

The City of Fairhope Board of Adjustments and Appeals met on Monday, June 20, 2011 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

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

Absent: Chairperson Cathy Slagle and Clyde Panneton

The meeting was called to order at 5:00 PM by Vice-chair Anil Vira.

The minutes of the May 16, 2011 meeting were considered. Sam Andrews moved to accept the minutes as written and was 2nd by Debra Green. Motion carried unanimously.

Mr. Vira announced agenda item B. ZBA 11.03 would not be heard at this meeting due to a lack of a quorum, Debra Green has a conflict and will be rescuing herself.

ZBA 11.02 Request of Barry Gilliland for a 20' front setback variance for property located on the east side of N. Summit Street between Powell Avenue and Kierfer Avenue at 254 N. Summit Street.

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

STAFF INTERPRETATION: The subject property is zoned R-2 Medium Density Single Family Residential District. Barry Gilliland (subject property owner) 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 front-yard setback of thirty-five (35'). The applicant would like to reduce the front-yard setback to fifteen feet (15') in order to build as far possible from the bluff that exists on the east side of the parcel.

The applicant has provided a letter from J. Martin Pitts, P.E. which reinforces the applicants concerns relating to the bluff's stability.

The property is bordered on all sides by City of Fairhope R-2 zoned property. The front setback for the existing home to the south of the subject property is approximately 13.5 feet (legal non-conforming) and the existing home on the parcel directly north of the subject is constructed with a front setback of approximately 35 feet. In the surrounding area, it is not uncommon to find homes that were constructed with a front setback less than the required 35 feet.

Facts to be considered in this case:

1. There is a bluff and an abundance of existing stabilizing vegetation located on the east side of the subject property.
2. This variance application meets all of the established Zoning Ordinance criteria for the issuance of a variance due to the abnormal topography (the bluff/ravine) of the subject lot.
3. The applicant is requesting a 20' front setback variance; a front setback of 15'.
4. The applicant has provided a letter stamped and signed by a Professional Engineer stating that there are potential slope stability issues on the subject property.
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 existing topographic conditions, staff recommends the Board of Adjustment approve the twenty foot (20') variance request and allow a fifteen foot (15') front setback for the subject parcel.

Barry Gilliland, the applicant, addressed the Board saying Martin Pitts, P.E. recommended for them to build as far forward as possible and away from the bluff. He said there are signs of erosion and they would like to keep from causing any further damage. Mrs. Green asked if private drainage pipes are allowed to drain off of private property into the gullies. Barry Fulford stated there is no permitting for drainage for single family residential and the City would not be aware of pipes being put in. Mr. Gilliland stated they are not planning on laying drainage pipes to the gully; they would like to put in cisterns to collect the rain water. He added they want to keep the large trees and vegetation but clean it up a little. There was discussion about the possibility of placing a conservation easement along the rear of the lot to protect the bluff. Mr. Smith stated that the applicant could impose a deed restriction but the Board cannot mandate it. Mr. Vira asked if the applicant removes all of the vegetation from the rear of the lot and then has an erosion issue, is the applicant responsible for it or the City and Mr. Smith responded it would be the applicant. Mr. Strunk stated he does not have an issue with the variance but noted the applicant could clear cut the property by right regardless of whether the variance is granted or not and still build his proposed house. Mr. Strunk said he felt the applicant is being more environmentally conscious with this proposal. The applicant said they will be landscaping and will likely add additional trees to what is existing. Troy Strunk moved to accept the staff recommendation to approve the twenty foot (20') variance request and allow a fifteen foot (15') front setback for the subject property due to the existing topographic conditions (bluff). Sam Andrews 2nd the motion and the motion carried with the following vote: AYE – Debra Green, Sam Andrews, Anil Vira and Troy Strunk. NAY – None.

Old/New Business

Debra Green thanked the City for allowing the Board to attend the Continuing Studies Classes offered by the University of North Alabama. She said they were very educational and informative. She also asked if there is any new information regarding the Pier Street lawsuit. Mr. Smith stated it is being handled by the City Attorney and he does not have any part in it. Mrs. Green asked what can be done to protect the sensitive areas if the Board cannot impose setback restrictions. Mr. Smith responded the City's Wetland Ordinance's buffers would apply to any new lots that are created but not to existing lots.

Having no further business, Debra Green made a motion to adjourn. Troy Strunk 2nd the motion and the motion carried unanimously. The meeting was adjourned at 5:38 pm.