

The City of Fairhope Board of Adjustments and Appeals met on Monday, July 21, 2008 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Chairman Bob Mannich; Stan Grubin; Suzanne Winston; Anil Vira; Louis Agee; Barry Fulford, Building Official; Jonathan Smith, Planner; and Emily Irby, Secretary. Absent: Vice Chairman Teddy Joe Faust; Cathy Slagle;

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

Members were asked to review the June 16, 2008 minutes for consideration and make a motion to approve. Stan Grubin made a motion to approve the minutes as written. Louis Agee seconded the motion. Motion carried unanimously.

ZBA 08.04 Request of Ack Moore of Moore Engineering and Surveying for a ten foot (10') front setback variance for property located on the west side of Fairwood Boulevard just west of where Park Drive meets Fairwood Boulevard. (254-A, Fairwood Subdivision No. 7).

Jonathan Smith, Planner, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned R-2 (Medium Density Single Family Residential District). Ack Moore is seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structure in the Fairhope Zoning Ordinance.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum front-yard setback of thirty-five (35'). The applicant would like to reduce the front yard setback to twenty-five (25') in order to “build as far away from Big Mouth Gully as possible to limit foundation instability”.

The “Site Plan Existing Conditions” provided by the applicant show the lot dimensions, setback lines, allowable building footprint and the top of bluff line for Big Mouth Gully. The gully appears to be very close to, and in a couple of places overlaps, the rear building setback line.

A Drainage Easement is located on the south side of the parcel, which further prohibits construction on this south corner of the subject property.

The applicant included a “Site Plan Proposed Conditions”, which show a “proposed residence” on the property built with a twenty-five (25') front setback. The rear building line of the proposed residence is shown to be approximately fourteen feet (14') off of the Top of Bluff line for Big Mouth Gully.

The property is bordered on all sides by City of Fairhope R-2 zoned properties.

Facts to be considered in this case:

1. A portion of Big Mouth Gully is located on the property and presents topographic challenges for building on the subject property (hardship).
2. A Drainage Easement is located on the south side of the property, which prevents the applicant from building on this portion of the subject property (hardship).
3. This variance application meets all of the established Zoning Ordinance criteria for the issuance of a variance.
4. The applicant is requesting a 10' front setback variance.
5. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

STAFF RECOMMENDATION: The application meets the mandatory criteria established in the Zoning Ordinance for the issuance of a variance. Due to the property dimensions and site specific and topographic conditions, staff recommends the Board of Adjustment approve the ten foot (10') variance request contingent upon the following condition:

1. The rear building line for the principle structure, and/or any accessory structure to be constructed on the subject property, shall be at least fourteen feet (14') from the Top of Bluff line of Big Mouth Gully.

Chairman Mannich opened the meeting as a public hearing.

Ack Moore was present for the applicant. He stated that this is the last house on the street and that it will not protrude or block any line of sight.

Having no other comments Chairman Mannich closed the public hearing.

Chairman Mannich commented that on the drawings that were provided it looks that the proposed building will encroach on an existing driveway to the west. Ack Moore responded that the driveway will be removed.

Mr. Mannich asked if any work would be done to the gully. Mr. Moore said he advised the applicants that a berm would be needed.

Anil Vira asked if this would be new construction. Mr. Moore responded yes.

Mr. Mannich questioned if the City could be held liable for anything if the gully erodes. Jonathan Smith explained that granting this variance would help protect the City and the applicant.

Louis Agee moved to accept the Staff Recommendation to approve the ten foot (10') variance contingent upon the rear building line for the principle structure, and/or any accessory structure to be constructed on the subject property, shall be at least fourteen feet (14') from the Top of Bluff line of Big Mouth Gully. Stan Grubin seconded the motion. The motion carried unanimously.

ZBA 08.05 Request of Mr. Darrel J. Williams for a thirty foot (30') rear setback variance for property located at 301 Gaston Avenue.

Jonathan Smith, Planner, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned R-2 (Medium Density Single Family Residential District). Darrel Williams is seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structure in the Fairhope Zoning Ordinance.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum rear-yard setback of thirty-five feet (35'). The applicant has built a conforming accessory structure five feet (5') off the rear property line in the rear yard of the subject property. The accessory structure is connected by a covered "open-air" breezeway. The applicant would like to enclose a second level on the open-air breezeway, which will lead to the upper story of the home providing a heated and cooled connection between the two structures. This type breezeway enclosure would make the breezeway and the accessory structure part of the primary structure. Therefore, the applicant would need a thirty-foot (30') variance from the required thirty-five foot (35') setback.

Essentially, this variance request is to allow construction of a heated and cooled breezeway connecting a primary structure and accessory structure. The applicant is allowed to connect the two structures with an open-air breezeway, as currently built. But if the applicant is allowed to build an enclosed heated and cooled breezeway, the accessory structure will become part of the primary dwelling unit (the house), which is built five feet (5') off of the rear property line.

The property is bordered on all sides by R-2 zoned properties.

Facts to be considered in this case:

1. The structures appear to be in compliance with the Fairhope Zoning Ordinance as they are currently built.
2. The applicant is requesting a thirty-foot (30') rear setback variance.
3. The applicant is requesting a variance from Ordinance provisions to construct a heated and cooled, enclosed breezeway from the second story of the primary dwelling unity to the "storage area" above the detached garage.
4. There are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.
5. The granting of the variance will confer on the applicant special privileges that are denied by this Ordinance to other lands, buildings, or structures in the same zoning district.

STAFF RECOMMENDATION: Staff recommends the Board of Adjustment deny the variance request due to the application not meeting the mandatory criteria established in the Zoning Ordinance for the issuance of a Variance.

Chairman Mannich opened the public hearing.

Darrel Williams came forward to represent the applicant. He explained that the applicant wanted to enclose a hallway from the residence to the garage.

Having no other comments Chairman Mannich closed the public hearing.

Mr. Mannich stated the applicants were taking a conforming house and adding a non-conforming new structure. He asked if the applicants had considered using shutters or adding rails and just have a walkway. The homeowners responded that they were concerned of their children's safety. They also would like to have the connection serve as office space.

Mr. Williams stated if the concern was with the area being heated and cooled then that could be changed. Further discussion led to a motion to table by Louis Agee. Anil Vira seconded the motion. Motion carried unanimously.

A motion to adjourn was made by Louis Agee. Motion seconded by Stan Grubin. Motion carried unanimously. The meeting was adjourned at 5:25 PM.

Minutes were reviewed and approved by the Board of Adjustments on Monday, September 15, 2008.