

The City of Fairhope Board of Adjustments and Appeals met on Monday, October 18, 2010 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Chairperson Cathy Slagle; Troy Strunk; Sam Andrews; Debra Green; Anil Vira; Clyde Panneton; Jonathan Smith, Director of Planning & Building; and Emily Boyett, Secretary.

The meeting was called to order at 5:00 PM by Chairperson Slagle.

The minutes of the August 16, 2010 meeting were considered and Debra Green had several minor changes and Sam Andrews had an insertion. Sam Andrews moved to accept the minutes with the changes and was 2nd by Anil Vira. Motion carried unanimously.

ZBA 10.07 Amendment to the Board of Adjustments Bylaws – Article III, Section 1, Membership.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Recommendation. He said this request is more of a clean-up of the Bylaws to encourage the City Council to accept applications of the Board's supernumerary members, before those who are not on the Board, due to the experience an alternate receives while working with the Board. Staff recommendation is to approve the proposed amendment to insert the following: "Supernumerary Board members shall be considered for full time membership, prior to individuals who have not served on the board." Debra Green moved to accept the Staff Recommendation to approve the proposed amendment to Article III, Section 1, Membership of the Board of Adjustments Bylaws to insert the following: "Supernumerary Board members shall be considered for full time membership, prior to individuals who have not served on the board." Sam Andrews 2nd the motion and the motion carried unanimously.

ZBA 10.08 Request of Mitch Briggs of Briggs Builders, LLC for an approximate two foot six inch (2'6") rear setback variance for property located at 802 Tealeaf Willow Lane.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned R-1 Low Density Single Family Residential District. The applicant is seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structures in the Fairhope Zoning Ordinance. The required rear setback for the subject property is 35 feet.

Table 3-2 requires that all principle structures in the R-1 zoning district adhere to a minimum rear-yard setback of thirty-five feet (35'). The applicant is proposing a 32'-6" rear setback for a screened porch attached to the principle structure.

The minimum area and dimensional standards for an R-1 lot include a minimum lot area of 15,000 square feet and a minimum lot width (at front setback) of 100'. The subject property is approximately 16,578 square feet and has a lot width at the front setback of approximately 90 feet. The house is approximately 2091± square feet. The proposed screened porch is approximately 288 square feet.

The property is bordered to the north, south and west by R-1 zoned property.

Facts to be considered in this case:

1. The subject property meets the R-1 minimum lot area of 15,000 sf.
2. The applicant is requesting a 2'-6" rear setback variance (a setback of 32'-6").
3. The applicant is requesting a variance from Zoning Ordinance provisions to construct a principle structure over the required minimum rear setback established for R-1 lots.
4. There are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography. A valid hardship does not exist.
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.

Mitch Briggs came forward and addressed the Board saying the owners of the property are his mother and father-in-law. He stated the request is only for one corner of the porch and it is because of the strange shape and size of the lot and because of the woodlands surrounding the lot. He said there are issues with snakes and mosquitoes. Mrs. Slagle opened the public hearing, having no one present to speak the public hearing was closed. Mr. Andrews asked why the applicant does not move the patio over to bring it out of the setback. Mr. Briggs responded it is possible to move the wall in, but there is a window and a door in the way and it would require the wall to be moved about six feet which would leave about six feet of open patio which would not be aesthetically pleasing. Mr. Strunk said approximately two months ago the Board heard a very similar case where a lot in a subdivision backed up to an open space and unzoned land and the applicant was asking for five feet. He stated that as a resident he understands the request and would have no problem with it; however, the Board has to abide by a strict letter of the law and if the Board was to grant this request then the applicants from two months ago could come back and take the City to court. He stated he can not vote to approve this request

based on the rules of the Zoning Ordinance. Mrs. Green said that she agrees with Mr. Strunk and even though she would like to accommodate every applicant, there are strict rules, ordinances and guidelines that the Board must adhere to. Troy Strunk moved to accept the staff recommendation to deny the request due to the application not meeting the mandatory criteria established in the Zoning Ordinance for the issuance of a variance. Debra Green 2nd the motion and the motion carried unanimously.

ZBA 10.09 Request of Sister Julie Guillot of Eastern Shore Affordable Houses for a 10' rear setback variance for property located at 7384 New Era Road.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned R-3 High Density Single Family Residential District. Sister Julie 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-3 zoning district adhere to a minimum rear yard setback of 35'. The subject property is part of a subdivision that was approved in 2007.

The Zoning Ordinance has a provision that allows a building permit applicant to align a proposed structure with the average front setback of principle structures on adjacent lots to the side. As the recorded plat shows, the structure on the lot adjacent to the north was existing with an approximate 25' front setback. The applicant is proposing a 15' rear setback for the principle structure due to unsafe conditions present on the subject property. According to the attached survey, the County road (New Era Lane) serving as access for the property, encroaches approximately 20' on the subject lot. If the structure is placed within the allowable footprint, there will only be approximately 5' separating the home from the street.

Currently a home is existing on the subject property meeting the setbacks on the recorded plat. The existing structure was moved onto the lot in September of 2010 and is on blocks, waiting on the permanent foundation to be installed.

The property is bordered to the north by City of Fairhope R-3 property; to the south, east and west lies un-zoned property in Baldwin County.

Facts to be considered in this case:

1. The home on the lot was recently moved onto the lot in an effort to provide affordable housing.
2. The existing home may stay as it is placed on the property, but it is staff's opinion that potential dangers are present with the way the home is currently configured.

3. The applicant is requesting a 10' rear setback variance from the 25' rear setback established on the plat (rear setback of 15').
4. If granted, the variance will bring the subject property into compliance with the standard R-3 front setback of 30'.
5. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography, due to the existing County right-of-way encroachment on the subject property.
6. The granting of the variance will not confer on the applicant special privileges that are denied by this Ordinance to other lands, buildings, or structures in the same zoning district.
7. The structure existing on the lot directly to the north of the subject property appears to have an approximate 10' rear yard setback.

STAFF RECOMMENDATION: Staff recommends the Board of Adjustment approve the variance request due to the presence of a hardship associated with the physical characteristics of the property.

The applicant, Sister Julie Guillot came forward and addressed the Board saying this is a long, narrow piece of property and is the last lot in the subdivision that was approved in 2007. She stated the house can not be moved any further and she is asking to have only a 15' rear setback. She said the road has been there and the County will not move it, so this is the only other option. Mrs. Slagle opened the public hearing. Evelyn Stanton of 7365 New Era Road came forward in opposition. She said the applicant should not be allowed to do this if everyone else is not allowed to. She said the residents in the subdivision have caused problems in the neighborhood which has children and disabled and elderly adults. She said they drive crazy and fast and play loud music. She added that she feels there are enough houses in there already and asked the Board to deny the request. Having no one else to speak, Mrs. Slagle closed the public hearing. Mrs. Green asked if the subject property is located in City limits or in the Planning Jurisdiction and Mr. Smith stated it is inside City limits and any case that comes before the Board will be in the City limits. Mr. Andrews asked where the county property was if there was a county road and Mr. Smith responded New Era Lane is a county maintained road and there is unzoned county land adjacent to the subject property. Mr. Smith stated there is no issue whether a house can be placed on the lot; the issue is where the house is going to be located on the lot due to the right-of-way encroaching the lot and the safety issue it poses. Mrs. Green asked if the residents of the surrounding area could petition the City or County to do something about the traffic issues and Mr. Smith recommended the community as a whole write their County Commissioners regarding the traffic issues. Mr. Andrews asked if the noise issues would be a City concern and Mr. Smith stated that noise issues are relevant to this request, but a noise complaint would be directed to the City of Fairhope Police Department and Mr. Smith said he would pass this along to the

Police Chief. Mrs. Green asked Mr. Smith where the house would be located if this request is approved and Mr. Smith stated, if approved, the house will sit where it is now and if denied the house will have to be moved up closer to the road. Mr. Andrews said the decision is not if the house can be there, but the placement of the house on the lot. Mr. Strunk stated the house fits on the lot as configured and he asked if the County continues the road will it cause a problem. Mr. Smith responded the house will sit where it is and if the County moves the road into the designated right-of-way, then that would help the situation because the house would be further away from the street. Anil Vira moved to accept the staff recommendation to approve the request due to the presence of a hardship associated with the physical characteristics of the property. Sam Andrews 2nd the motion and the motion carried unanimously.

New/Old Business – Election of Vice Chair – Mr. Andrews asked the status of Mrs. Winston on the Board and Mr. Smith stated she has resigned because she moved outside of City limits. Debra Green nominated Anil Vira as Vice-Chair and was 2nd by Troy Strunk. Motion carried unanimously.

Election of Officers – Debra Green moved to reappoint Cathy Slagle as Chair, Anil as Vice-Chair and Emily Boyett as Secretary. Troy Strunk 2nd the motion and the motion carried unanimously.

Mr. Andrews asked for an update on the pending lawsuit regarding the case on Pier Street. Mr. Smith said the attorneys for both sides are looking into the issue and he does not have any concrete details, but he will update the Board once he has more information. Mr. Smith stated if the case goes to trial the Board members may be called as witnesses, but he said he has never had a member go to court with him.

Mrs. Slagle asked if the Board is covered by any insurance and Mr. Smith responded the Board is covered by the City's liability insurance.

Mrs. Green asked about the newest members being able to take some training classes. Mr. Smith stated he included some training for the new Board members in the budget and hopes to be able to provide at least one class for them. Mrs. Boyett stated the classes are offered throughout the state at different times during the year and the closest locations are typically Gulf Shores and Mobile; however, classes in those locations were offered last month. She said she would compile the information and provide it to the members that are interested in taking the classes.

Mrs. Green asked if there is anything that could be done to help the concerned parties of cases that come before the Board. Mr. Andrews asked if a flyer could be done that explains the rules and guidelines the Board uses to make their decisions. Mr. Smith stated staff can make copies of the section of the Zoning Ordinance that outlines the powers and duties of the Board of Adjustment and the criteria for issuing a variance.

Having no further business, Troy Strunk made a motion to adjourn. Sam Andrews 2nd the motion and the motion carried unanimously. The meeting was adjourned at 5:49 pm.