

**The City of Fairhope Board of Adjustments and Appeals met on Monday, December 20, 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; Anil Vira, Vice-Chair; Troy Strunk; Sam Andrews; Debra Green; Clyde Panneton; Nancy Milford, Planner; and Emily Boyett, Secretary.**

**Absent: Jonathan Smith, Director of Planning and Building**

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

The minutes of the October 18, 2010 meeting were considered and Cathy Slagle had a minor change. Debra Green moved to accept the minutes with the change and was 2<sup>nd</sup> by Anil Vira. Motion carried unanimously.

**ZBA 10.10 Request of Curtis Harris for an approximate twelve foot (12') rear setback variance for property located at 139 North Drive.**

Nancy Milford, 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. The applicant is seeking a variance to the provisions of the Rock Creek PUD Ordinance and recorded plat. The required rear setback for the subject property is 35 feet. The applicant is proposing to reduce the rear yard setback (the westernmost property line) by approximately 12 feet. If approved, this will result in an approximate 23' rear setback.

A single-family residence currently occupies the property and the applicant is requesting the 12' variance in order to construct a roof and screened-in area where an open air porch currently exists on the southwest corner of the home.

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

Facts to be considered in this case:

1. The applicant is requesting a 12' rear yard setback variance. The required rear yard setback is 35', if a variance is granted by the Board, the rear yard setback will decrease to approximately 23'.
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.

4. There is an existing home on the lot and there are other areas inside the allowable footprint to construct a covered porch.
5. Unfortunately, a physical disability is not considered a “hardship” when reviewing a variance request. In reviewing a hardship, the applicant must be able to demonstrate that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question.

**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.

Mr. Harris, the applicant, addressed the Board saying he applied for the variance because he thought it would be approved due to his physical hardship. He stated he provided documents from his orthopedic doctors regarding his knee disabilities. He explained the deck is ground level and does not have any stairs, which allows him to easily access the house and it is his primary entrance and exit for the house. He said the Rock Creek POA has approved his request to cover the deck. Mr. Harris said he can not benefit from his deck because it is not covered and in inclement weather he can't even use it. Mrs. Harris stated the reason they bought this particular house was because of the deck and her husband would not have to go up stairs to enter the house. She added this is the perfect place for a covered area and any other location on their property would block the sunlight from entering the family room. Mr. Andrews asked how the applicant's knee problem causes a need for a variance. Mr. Harris responded he will use the area to get sun and be able to enter the house with out having to climb any stairs even in bad weather. Mr. Andrews asked what the topography of the lot is and if there is an elevation change on the lot. Mr. Harris said there is an incline in the front but the rear is flat, which makes it easy for him to enter the house from the deck. Mr. Andrews asked if the side of the property could be used and Mr. Harris stated there is not an access point on that side of the house. Mrs. Slagle opened the public hearing, having no one present to speak she closed the public hearing. Mrs. Green said the medical documents that were provided state Mr. Harris has problems with both knees and the documents indicate Mr. Harris will be having both knees replaced in the future. Mr. Harris responded yes, his doctor is recommending that both knees be replaced. Mrs. Green said she contacted the Americans with Disabilities and was told that as long as he was able to enter and exit his home and an access is available then the City is not in any violation of the Americans with Disabilities Act (ADA) and the City is not required to grant this request. Mrs. Green asked if staff had contacted the ADA and Ms. Milford responded she did not see any documentation in the file that they had. Mrs. Green reiterated that a physical disability is not grounds for a variance unless there is no other way to access the residence. Mr. Andrews asked how staff determined the front and rear of the lot which require the 35' setback. Mrs. Slagle explained it is based on the relation to the street and Mrs. Boyett stated they are also set forth on the recorded plat for this phase of Rock Creek. Mr. Vira asked if the applicant has considered a retractable awning and Mr. Harris stated he has not at this time but it may be what he has to do. Mr. Strunk questioned if the deck is attached to the house then would this not be an existing non-conformance. Mrs. Slagle

stated the deck is in conformance with the Zoning Ordinance since it is not covered. Anil Vira moved to accept the staff recommendation to deny the variance request due to the application not meeting the mandatory criteria established in the Zoning Ordinance for the issuance of a variance. Debra Green 2<sup>nd</sup> the motion and the motion carried unanimously.

Having no further business, Debra Green made a motion to adjourn. Sam Andrews 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 5:25 pm.