facto side setback on the same lot so that the proposed home to be constructed will have at least 10' of setback from the adjacent common area 4 while

preserving the access allowed by the easement. All other setback lines shall be maintained as-platted.

Recommendation:

Subject application is a unique situation that is similar to a re-plat of the subdivision and its PUD master plan, but a change in the size and shape of the subject lot is not requested. Staff believes in this situation a variance is warranted in lieu of a re-plat because only one setback line is to be affected by the variance, and a ‘de facto’ setback line twice the width of the PUD’s side setback requirement will still be in place due to the existence of the landscape easement. This application does not change the landscape easement, nor does it change the lot coverage requirements of the subject lot, and those provisions of the PUD ordinance will remain in effect.

As a result, staff recommends **APPROVAL** of the variance converting the 5’ east side setback line to 0’ for the subject property.

Mr. Vira questioned the location of the landscape easement and Mr. King explained there are several similar easements in the subdivision, but he is not sure why this particular one is on a platted lot. Mr. King stated there is a letter of support for the variance from the HOA in the Board’s packet. Ms. Slagle noted no landscaping has been done in the easement to separate the lot from the common area. Mr. Avent stated it is strange to have a setback line off an easement. Ben Stewart, builder, stated the owners are planning to keep the trees for a buffer between the home and common area.

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

Christina Stankoski made a motion to accept the staff recommendation for approval of the variance converting the 5’ east side setback line to 0’ for the subject property. Harry Kohler 2nd the motion and the motion carried unanimously with the following vote: AYE – Anil Vira, Harry Kohler, Christina Stankoski, John Avent, and Cathy Slagle. NAY – none.

Having no further business, Cathy Slagle made a motion to adjourn. John Avent 2nd the motion and the motion carried unanimously. The meeting was adjourned at 5:38 PM.