

**The City of Fairhope Board of Adjustments and Appeals met on Monday, June 18, 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; Dick Schneider; John Avent; Cathy Slagle; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.**

**Absent: Troy Strunk, Vice-Chair**

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

The minutes of the May 21, 2018 meeting were considered. Cathy Slagle moved to accept the minutes as corrected and was 2<sup>nd</sup> by John Avent. Motion carried with an abstention by Dick Schneider.

**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.**

Mr. King gave the staff report.

**Summary of Request:**

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. 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. The subject property is a quadrilateral 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. 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.

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.

**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.

Mr. Vira asked if adjacent property could be purchased and Mr. King said he could not speculate. Ms. Slagle asked if the land adjacent is the access for the property to the east and Mr. King explained it is part of the adjacent property which is a flag lot and is their driveway. Mr. Avent noted the northern setback is shown as 15' on the survey provided by the applicant and only 10' is required. He stated the applicant would have an extra 5' if the survey would have been correct.

Bryan Broderick of Sawgrass Builders, LLC addressed the Board saying the encroachment was not intentional and was found when a foundation survey was completed for the bank. Mr. Broderick asked for leniency and cited a recent case that was very similar to this situation but there is no fire separation issue in this case and no adjacent house. He stated this request will not adversely affect the neighbors.

Brian Dixon, applicant, addressed the Board saying he currently lives in the Fruit and Nut area and this is their second home they have built here. He stated the neighbors support their request.

Mr. Vira opened the public hearing.

Christy Guepet of 317 Equity Street – She asked the Board to approve the Dixon's request. She said the encroachment was a mistake and was not done deliberately.

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

Mrs. Stankoski asked if there is a fire code violation and Mrs. Boyett responded no. Mr. Schneider asked how much of the home is encroaching the setback and Mr. King responded 2'9" and approximately 14 square foot. Mr. Avent stated the previous case was due to survey equipment error and Mrs. Boyett responded there was no proof of equipment malfunction. Mr. Avent asked why the northern setback is shown as 15' not 10' and Mr. Broderick explained the house would have been moved north 5' if they had realized the error on the survey. Mr. Schneider asked what the correction is for this situation and Mr. Broderick stated it would be catastrophic to tear the home down. Mr. Schneider stated it would be reasonable to approve the variance. Ms. Slagle stated this is the third request in 6 months and Mr. Schneider said the Board has approved the others so how can this one be denied. Mr. Broderick noted this request is almost exactly the same as the previous case.

Dick Schneider made a motion to approve the 2'10" side setback variance. John Avent 2<sup>nd</sup> the motion and the motion failed with the following vote: AYE – Christina Stankoski, Dick Schneider, and John Avent. NAY – Anil Vira and Cathy Slagle.

Mr. Broderick asked Ms. Slagle why she voted in favor of the last case but not this one which is a better situation. He asked the Board to reconsider their decision. Mr. Vira said he was not at that meeting and did vote on that case. Ms. Slagle said the Board is having more cases and what stops people from building over the setbacks and then coming before the Board and saying it was an accident. Mr. Dixon explained they wanted the house in the middle of the lot but would have resituated to the north 5' if they knew the error. Mr. Broderick reiterated this case is a better situation than the previous case the Board approved in December.

Dick Schneider made a motion to approve the 2'10" side setback variance to be consistent. John Avent 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 Cathy Slagle.

Having no further business, Dick Schneider made a motion to adjourn. Christina Stankoski 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 6:01 PM.