

**The City of Fairhope Board of Adjustments and Appeals met on Monday, August 16, 2010 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

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

**Absent: Suzanne Winston and Clyde Panneton**

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

The minutes of the July 19, 2010 meeting were considered and Debra Green moved to accept the minutes as written and was 2<sup>nd</sup> by Sam Andrews. Motion carried with one abstention by Anil Vira.

**ZBA 10.05 Request of Elishia Kaley for a Special Use Permit for a Day Care for property located just south of the intersection of Oakwood Avenue and Sagebrush Loop, at 214 Sagebrush Loop.**

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

**STAFF INTERPRETATION:** The subject property is zoned R-2 Medium Density Single Family Residential District. Article III, Section B Table 3-1: Use Table states that in the R-2 district a Daycare is permitted only on appeal and subject to special conditions. The proposed daycare will operate Monday through Friday between the hours of 7:00 AM to 4:00 PM and a maximum of seven children will be present. No signage is proposed.

The property is surrounded and bordered on all sides by R-2 zoned property. The neighborhood consists of single family residences.

Facts to be considered in this case:

1. The neighborhood in which the daycare is proposed is zoned R-2 and is built out with single family residential homes.
2. Staff believes that a daycare is not a suitable home occupation for the subject property due to the noise and traffic associated with the described use.

**STAFF RECOMMENDATION:** Staff recommends the Board deny the request of Elishia Kaley for a Special Use Permit to operate a daycare out of her home in City of Fairhope R-2 Medium Density Single Family Residential zoned property. The use is not consistent with the single family residential character of surrounding and adjacent properties.

Mr. Andrews asked what the special use permit is for and if the use would apply only to subject property and the current owner. Mr. Smith answered the Zoning Ordinance requires the Board's approval of the use of a daycare in the R-2 zoning district and the Board may put any conditions on the approval. Elishia Kaley, the applicant, addressed the Board saying she is only going to watch teacher's children and it will only be for 38 weeks a year. She stated the children will be dropped off before the regular school traffic and picked up after and there will not be any signage. Mrs. Slagle opened the public hearing and stated the Board has received several letters from surrounding neighbors in opposition of the request. Mrs. Green thanked Mrs. Kaley for petitioning the Board and asking permission to operate her daycare. She stated there are several daycares within the City operating without proper approval. Mrs. Green said the Board received a letter from the property owner next door stating an elderly couple is living beside the Kaleys. Mrs. Kaley said those people have moved out and now a family with kids have moved in. Mrs. Green asked if Mrs. Kaley ever planned to upgrade from a home daycare to a full daycare center and Mrs. Kaley responded no, this is all she wants to do. Mrs. Green said she spent some time in the neighborhood and it seemed very nice and kid friendly but there is a lot of traffic. Mrs. Kaley stated she has a fenced yard and the children would never play in the front yard. Mr. Vira asked the applicant how the number of children was determined and what the ages would be. Mrs. Kaley answered the Department of Human Resources (DHR) would only approve her for seven children based on the size of her house and the children's ages would range from infant to approximately five years old or school age. Mr. Andrews stated there are several rental properties in the neighborhood and Mrs. Kaley agreed and said someone else already had a daycare in their neighborhood. Natasha Milam of 135 Oakwood Avenue addressed the Board on behalf of the Property Owners Association saying an e-mail was sent with several questions regarding this request and stating their opposition of this request. Mr. Andrews said the questions in the e-mail have been answered in the earlier discussion and he asked Mrs. Milam if she is aware of any restrictions in the subdivision's covenants to prohibit Mrs. Kaley from operating a daycare in her home. Mrs. Milam responded she has not been able to find any. Mrs. Kaley stated DHR has already approved her for the daycare. Mrs. Green asked if she has any documentation from DHR with their approval and Mrs. Kaley answered no. Mrs. Green asked if she has approval from the Health Department and Mrs. Kaley responded yes, she has been cleared by the Health Department and the Fire Marshall. Mr. Strunk asked staff if a daycare is allowed, with approval, in all residential districts and Mr. Smith answered yes. Mr. Strunk asked if staff's opinion is that a daycare should not be allowed in any R-2 zoned area. Mr. Smith responded no, each decision is based on individual merit and staff may recommend approval in areas with larger lots. Mr. Vira asked the number of uses that require a special use permit in the R-2 zoning district and Mr. Smith responded approximately seven or eight. Mrs. Slagle stated concerns with the number of children in the neighborhood and the traffic increase that would be generated if this request is approved. Anil Vira moved to approve the request of Elishia Kaley for a special use permit for a daycare at 214 Sagebrush Loop conditional upon the following three conditions: 1) the maximum number of children allowed is five; 2) the hours of operation are limited to 7:00 AM to 4:00 PM; and 3) the approval of the special use permit is to run concurrent with the current ownership. Debra Green 2<sup>nd</sup> the motion and the motion failed and the request was denied due to the lack of

a supermajority vote with the following votes: AYE – Debra Green, Anil Vira and Sam Andrews. NAY – Cathy Slagle and Troy Strunk

**ZBA 10.06 Request of Rance Reehl of Reehl Properties, LLC for a ten foot (10') street side setback variance for property located at 1 Pier Street, just north of the Pier Street Boat Launch.**

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

**STAFF INTERPRETATION:** The subject property is zoned R-2 Medium 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.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum street side-yard setback of twenty feet (20'). The applicant is proposing a ten foot (10') street side setback for a principle structure to be built on a vacant piece of property.

The minimum area and dimensional standards for an R-2 lot include a minimum lot area of 10,500 square feet and a minimum lot width (at front setback) of 75'.

The subject property is approximately 7,920 square feet and has a lot width at the front setback of approximately 55 feet. The applicant has identified a large live oak in the front yard of the subject property. In order to save the live oak, it is necessary to push the building footprint beyond the minimum 35' front setback, leaving the property owner with a smaller buildable area than a typical R-2 lot. The minimum lot width for a newly created lot in the R-2 district is 75'. The property is only 55' wide with a street side setback; therefore if the typical setbacks apply (10' side and 20' street side), the applicant is limited to a 25' wide structure on the lot. It is staff's opinion that the physical characteristics of the property present a unique situation and an undue hardship.

The property is bordered to the west by Mobile Bay; to the east, south and north lies City of Fairhope R-2 zoned property.

Facts to be considered in this case:

1. The property is currently vacant.
2. The applicant is requesting a 10' street side setback variance (a setback of 10').
3. There is an existing very large live oak (27' DBH) on the property that the property owner would like to preserve.

4. The applicant is requesting a variance from Zoning Ordinance provisions to construct a principle structure over the required minimum street side setback established for R-2 lots.
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 narrow lot width of 55'.
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.

**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 (55' lot width).

Mr. Andrews and Mrs. Green asked why the subject property was allowed to be subdivided without meeting the minimum requirements and Mr. Smith stated he was not involved with that subdivision but it appears to have been approved administratively as a replat. Mr. Smith said the original lot configuration looks as though there were three lots facing Pier Street and the replat rearranged the lots to face Mobile Bay and were combined into two lots. Mr. Andrews asked how the shoreline interacts with the setbacks and Mr. Smith stated there is a coastal conservation buffer area along the bay and no construction would be allowed to impact the beach. Mrs. Green asked if the Board's decision would impact the parcel to the north and its setbacks. Mr. Smith answered no, the side setback along the north side of the subject property will not change, and it will be the required 10'. Mrs. Slagle opened the public hearing, having no one present to speak she closed the public hearing. Rance Reehl, the applicant's representative, addressed the Board saying the property has a bulkhead to protect the bay and to help against erosion. He said the lot has a width of 55' and with the required setbacks the applicant would only be able to build a 25' wide house. Mrs. Slagle asked who constructed the privacy fence on the lot and if it is on the property line. Mr. Reehl responded the property owner had the fence put up and it is within inches of the property line. Mrs. Slagle asked how close the house would be to the fence if the variance is approved and Mr. Reehl answered 10'. Mr. Andrews asked if staff anticipated any problems with the use of the boat launch and Mr. Smith responded no. Mrs. Slagle asked if the applicant was anticipating building a two-story house and Mr. Reehl said yes. Mrs. Slagle asked about the oak tree and the alley. Mr. Reehl stated the applicant wants to save the oak tree and will design a house to limit impact to the tree. He explained the alley has an aluminum gate and is a shared access for three lots. Mrs. Green stated concerns with the size of the lot and why it was approved since it does not meet the minimum lot standards. She asked if the applicant was requesting the variance due to the size of the lot and the oak tree on the property and Mr. Reehl responded yes. Mrs. Green said the applicant should purchase both lots and use both to build a house. Mr. Smith explained subdivisions are the sole responsibility of the Planning Commission and the subject property is an existing non-conforming lot. He stated the Board is only responsible for deciding if there is a hardship which would

warrant the approval of the setback variance request. He added if the request were to be approved it would also allow the applicant more room to accommodate for saving the oak tree. Mr. Andrews had concerns with the noise generated from the boat launch and the close proximity to the house. Mrs. Green said she had an issue with the sub-standard size of the lot and the 10' setback between the house to the north. Mr. Smith explained the Board's decision will not have any affect to the relation to the house to the north. Mr. Strunk said the tree has no bearing on this decision, it is only the setbacks. Anil Vira moved to accept the staff recommendation to approve the 10' street side-yard setback variance due to the presence of a hardship associated with the physical characteristics of the property (55' lot width). Troy Strunk 2<sup>nd</sup> the motion and the motion failed and the request was denied due to the lack of a supermajority vote with the following votes: AYE – Anil Vira, Troy Strunk and Cathy Slagle. NAY – Sam Andrews and Debra Green.

**New/Old Business – Election of Vice Chair** – Mr. Smith stated an issue has arisen with Suzanne Winston's Board eligibility. He explained she has recently moved outside of City limits and will likely be resigning from the Board. There was discussion about how new members are appointed. The Board reached a consensus to wait to elect a Vice-Chair until there are more definite answers regarding Mrs. Winston's resignation and a new appointment.

Having no further business, Debra Green made a motion to adjourn. Troy Strunk 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 5:59 pm.