

The City of Fairhope Board of Adjustments and Appeals met on Monday, November 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; Dick Schneider; Christina Stankoski; Cathy Slagle; Wayne Dyess, Director of Planning; Buford King, Planner; Mike Jeffries, Planning Tech.; and Emily Boyett, Secretary.
Absent: Troy Strunk, Vice-Chair; and John Avent

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

BOA 18.11 Public hearing to consider the request of Magnolia Church, LLC for a Special Exception to allow parking in the front for property located at 301 Magnolia Avenue.

Mr. King gave the staff report.

Summary of Request:

The applicant is requesting a special exception from the parking requirements of City of Fairhope Zoning Ordinance *Article V, Section B.4.d.(2)* to allow “front screened parking on the Church St. frontage only”. The subject property is zoned B-2 General Business District and is located within the Central Business District. A supporting drawing depicting a future development on subject property containing three (3) residential units, two buildings with an unspecified unit count that are likely to be mixed-use commercial/residential, a 20-space onsite parking area, additional on-street parking along North Church Street, and reconfigurations of existing on-street parking along Magnolia Avenue. The residential units along Church Street reflect 20’ front building setbacks as required by Table 3-2, Dimension table, and the mixed-use buildings are shown at the right-of-way line as required by Article V, Section B.4.a. The intent of the development is to create individual lots for each residential unit, likely in a future subdivision application, as well as construct parking and an unknown number of potential mixed-use units likely in a future Multiple Occupancy Project (MOP) application. The applicant states the indicated conditions of the subject property include a “grade differential across the site (that) is approximately 15’. The use of retaining walls and terraced building areas makes it difficult to have vehicle access to the rear of the Church St. frontage lots”. The applicant states the indicated conditions preclude reasonable use of the land because the “rear parking as required for residential use presents an extraordinary use of land for circulation”.

The 20-space off-street parking area located behind (north) of the two proposed commercial units is not required in the CBD as explained in the zoning ordinance and parking for the residential units is required. However, Article IV, Section E.2. states “businesses in the CBD Overlay are encouraged to provide off-street parking facilities” for commercial uses. It appears the rear (north) parking area satisfies the parking loading of the two proposed mixed-use units based upon the square footage of the commercial units, as if onsite parking was required for those commercial units, and that parking is located behind the mixed-use buildings as required by *Article V, Section B.4.d.(1)*. However, the exact use of the two proposed commercial buildings is not known and

therefore the exact parking requirements for this area is not known and pending the necessary development applications needed for the site. The subject application is related to the parking requirements of the Church Street residential units, however the potential hardship related to furnishing the required parking affects the grading of the site.

The subject property is rectangular in shape and approximately 22,400 sf, or slightly more than ½ acre in size. The shape of the lot is not uncommon, and no minimum lot size is required for B-2 zoning. The extraordinary or exceptional topographical conditions are not immediately noticeable visually, however the applicant illuminates the grade differential on the lot is 15' and the effect of the grade differential.

The applicant states the hardship created by the topography of the subject property affects the grading necessary to develop the site. Specifically, the applicant asserts the proposed 20-space parking area will have a finished elevation of approximately 10' higher than the finished floor elevation of the residential units fronting Church Street, complicating the drainage design of both areas. Staff understands the conceptual need to allow front, screened parking for the residential units along Church Street and does not necessarily object to the screened parking. Staff believes the applicant has a reasonable request for a relief from the zoning ordinance due to extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, and more specifically its topography. The applicant requested a variance in their application, but the type of relief requested is actually a request for special exception. This review will consider the applicant's request for a variance and review the criteria for a variance as a means of evaluating the application, but the staff recommendation will be in terms of a *special exception*.

The requested special exception is in relation to the residential uses to be constructed on subject property, with each unit likely located on its own lot to be created by a future subdivision request. The dimensions of the property do not appear to prevent the reasonable use of the property for residential purposes. The applicant's proposed method of developing the subject property involves cutting and filling of the site.

The applicant wishes to construct the residential units at the lower elevation along Church Street, with street access from Church Street rather than the CBD requirement for rear loading. The applicant further states the intended development desires to use the cut material from the site to fill and "build up" the proposed parking area so that the parking area will have the required elevation to drain from the parking area and connect to an existing drain inlet at the intersection of Magnolia Ave and N. Church Street. Staff requested the applicant clarify the various alternatives that would not require approval of a variance from the parking requirements within the CBD and construct the proposed development with the required rear parking. The applicant indicated reducing the elevation of the proposed parking area and raising the finished floor elevation (FFE) of the proposed residential units is possible and would allow rear access to the residential units by traversing the parking area and reducing the number of parking spots in the parking area. However, reducing the elevation of the parking area would reduce the elevation of the drain inlet to the parking area to an elevation where gravity flow drainage from the parking area's drain inlet to the existing conveyance system would not be possible. Further, deep (4' approximately) excavation would occur immediately adjacent to the existing residential property north of subject property, with possible undercutting and stabilization of the adjacent property occurring as a result.

Staff understands the conceptual need for and does not necessarily object to the requested screened front parking. The application provided additional clarification indicating the drain inlet for the parking area with an elevation of 105'. If the parking area is constructed with this drain inlet at 105', the parking lot will adequately drain to the existing drain inlet at an elevation of 102'.

Staff met with the applicant multiple times to gain a better understanding of the request and the conditions of the existing site. Though it is possible the northernmost residential unit could be moved southward to allow a drainage easement for connection of the parking area's drainage to N. Church Street, the deep excavation needed to allow rear parking to the residential units would still be required,

Many of the existing residences on the west side of N. Church Street, which are outside of the CBD, contain front loaded parking with driveways not unlike those requested by this request for variance (special exception), and as a result staff understands the potential compatibility the proposed front loaded parking of the proposed residences provides if they were not located within the CBD. The proposed development depicted in this case requires substantial cutting and filling of soil and construction of retaining wall systems regardless of the type of construction system utilized, and therefore believes the applicant has not necessarily submitted subject application to avoid financial hardship. Staff believes the hardship caused by the site's topography is the ability to construct an adequate drainage system while also avoiding deep excavation immediately adjacent to existing residences, which is a possible detriment to the public good. As a result, the staff recommendation for subject application will be for approval, and staff believes no relief is recommended to be granted that would cause substantial detriment to the public good and impair the purpose and intent of the zoning ordinance.

Staff Recommendation:

Staff recommends this request for special exception be **APPROVED**.

Mr. Vira asked if the timeframe for the approval can be limited and Mr. Dyess stated the Board can make it a condition of approval. Mr. King added the Notice of Action Taken will be recorded and any conditions are included.

Mr. McCown addressed the Board saying the request is to allow the proposed townhomes to have parking at grade and to match the existing homes on the opposite side of the street. He noted on-street parking would only accommodate 5 spaces but the proposed parking lot will net 44 spaces.

Mr. Vira opened the public hearing.

Ronny Holifield of 55 N. Church Street – He spoke in favor of the proposal and said the townhomes will fit with the rest of the residential use on the street.

Mrs. Boyett stated she received two calls from surrounding property owners in favor of the request.

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

Cathy Slagle made a motion to accept the staff recommendation to **APPROVE** the special exception to allow front parking along N. Church Street for PPIN 15164 with the following conditions:

1. The Notice of Action Taken shall be recorded.
2. The Special Exception shall be acted upon within 365 days.

Mr. McCown stated he did not know if the project can be done within a year. He asked if the approval can be tied to the applicant and this proposal. Mr. King explained the submittal of a development application, such as a subdivision request or site plan application, would constitute the approval being acted upon.

Harry Kohler 2nd the motion and the motion carried unanimously with the following vote: AYE – Harry Kohler, Christina Stankoski, Dick Schneider, Anil Vira, and Cathy Slagle. NAY- none.

Having no further business, Harry Kohler made a motion to adjourn. Christina Stankoski 2nd the motion and the motion carried unanimously. The meeting was adjourned at 5:19 PM.