

**The City of Fairhope Board of Adjustments and Appeals met on Monday, September 15, 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; Cathy Slagle; Stan Grubin; Suzanne Winston; Louis Agee; Barry Fulford, Building Official; Jonathan Smith, Planner; and Emily Irby, Secretary.**

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

Members were asked to review the July 21, 2008 minutes for consideration and make a motion to approve. Louis Agee made a motion to approve the minutes as written. Stan Grubin seconded the motion. Motion carried, with one abstention by Cathy Slagle.

**ZBA 08.06 Request of James P. Murphy for a two-foot (2') side-yard setback variance for property located at 206 North Circle in Rock Creek.**

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

STAFF INTERPRETATION: The subject property is zoned PUD (Planned Unit Development) and is located in Phase IV of the Rock Creek Subdivision. James P. Murphy is seeking a variance to the provisions of the Rock Creek PUD Ordinance and Plat.

The PUD Ordinance requires seven foot, six inch (7'-6") side-yard setbacks for the subject property. The applicant would like to reduce the side-yard setback for the northeast side of the property by two feet (2'). This reduction will result in an approximated five foot, six inch (5'-6") setback from the northeast property line of the subject site.

The property is bordered on all sides by Rock Creek PUD zoning.

In this request, a variance is a deviation from the literal provisions of the Rock Creek PUD Ordinance, which is granted by the Board of Zoning Adjustment when strict conformity to the Ordinance would cause an unnecessary hardship owing to circumstances unique to the property on which the variance is granted. In order to authorize any variance from the terms of this Ordinance, the Board of Zoning Adjustment must and 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 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.

It is incumbent upon the applicant to demonstrate that a combination of the zoning regulations and uncommon physical condition inherent in the property prevent making reasonable use of the land as permitted by the zoning regulations.

Facts to be considered in this case:

1. The applicant is requesting a two-foot (2') side-yard setback variance. The required side-yard setback is seven foot, six inches (7'-6"), if a variance is granted, the side-yard setback will decrease to five feet, six inches (5'-6").
2. There are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.
3. The application of the Rock Creek PUD Ordinance to this particular piece of property does not create an unnecessary hardship.

STAFF RECOMMENDATION: Due to the subject property not meeting the minimum criteria established for the issuance of a variance, staff recommends the Board of Adjustment deny the variance request.

Chairman Mannich opened the meeting as a public hearing.

The applicant, James Patrick Murphy was present and spoke on his own behalf. He explained that he and his wife are expecting their fifth child and need to expand. He said that they looked at all of the possible scenarios and the one that is proposed was the least intrusive and nonconforming. Mr. Murphy stated that he had spoken with the neighbors and the Rock Creek Property Owners Association for approval.

Having no other comments Chairman Mannich closed the public hearing.

Chairman Mannich asked what the variance was for. Mr. Murphy explained that his lot is pie shaped and that every option for expansion would be encroaching a setback. Mr. Murphy said that his neighbor to the north came over and looked at the proposed addition and didn't have any concerns.

Cathy Slagle asked about the neighbor to the back. Mr. Murphy responded that they did not have any problems. Mrs. Slagle questioned the interference of the tree in the backyard. Mr. Murphy said that the tree was not a problem since it had fallen during Katrina.

Chairman Mannich asked if the Rock Creek Architectural Review Committee had any concerns. Mr. Murphy stated that he provided an e-mail from them with their approval of his addition.

Mrs. Slagle asked if the addition would be bedrooms. Mr. Murphy responded that it would be a double garage and a game room. He explained that Rock Creek requires all homes to have a two-car garage.

Further discussion of the Rock Creek approval and the pie shape of the lot lead to a motion to approve from Cathy Slagle. Suzanne Winston seconded the motion. Motion carries unanimously.

**ZBA 08.07 Request of Melvin Turner for Administrative Appeal to allow for “Outdoor Sales Lot” use in the B-2 General Business District for property located on the west side of Highway 181, just south of where Fairhope Avenue and Highway 181 intersect (20489 Highway 181).**

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

STAFF INTERPRETATION: The subject property is zoned B-2 (General Business) and is located at 20489 Highway 181. Melvin Turner is seeking administrative appeal to allow an Outdoor Sales Lot on the subject property for a wholesale, used automobile car lot.

The Zoning Ordinance lists “Outdoor Sales Lot” in Table 3-1: Use Table as a use only allowed in the B-2, M-1 (Light Industrial) and M-2 (General Industrial) districts, “permitted only on appeal and subject to special conditions”.

Two commercial buildings/spaces connected by a breezeway and a small parking lot currently occupy the lot. The lot has a small amount of parking behind the building.

The property is bordered to the north, west and south by B-2 zoned property, and to the east by Hwy. 181 and the Wal-mart property, which is un-zoned. Two parcels west is the Idlewild Residential Subdivision.

Facts to be considered in this case:

1. The applicant is requesting to use B-2 property located at 20489 Hwy. 181 as an Outdoor Sales Lot.
2. The property is close to a residential subdivision (Idlewild).
3. The parking lot in the front of the building is small and limited.
4. Another business space of equal size is located on the subject property. This space is required parking.
5. The applicant has assured staff that very few cars will be available for sale on the lot at any one time.

STAFF RECOMMENDATION: Staff recommends the Board of Adjustment approve the request contingent upon the following conditions:

1. No more than three (3) cars may be for sale on the property at any time.
2. All cars for sale on the property shall be stored in the rear parking area of the building (the gravel paring area west of the building).
3. The business operations on the property shall be limited to automotive wholesale.
4. No freestanding signs shall be allowed.
5. No retail sales shall be allowed.

Chairman Mannich opened the public hearing.

The applicant, Melvin Turner was present and came forward to speak on his own behalf. He explained that in order to be eligible for a state license he must be able to have retail sales on the premises. He stated that two (2) cars must be in front of the building and he would like to have about eight (8) total.

The property owner, Gene Tillman, came forward to speak. He told the Board that he would not allow the site to be overcrowded with cars or for it to be an eyesore. Mr. Tillman explained that he and Mr. Turner have discussed the situation thoroughly and are in agreement on how the requirements need to be met. Mr. Tillman will allow the required two (2) cars out front and the rest will be located on the side of the building and in the rear gravel parking area.

Having no other comments Chairman Mannich closed the public hearing.

Mrs. Slagle questioned the accessibility to the back of site and adjacent properties if cars are parked along the side of the building. Mr. Tillman responded that there is a gravel road on an access easement that is used and it will not be blocked.

Chairman Mannich asked staff how much parking is required for the site. Jonathan Smith responded that five (5) parking spaces are required and may not be used for the cars being sold. Mr. Tillman said there is plenty of parking available in the rear.

Mrs. Slagle asked where the used cars would be repaired. Mr. Turner answered no repair work will be on-site. He stated that he does not buy dilapidated cars, but if any cars should need minor work, the work would be done off-site at the repair shop that he uses. However, he may wash the cars periodically, if needed.

Louis Agee asked how many cars would be for sale at one time. Mr. Turner said that two (2) are required to keep his state license, but he only wants eight or ten at a time.

Louis Agee made a motion to approve the use, with the following conditions:

1. An eight-foot (8') privacy fence shall be constructed along the southern property line at the time of residential development of the adjacent property to the south.
2. Business operations shall be limited to retail and wholesale of automobiles.
3. The site shall be limited to a maximum of ten (10) cars at one time for retail and wholesale with a maximum of two (2) cars to be located in front of the building.
4. All signage shall meet the City's current zoning requirements.
5. The administrative appeal use and all conditions shall expire with the termination of use by Mr. Turner and his business.

Suzanne Winston seconded the motion. Motion carried unanimously.

The meeting was adjourned at 6:05 PM.

**Minutes were reviewed and approved by the Board of Adjustments on Monday, October 20, 2008.**