



**City of Fairhope  
Board of Adjustment and Appeals  
5:00 PM  
City Council Chambers  
January 18, 2018**

Karin Wilson  
*Mayor*

*Council Members*

Kevin G. Boone

Robert A. Brown

Jack Burrell, A.C.M.O.

Jimmy Conyers

Jay Robinson

Lisa A. Hanks, MMC  
*City Clerk*

Deborah A. Smith, CPA  
*City Treasurer*

1. Call to Order
2. Approval of the December 18, 2017 minutes
3. Consideration of Agenda Items:
  - A. BOA 17.20 Public hearing to consider the request of Richard and Mary Mundy for a variance to the rear setback requirements for property located at 319 Equity Street.  
**PPIN #: 29980**
  - B. BOA 18.01 Public hearing to consider the request of Lance Hill for a Special Exception to allow Storage at 362 S. Greeno Road.  
**PPIN #: 5318**
4. Old/New Business
5. Adjourn

161 North Section Street

P.O. Drawer 429

Fairhope, Alabama 36533

251-928-2136

251-928-6776 Fax

[www.fairhopeal.gov](http://www.fairhopeal.gov)

*Printed on recycled paper*

**The City of Fairhope Board of Adjustments and Appeals met on Monday, October 16, 2017 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

**Members Present: Troy Strunk, Vice-Chair; Cathy Slagle Dick Schneider; John Avent; Christina Stankoski; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.**

**Absent: Chairman Anil Vira and Harry Kohler**

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

The minutes of the October 18, 2017 meeting were considered. Dick Schneider moved to accept the minutes as written and was 2<sup>nd</sup> by John Avent. Motion carried with one abstention by Cathy Slagle.

**BOA 17.18 Public hearing to consider the request of Kenneth Lee for a Special Exception to allow a restaurant at 552 N. Section Street.**

Mr. Dyess gave the staff report.

**Summary of Request:**

The property owner and applicant is Kenneth Lee. He is seeking approval for a special exception for a restaurant pursuant the Zoning Ordinance, Table 3.1. According to the use table, a restaurant is in the use category of "service." A restaurant is in the service category and is only allowed in the B-1 district as a special exception. It should be noted that this special exception request is for an existing restaurant (Original Ben's Jr. BBQ) which was given its initial business license in December of 1986. The 2006 Comprehensive Plan recognizes the existing land use in Section 2.2 on page 8. It is described as "commercial pockets supply the immediate neighborhoods with goods and services." The subject property is in an area of North Section which falls into the category of a "commercial pocket." The use is existing and this special exception application is only for approval of the use. The special exception approval process is contained within the zoning ordinance and is therefore consistent with standards, goals, and intent of the zoning ordinance. The subject property and restaurant use is located on a triangular shaped property, not suitable for any residential use. A pocket of commercial uses has historically existed in the vicinity. The current use has existed at the subject property for many years and presumably has adequate infrastructure. This application for special exception does not include new development. Staff is not aware of any issues or deficiencies with other laws and regulations of the City, or of other jurisdictions. The use is existing and the special exception application does not permit new development. Any new development must be done in compliance with current setbacks and other applicable regulations. The use has existed for many years and appears to be a viable use for the property. The existing use is in a "commercial pocket" on a property which is irregularly shaped and not suitable for a residential use or a larger commercial use. This "commercial pocket" was established many years ago well before the comprehensive plan. In addition, the current zoning map for this area recognizes the existing use as



commercial. Staff is not aware of any additional terms or conditions outside of applicable standards of the zoning ordinance.

**Recommendation:**

Currently, the restaurant use is non-conforming which restricts improvements. After reviewing the criteria for a variance/special exception staff recommends that the special exception be **APPROVED**.

Mr. Avent asked if the business was in operation prior to the zoning and Mr. Dyess responded he was not sure but he believed so. Mr. Lee stated the restaurant has been in business for over 40 years.

Mr. Strunk opened the public hearing. Having no one present to speak, Mr. Strunk closed the public hearing.

Mrs. Stankoski asked if a bar could be opened at this location and Mr. Dyess explained this request would allow a bar as part of a restaurant but not a stand alone business.

Cathy Slagle made a motion to accept the staff recommendation to approve the Special Exception to allow a restaurant. Dick Schneider 2<sup>nd</sup> the motion and the motion carried with the following vote: AYE – Christina Stankoski, Cathy Slagle, Dick Schneider, Troy Strunk, John Avent. NAY – none.

**BOA 17.19 Public hearing to consider the request of PolySurveying of Mobile, Inc. for a variance to the side setback requirements for property located at 233 Divot Loop.**

Mrs. Boyett gave the staff report.

**Summary of Request:**

The applicant is requesting a side setback variance related to Lot 108 of the Quail Creek Estates, The Villas, Phase VI subdivision. The subject property is located at the south end of Club Drive, at 233 Divot Loop. The Quail Creek Estates, The Villas, Phase VI subdivision was approved on September 4, 2007, case number SD 07.33. The subject property is zoned R-3 High Density Single Family Patio/Garden Home Residential District and was approved with the following setbacks: front – 20', rear – 15', side – 10' one side only, and side street – 10'. On October 30, 2017 a building permit was submitted for the subject property. The submittal was reviewed for compliance and a building permit was issued on September 20, 2017. During a routine sheathing inspection by the Building Department, the inspector noted the structure appeared to encroach into the setbacks. Upon further examination, the front northwest corner of the building was found to be over the setbacks by 2.9'. The applicant is requesting a 2.9' side setback variance for the subject property. The subject property is a pie-shaped lot approximately 15,088 sq.ft. in size. The shape of the lot is not particularly uncommon and the lot is the largest in this phase of the subdivision. The lot has no extraordinary and exceptional topographical conditions. The subject property's setbacks do not prevent the reasonable use of the property. The pie-shape of the site is not uncommon within the Fairhope Planning Jurisdiction and is not necessarily peculiar to the subject piece of

property. Staff believes that a setback variance allowing the protrusion is not warranted, and therefore no relief is recommended.

**Recommendation:**

Staff recommends that this variance be **DENIED** due to no hardship has been proven as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e.

Brett Orrell of PolySurveying of Mobile, Inc. – He said the 10’ setback is not specified as to which side it has to be and he contended the overall setbacks are more than what is required. He noted the house is smaller than what is allowed and sits further back from the front building line. He explained this is an honest mistake and there was no malice intent. He stated there is 11’ between the existing structure and the house to the west so the fire code requirements are being met. He stated he is asking for relief for himself and the homeowner.

Mike Hayes of MDH Construction – He stated he has never had something like this happen before. He said it was caught after the house was under construction and they are asking for leniency.

Mr. Schneider asked what would it hurt to allow this and Mr. Dyess stated the request does not meet the criteria for a hardship. Mr. Dyess explained this is a self-imposed hardship and even though he understands the plight, to allow this will diminish the integrity of the process but he will respect the decision of the Board.

Mr. Strunk opened the public hearing. Having no one present to speak, Mr. Strunk closed the public hearing.

Ms. Slagle asked what will happen if the request is denied. Mr. Orrell said the options aren’t good. He said the corner of the bedroom would have to be cut off or the entire building will have to be torn down. Mr. Hayes stated the bedroom will be useless if the corner must be cut off. Mr. Avent said he respects staff and their position but the Board is here to offer solutions when the black and white rules don’t work. He said he read the plat and it is not clear regarding the setbacks. He noted the subject structure is still 11’ from the structure to the west and 27’ from the structure to the north. Mrs. Boyett stated if the variance is approved it will restrict the adjacent property and cause a hardship for them. Mrs. Stankoski asked what the neighbor had to say and Richard Good, the applicant, stated the neighbor has only commented that they like the design of the house. Mr. Avent acknowledged that approving the variance would be taking a right from the neighbor but the Board is looking at the greater good. Mr. Strunk said he is against tearing down the structure or making it unusable. Mr. Schneider said this is a small mistake. Mr. Strunk suggested there be a condition that no future expansion shall be allowed. Mr. Hayes added the wall could be fire rated.

Dick Schneider made a motion to approve the variance request to allow a 2.9’ side setback variance on the west side of the subject property with the following condition:

1. The exterior wall on the west side of the property shall be fire rated.

John Avent 2<sup>nd</sup> the motion and the motion carried unanimously with the following vote:  
AYE – Dick Schneider, Christina Stankoski, John Avent, Troy Strunk, and Cathy Slagle.  
NAY – none.



**BOA 17.20 Public hearing to consider the request of Richard and Mary Mundy for a variance to the rear setback requirements for property located at 319 Equity Street.**

Mr. King gave the staff report.

**Summary of Request:**

The applicant is requesting a rear setback line adjustment to lot 1 of the McMillins Subdivision, located approximately 1/3 mile southeast of South Mobile Street at the convergence of Nichols Avenue and Equity Street. The subject property is located within an R-2 medium density single family zoning district, which requires 35' front and rear setbacks as well as 10' side setbacks. The applicant provided supporting documents depicting the existing survey of the lot as well as a proposed survey requesting treatment of the 35' rear setback on the southeast side of the property as a 10' side setback line. Lot 1 is generally rectangular, with slightly irregular lot lines on its northeast side bordering lot 2, PPIN 357758. Lot 1 contains two lot lines that are contiguous with the right-of-way (ROW) at the convergence of Nichols Avenue and Equity Street. As-platted, this slight irregularity creates two front lot lines as well as two rear lot lines: the 20' front lot line corresponds to a 152.5' rear lot line, and the 118.3' front lot line corresponds to a 57' rear lot line. Approximately 69' of the 118.3' lot line is contiguous with the ROW at the convergence of Nichols Avenue and Equity Street. The variance request desires to treat the 35' rear setback line along the 152.5' rear lot line into a 10' side setback line along the same 152.5' lot line. The *City of Fairhope Zoning Ordinance Article IX Section "C"* defines a Lot Line, Front as: "The lot line contiguous to the right-of-way line of the street on which the lot has least dimension." The *City of Fairhope Zoning Ordinance Article IX Section "C"* defines a Lot Line, Rear as: "The lot line opposite to and most distance from the front lot line." By definition the 20' lot line contiguous with the ROW is a front lot line and the 152.5' lot line opposite to and most distant from the 20' lot line is a rear lot line. Though only approximately 69' of the 118.3' lot line is contiguous to the ROW, the 118.3' lot line is not the lot line of the least dimension contiguous to the ROW. The subject property's size and buildable area do not appear to be extraordinary or exceptional due to size, shape, or topography with the existing setbacks in place. Further, the subject property's topography is consistent with the nearby lots along Nichols Avenue and Equity Street. The subject property's existing as-platted setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance. Further, the existing setbacks do not appear to prevent the reasonable use of the property for a residence of similar size to nearby residences. The layout of the ROW at the convergence of Nichols Ave and Equity Street creates a number of peculiarities that are unique to subject property. The Nichols Ave ROW increasingly turns to the southeast as it approaches Equity St., cutting across an existing driveway for the lot with PPIN 22291. It is possible, but unknown to staff that this ROW routing was intended to place a large existing oak tree in the ROW. In addition, the convergence of Nichols Ave and Equity St. occurs as a 90-degree curve rather than an intersection, and as a result the ROW at the convergence is irregular in the manner in which the ROW makes the curve of the two streets at the convergence. The ROW along Equity St. travels southwest, makes a sharp turn to the west, and then turns southwest again to intersect with the Nichols Ave ROW. This irregularity creates two

lots lines for the subject property that are contiguous to the ROW. The existing survey for subject property treated both lot lines as front lines and as a result two 35' rear setback lines were platted to subject property. Staff believes that a variance allowing the setback requested is warranted. The variance requested wishes to treat a rear 35' setback line as 10' side setback line. The existing 57' rear lot line does not appear to meet the *City of Fairhope Zoning Ordinance Article IX Section "C"* definition of rear lot line, and therefore relief is recommended to be granted. The requested setback line would add approximately 648sf to the buildable area of the lot but this relatively small increase in the buildable area would not cause substantial detriment to the public and impair the purpose and intent of the *City of Fairhope Zoning Ordinance*.

**Recommendation:**

It is staff's position that the location of the ROW at the convergence of Nichols Avenue and Equity Street, combined with the slightly irregular shape of the lot creates a peculiarity unique to subject property that resulted in additional rear lot line and corresponding 35' rear setback to be platted for the lot. Therefore, staff recommends the variance request be approved to allow the as-platted rear setback along the 57' lot line to be treated as a side lot line with a 10' setback.

Knox McMurphy of Ashurst Niemeyer – She explained the subject lot was previously one lot and was subdivided into two lots. She said the lot is currently under contract but the setback will not allow the desired house plan to be constructed on the lot. She stated the applicant wants to build a one-story home and would like it to match the existing neighborhood. She stated they would prefer to have the south property line setback reduced to 10'. Mr. King stated this is not the request that was advertised and the case will have to be tabled and re-advertised if the applicant wishes to change their request. Mr. King explained the regulations are very clear on the definitions of front and rear property lines. He said staff will not be able to support the proposed change to the request.

Mr. Strunk opened the public hearing. Having no one present to speak, Mr. Strunk closed the public hearing.

Mr. Avent said he agrees with staff's interpretation and the definitions but he thinks geometrically the new request lines up with the adjacent structures and the lot is irregular. He added the request before the Board is not what the applicant wants and if it is changed then it will have to be re-advertised.

Cathy Slagle made a motion to table the request to the next meeting for re-advertisement. John Avent 2<sup>nd</sup> the motion and the motion carried unanimously with the following vote: AYE – Dick Schneider, Christina Stankoski, John Avent, Troy Strunk, and Cathy Slagle. NAY – none.

**BOA 17.21 Public hearing to consider the request of Community Bank Coast for a variance to the side setback requirements for property located at 200 N. Greeno Road.**

Mr. King gave the staff report.



**Summary of Request:**

The applicant is requesting a side setback variance related to lot 1 of the Greeno Professional Village Planned Unit Development (PUD). The Greeno Professional Village PUD was approved April 8, 2002, case number ZC 02.01. The subject property is located at the eastern intersection of Edwards Avenue and Greeno Road, located approximately 1/4 mile north of Fairhope Avenue. The subject property is currently under consideration for a site plan review, case number SR 17.03 as well as a PUD amendment, case number ZC 17.17. Both the site plan review and PUD amendments have been approved by the Fairhope Planning Commission and each case is awaiting review by the Fairhope City Council for final approval. Cases SR 17.03 and ZC 17.17 are related to the construction of a new Community Bank location, an allowable use within the Greeno Professional Village PUD. The subject request for variance is related to the driveway side setback on the north side of the property and the allowable overhang of the proposed drive-thru canopy. Lot 1 of the Greeno Professional Village PUD is generally rectangular, with a protrusion fronting upon Edwards Avenue that creates an "L" shape. The existing private access road traversing Greeno Professional Village enters the "L" shape, makes a sharp 90-degree turn to the east, another 90-degree turn to the north, and then continues through the Greeno Professional Village before intersecting Gayfer Avenue. The bank building will be situated in the rectangular region of the subject property with the remaining areas utilized for parking. A bank drive-thru will connect to the existing access road on the northeast side of Lot 1 and re-connect to the access road on the southwest side of Lot 1. The variance request desires "relaxation" of the *City of Fairhope Zoning Ordinance Article III, Section C.3*, which states: "*No part of a yard or other open space required for any building for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building. Every part of a required yard or court shall be open to the sky, except for permitted accessory structures and the ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves, provided the projections shall not extend more than two feet beyond the yard area requirements.*" The proposed Community Bank's drive-thru canopy extends beyond the 2'-0" yard area (across the setback line) allowance for ordinary projection of sills, cornices, buttresses, ornamental features, chimneys, flues, and eaves. A driveway side setback line is created by the inclusion of a drive-thru for the Community Bank at a length of 15'-0" as specified in the Greeno Professional Village PUD ordinance. As-submitted, the face of column distance to edge of canopy is 7'-4 3/8", and then 7'-6 3/8" from the edge of canopy to the property line for a total of 14'-10 3/4" ~15'-0" from the face of column to the property line to comply with the driveway side setback requirement of the PUD. The 7'-4 3/8" canopy protrusions exceed the 2'-0" allowance of *City of Fairhope Zoning Ordinance Article III, Section C.3*. The subject property's size and buildable area do not appear to be extraordinary or exceptional due to size, shape, or topography with the required setbacks in place. Further, the subject property's topography is consistent with the nearby lots comprising the Greeno Professional Village and the setbacks required by the PUD do not appear to prevent construction or use of the Community Bank structure without approval of a setback variance. The subject property's existing setbacks do not appear to prevent construction or use of the Community Bank structure or its use as a banking facility without approval of a setback variance. Further, the setbacks required by the Greeno

Professional Village PUD do not appear to prevent the reasonable use of the property as a bank as all three drive-thru lanes will be functional without approval of a setback variance. The layout of the subject property forms an “L” shape but contains a rectangular area that accommodates the Community Bank structure without a side setback variance. The “L” shape of the site is not uncommon within the Fairhope Planning Jurisdiction and is not necessarily a peculiarity unique to the subject piece of property. Staff believes that a setback variance allowing the additional drive-thru canopy protrusion is not warranted, and therefore no relief is recommended that would cause substantial detriment to the public and impair the purpose and intent of the City of Fairhope Zoning Ordinance.

**Recommendation:**

It is staff’s position that though the requested variance is an understandable and logical request, no hardship has been proven as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e. Therefore, staff recommends the variance request be denied.

Mr. Avent asked if the site plan still must go to the City Council and Mr. King answered yes, but this is a stand alone request and will not affect the site plan request. Mr. Avent asked if this request will amend the PUD ordinance and Mr. King responded no. Neil Polen of Dale Partners Architect – He explained the entire PUD has not been built as it was designed. He said the lot has been difficult to design and any relaxation would help. Mr. Schneider asked if 4’ would keep the elements off the customers and Mr. Polen responded yes anything is better than 2’. Mrs. Slagle asked if they have considered redesigning the interior of the building and Mr. Polen responded yes, exhaustively. Mrs. Stankoski asked if there have been any opposition from the adjacent property owner and Mrs. Boyett stated staff has not received any comments. Mr. Avent asked if the drainage requirements will be met and Mr. Polen responded yes.

Mr. Strunk opened the public hearing. Having no one present to speak, Mr. Strunk closed the public hearing.

John Avent made a motion to approve the request as proposed. Christina Stankoski 2<sup>nd</sup> the motion and the motion failed with the following vote: AYE – Dick Schneider, Christina Stankoski, and John Avent. NAY – Cathy Slagle and Troy Strunk.

Having no further business, John Avent made a motion to adjourn. Christina Stankoski 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 6:29 PM.





# Board of Adjustment

January 18, 2018

Case: BOA 17.20 319 Equity St.

**Prepared by:**

J. Buford King  
LEED AP, QCI  
City Planner

**Project Location:**

319 Equity St.

**Request:**

Rear setback line adjustment

**Applicant:**

Mary Knox Mundy  
Ricky Mundy

**Zoning District:**

R-2 Medium Density  
Single Family

**PPIN Number:**

29980

**General Location:**

1/3 mile east of S. Mobile St. at  
the convergence of Nichols and  
Equity

**Recommendation:**

Denial





**Summary of Request:**

The applicant is requesting a rear setback line variance to lot 1 of the McMillins Subdivision, located approximately 1/3 mile southeast of South Mobile Street at the convergence of Nichols Avenue and Equity Street. The subject property is located within an R-2 medium density single family zoning district, which requires 35' front and rear setbacks as well as 10' side setbacks. The applicant provided supporting documents depicting the existing survey of the lot as well as a proposed survey requesting treatment of the 35' rear setback line on the south/southwest side of the property as a 10' side setback line. *The proposed survey is a supporting document that represents the desired setback request and does not represent a re-plat request for subject property to be considered by the Planning Commission.*

**Comments:**

The City of Fairhope Zoning Ordinance defines a variance as follows:

***Variances: A modification of the strict terms of the relevant regulations in a district with regard to placement of structures, developmental criteria or provision facilities. Examples would be: allowing smaller yard dimensions because an existing lot of record is of substandard size; waiving a portion of required parking and/or loading space due to some unusual circumstances; allowing fencing and/or plant material buffering different from that required due to some unusual circumstances. Variances are available only on appeal to the Board of Adjustment and subject to satisfaction of the standards specified in this ordinance.***

The Board of Adjustments is authorized to grant a variance through Article II.A.d(3) which states the following:

***d. Duties and Powers: The Board shall have the following duties and powers:***

***(3) Variances - To authorize upon appeal in specific cases variance from the terms of this ordinance not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.***

***Prior to granting a variance, the Board 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 this ordinance to the particular piece of property would create an unnecessary hardship;***

***(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 or 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.***

The Ordinance provides guidance for variance requests through the following criteria:  
Article II.C.3.e.

***Criteria – (1) An application for a variance shall be granted only on the concurring vote of four***



**Board members finding 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.**

When a variance is granted by the Zoning Board of Adjustment it has the following effect:

Article II.C.3.g.

**Effect of Variance - Any variance granted according to this section and which is not challenged on appeal shall run with the land provided that:**

- (1) The variance is acted upon according to the application and subject to any conditions of approval within 365 days of the granting of the variance or final decision of appeal, whichever is later; and**
- (2) The variance is recorded with the Judge of Probate.**

**Analysis and Recommendation:**

Variance Criteria:

**(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

Response:

Lot 1 is generally rectangular, with slightly irregular lot lines on its northeast side bordering lot 2, PPIN 357758. Lot 1 contains two lot lines that are contiguous with the right-of-way (ROW) at the convergence of Nichols Avenue and Equity Street. As-platted, this slight irregularity creates two front lot lines as well as two rear lot lines: the 20' front lot line corresponds to a 152.5' rear lot line, and the 118.3' front lot line corresponds to a 57' rear lot line. Approximately 69' of the 118.3' lot line is contiguous with the ROW at the convergence of Nichols Avenue and Equity Street.

The variance request desires to treat the 35' rear setback line along the 152.5' rear lot line as a 10' side setback line along the same 152.5' lot line. The *City of Fairhope Zoning Ordinance Article IX Section "C"* defines a Lot Line, Front as:

The lot line contiguous to the right-of-way line of the street on which the lot has *least dimension*.

The *City of Fairhope Zoning Ordinance Article IX Section "C"* defines a Lot Line, Rear as:

The lot line opposite to and most distant from the front lot line.

By definition the 20' lot line contiguous with the ROW is a front lot line and the 152.5' lot line opposite to and most distant from the 20' lot line is a rear lot line. Though only approximately 69' of the 118.3' lot line is contiguous to the ROW, the 118.3' lot line is not the lot line of the least dimension contiguous to the ROW.

The subject property's size and buildable area do not appear to be extraordinary or exceptional due to size, shape, or topography with the existing setbacks in place. Further, the subject property's topography is consistent with the nearby lots along Nichols Avenue and Equity Street. The subject property's existing as-platted setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance.

***(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.***

Response:

As stated above, the subject property's existing setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance. Further, the existing setbacks do not appear to prevent the reasonable use of the property for a residence of similar size to nearby residences.

***(c) Such conditions are peculiar to the particular piece of property involved.***

Response:

The layout of the ROW at the convergence of Nichols Ave and Equity Street creates a number of peculiarities that are unique to subject property. The Nichols Ave ROW increasingly turns to the southeast as it approaches Equity St., cutting across the existing driveway servicing the lot with PPIN 22291. It is possible, but unknown to staff that this ROW routing was intended to place a large existing oak tree in the ROW. In addition, the convergence of Nichols Ave and Equity St. occurs as a 90-degree curve rather than an intersection, and as a result the ROW at the convergence is irregular in the manner in which the ROW makes the curve of the two streets at the convergence. The ROW along Equity St. travels southwest, makes a sharp turn to the west, and then turns southwest again to intersect with the Nichols Ave ROW. This irregularity creates two lots lines for the subject property that are contiguous to the ROW. The existing survey for subject property treated both lot lines as front lot lines and as a result two 35' rear setback lines were platted for the subject property. The irregularity of the ROW and lot lines is shown below:







subject property, and as a result relief in the form of a variance is not recommended to be granted.

**Recommendation:**

It is staff's position that the rear lot line for which a setback variance is requested clearly meets the *City of Fairhope Zoning Ordinance Article IX Section "C"* definition of a rear lot line, and therefore the 35' rear setback line is the correct setback line for the subject property. As stated previously the subject property's existing setbacks do not appear to prevent construction of a reasonably sized residence without approval of a setback variance. Further, the existing setbacks do not appear to prevent the reasonable use of the property for a residence of similar size to nearby residences. As a result, staff recommends DENIAL of the request for a rear setback line variance.

Prepared by:  
J. Buford King  
LEED AP, QCI  
City Planner

**Site Photos**



Subject property looking northeast



Subject property looking east



Subject property looking east toward from edge of ROW



Subject property looking east from center of Nichols Ave





### APPLICATION FOR BOARD OF ADJUSTMENTS

Application Type:  Administrative Appeal  Special Exception  Variance

**Property Owner / Leaseholder Information**  
 Name: Mary Knox; Ricky Mundy Phone Number: 251-680-6556  
 Street Address: 206 Pier Ave.  
 City: Fairhope State: Al. Zip: 36532

**Applicant / Agent Information**  
If different from above.  
 Notarized letter from property owner is required if an agent is used for representation.  
 Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Site Plan with Existing Conditions Attached:  YES NO  
 Site Plan with Proposed Conditions Attached:  YES NO  
 Variance Request Information Complete:  YES NO  
 Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:  YES NO

**Applications for Administrative Appeal or Special Exception:**  
 Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Mary Knox Mundy Ricky Mundy Mary Knox Mundy Ricky Mundy  
 Property Owner/Leaseholder Printed Name Signature  
November 17, 2017  
 Date

Fairhope Single Tax Corp. (If Applicable)

**RECEIVED**  
 NOV 20 2017  
 BY: EP



**VARIANCE REQUEST INFORMATION**

What characteristics of the property prevent / preclude its development?:

- Too Narrow                       Elevation                       Soil
- Too Small                           Slope                               Subsurface
- Too Shallow                       Shape                             Other (specify)

Describe the indicated conditions: Currently has 2-35' REAR SETBACK LINES

How do the above indicated characteristics preclude reasonable use of your land?  
PREVENTS DESIRED BUILDING FOOTPRINT

What type of variance are you requesting (be as specific as possible)?  
REQUEST ONE OF CURRENT 35' REAR SETBACK LINES BE CHANGED TO A 10' SIDE SETBACK LINE.

Hardship (taken from Code of Alabama 1975 Section 11-52-80):  
"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:		
	Residential	Commercial
Filing Fee:	\$100	\$500
Publication:	\$20	\$20
<b>TOTAL:</b>	<b>\$ 120.00</b>	

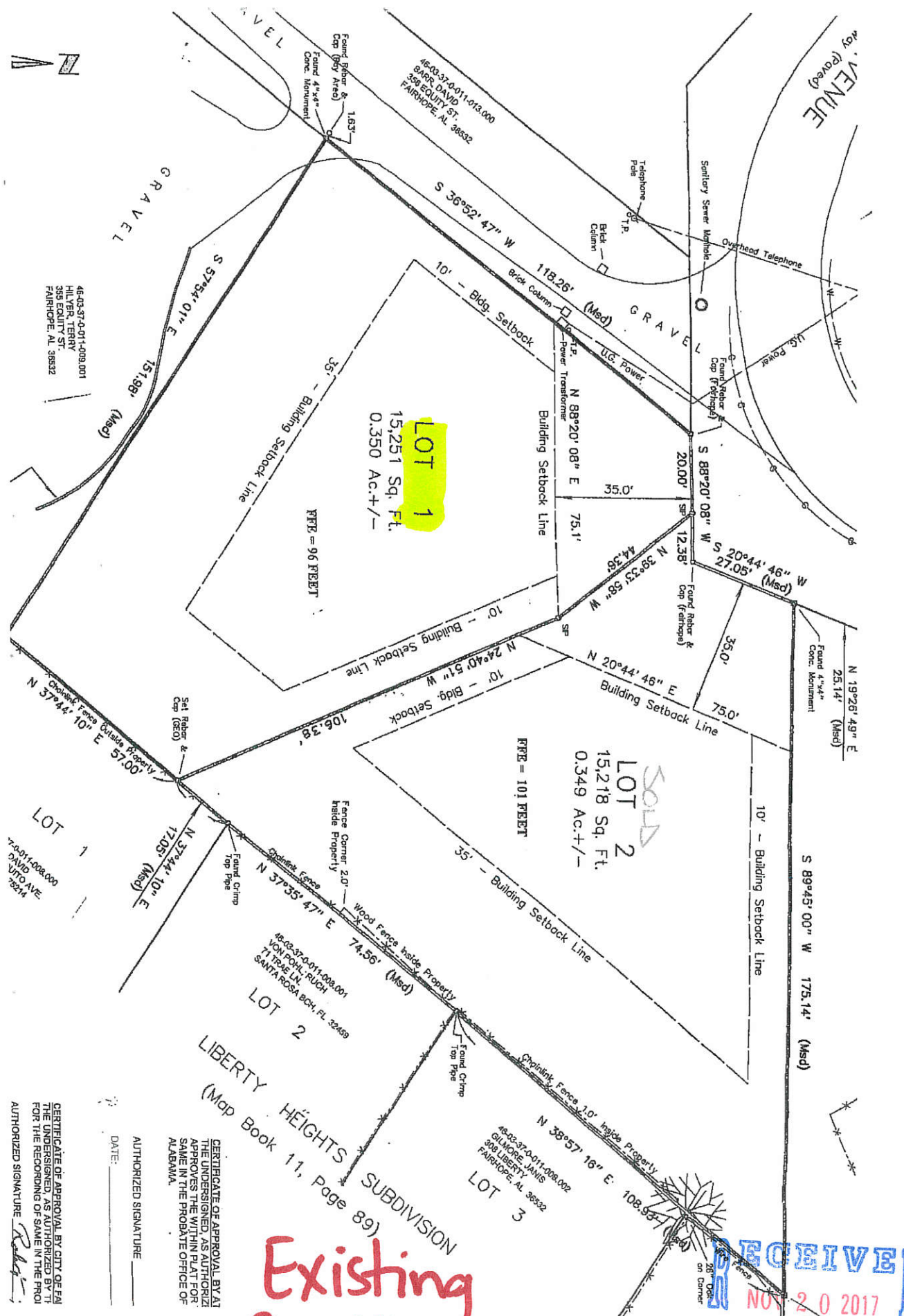
I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Mary Kira Mundy  
Doug Mundy  
Property Owner/Leaseholder Printed Name  
November 17, 2018  
Date

[Signature]  
Signature  
Fairhope Single Tax Corp. (If Applicable)

**RECEIVED**  
NOV 20 2017  
BY: SP





**LOT 1**  
15,251 Sq. Ft.  
0.350 Ac. +/-

**LOT 2**  
15,218 Sq. Ft.  
0.349 Ac. +/-

**Existing Conditions**

**RECEIVED**  
NOV 20 2017  
BY: *EB*

46-03-37-0-011-009,001  
HILVER, TERRY  
355 EQUITY ST.  
FAIRHOPE, AL 36532

46-03-37-0-011-008,000  
DAVID AVE.  
SUITE 10214

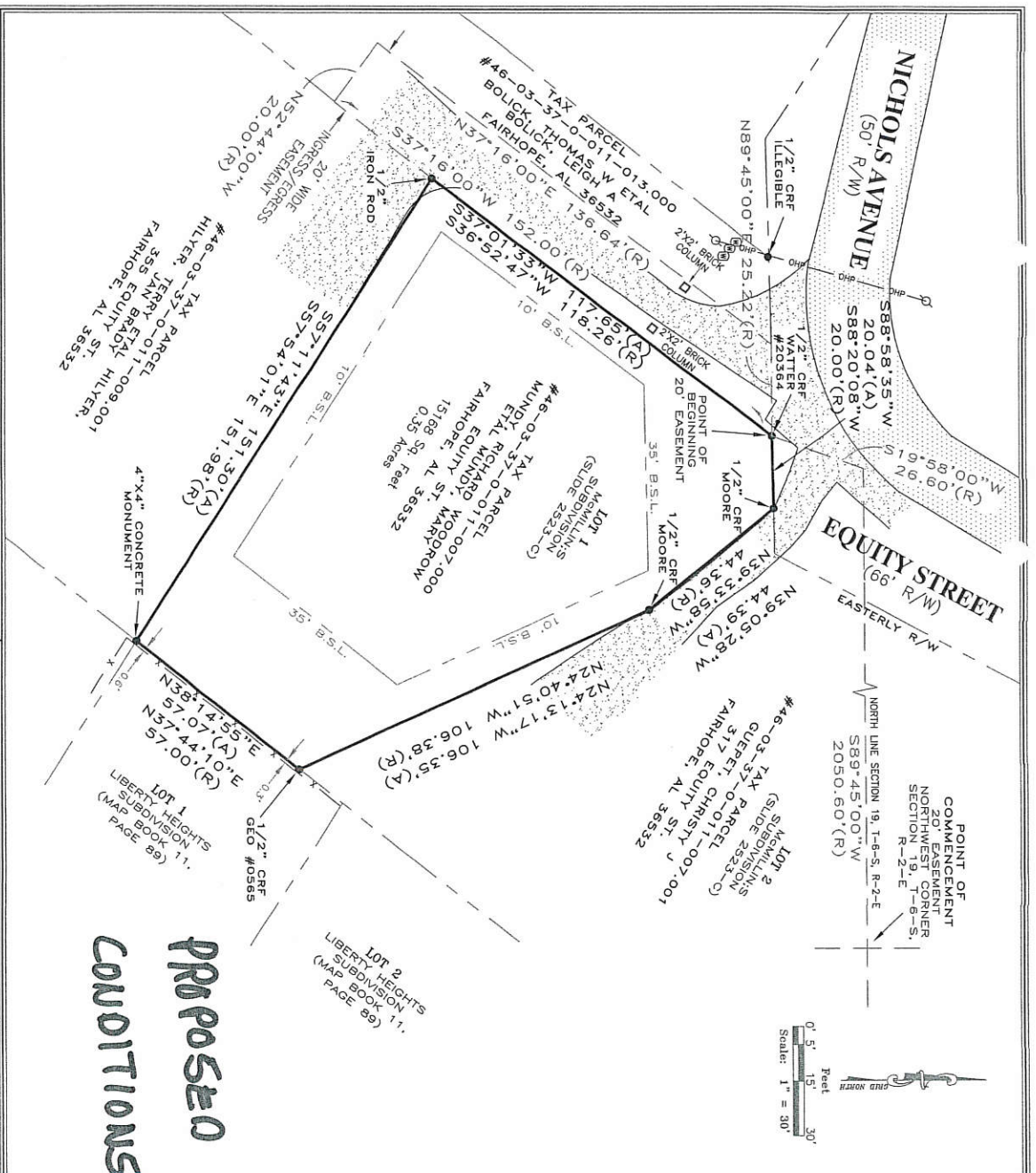
46-03-37-0-011-008,001  
VON PORT, RUCH  
7128E LN.  
SANTA ROSA BCH, FL 32459

46-03-37-0-011-008,002  
GILMORE, JAMES  
208 LIBERTY  
FAIRHOPE, AL 36532

CERTIFICATE OF APPROVAL BY CITY OF FAIRHOPE, ALABAMA  
THE UNDERSIGNED, AS AUTHORIZED BY THE PROBATE OFFICE OF FAIRHOPE, ALABAMA, APPROVES THE WITHIN PLAT FOR THE RECORDING OF SAME IN THE PROBATE OFFICE OF FAIRHOPE, ALABAMA.  
AUTHORIZED SIGNATURE: *Robert*

CERTIFICATE OF APPROVAL BY ALABAMA  
THE UNDERSIGNED, AS AUTHORIZED BY THE PROBATE OFFICE OF FAIRHOPE, ALABAMA, APPROVES THE WITHIN PLAT FOR THE RECORDING OF SAME IN THE PROBATE OFFICE OF FAIRHOPE, ALABAMA.  
AUTHORIZED SIGNATURE: \_\_\_\_\_  
DATE: \_\_\_\_\_

LIBERTY HEIGHTS SUBDIVISION  
(Map Book 11, Page 89)



REFERENCE MATERIAL	DATE
1. RECORD DEED INSTRUMENT (SUBJECT PARCEL) 1499445	2/09/2015
2. RECORD DEED INSTRUMENT (McMILLIN'S SUBDIVISION) SLIDE 2523-C	12/12/2014
3. RECORD DEED INSTRUMENT (20' INGRESS/EGRESS EASEMENT) 711064	2/18/2003
4.	

**LOT 1, McMILLIN'S SUBDIVISION**  
**BOUNDARY SURVEY**  
 EQUITY STREET, FAIRHOPE  
 BALDWIN COUNTY, ALABAMA  
 SECTION-37, TOWNSHIP-6-SOUTH, RANGE-2-EAST

FIELD WORK BY: JP	FIELD DATE: 08/28/2017
DRAWN BY: KJ	DRAWING NO.: 17055
CHECKED BY: JP	SHEET 1 OF 1
SCALE: 1"=30'	

**WOODLANDS**  
 THE GROUP  
 Surveying Solutions

# PROPOSED CONDITIONS

**SURVEYOR'S NOTES:**

- UNLESS STATED OTHERWISE HEREON, THIS PLAT WAS PREPARED WITHOUT BENEFIT OF AN ABSTRACT OF TITLE AND LIABILITY IS ASSUMED BY THE UNDERSIGNED FOR LOSS RELATING TO ANY MATTER THAT MIGHT BE DISCOVERED BY AN ABSTRACT OR TITLE SEARCH OF THE PROPERTY.
- REPRODUCTIONS OF THIS PLAT ARE NOT VALID UNLESS SEALED WITH AN ORIGINAL SURVEYOR'S SEAL.
- TYPE OF SURVEY - BOUNDARY SURVEY
- ALL BEARINGS BASED ON GLOBAL POSITIONING SYSTEM OBSERVATION USING THE NORTH AMERICAN DATUM OF 1983. ALL DISTANCES SHOWN ARE GROUND DISTANCES. ALL MEASUREMENTS WERE MADE IN ACCORDANCE WITH U.S. STANDARD FEET.
- SETBACK INFORMATION WAS PROVIDED BY CLIENT.

**ADDITIONAL NOTES:**

THE FOREGOING IS A PLAT OF LOT 1, McMILLIN'S SUBDIVISION, FAIRHOPE, ALABAMA, THAT THERE ARE NO OBSERVED ENCROACHMENTS BY BUILDINGS OF ADJOINING PROPERTY EXCEPT AS SHOWN; THAT THERE ARE NO OBSERVED RIGHT-OF-WAY, EASEMENTS, OR JOINT DRIVEWAYS, OVER OR ACROSS SAID LAND VISIBLE ON THE SURFACE EXCEPT AS SHOWN; THAT THERE ARE NO OBSERVED ELECTRIC OR TELEPHONE WIRES (EXCLUDING WIRES WHICH SERVE THE PREMISES ONLY) OR STRUCTURES OR SUPPORTS THEREOF, INCLUDING POLES, ANCHORS AND GUY WIRES, ON OR OVER SAID PREMISES EXCEPT AS SHOWN.

**SURVEYOR'S CERTIFICATION:**

STATE OF ALABAMA, COUNTY OF BALDWIN  
 I, JUSTIN PALMER, A LICENSED PROFESSIONAL SURVEYOR IN BALDWIN COUNTY, ALABAMA, HEREBY CERTIFY THAT ALL PARTS OF THIS PLAT AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN THE STATE OF ALABAMA TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

JUSTIN PALMER, PLS  
 A LICENSE NUMBER 32934  
 CERTIFICATE OF AUTHORIZATION - 1073 - LS  
 THE WOODLANDS GROUP LLC  
 22881 US HWY. 98, FAIRHOPE, AL 36532  
 PHONE: 251-929-4774

**DECEASED**  
 NOV 20 2017  
 BY: *JP*

SURVEY LEGEND	
● - PROPERTY CORNER	CRS - ¾" CAPPED REBAR SET (WOODLANDS CA-1073)
(R) - RECORD DIMENSION	CRF - CAPPED REBAR FOUND
(A) - ACTUAL DIMENSION	CRP - GRAPED TOP PIPE FOUND
R/W - RIGHT-OF-WAY	W - WATER VALVE
B.S.L. - BUILDING SETBACK LINES	W - WATER METER
X - FENCE	OP - OVERHEAD POWER LINE
CONCRETE	GRAVEL
	ASPHALT

**RECORD PROPERTY DESCRIPTION:**

Lot 1, McMillin's Subdivision according to the map or plat thereof as recorded in Slide 2523-C in the office of the Judge of Probate of Baldwin County, Alabama.





# Board of Adjustment

January 18, 2018

Case: BOA 18.01 362 S. Greeno Road

**Prepared by:**

J. Buford King  
LEED AP, QCI  
City Planner

**Project Location:**

362 S. Greeno Road

**Request:**

Special exception to allow  
storage units

**Applicant:**

Lance W. Hill

**Zoning District:**

M-1 Light Industrial District

**PPIN Number:**

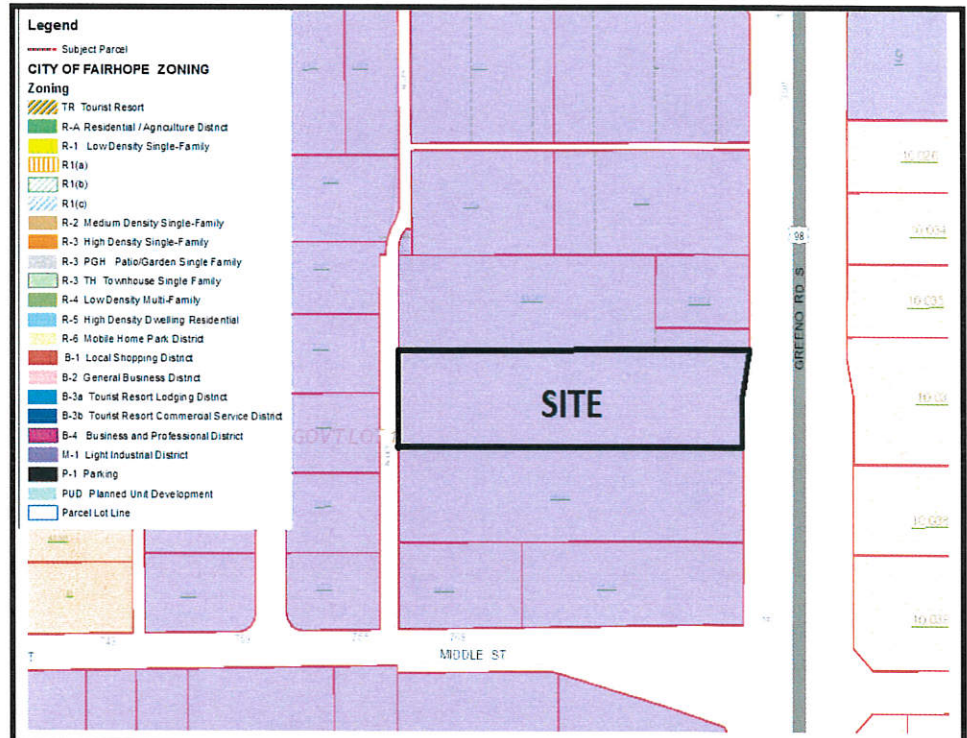
5318

**General Location:**

Greeno Road 1/10 mile  
south of Nichols Avenue

**Recommendation:**

Approve



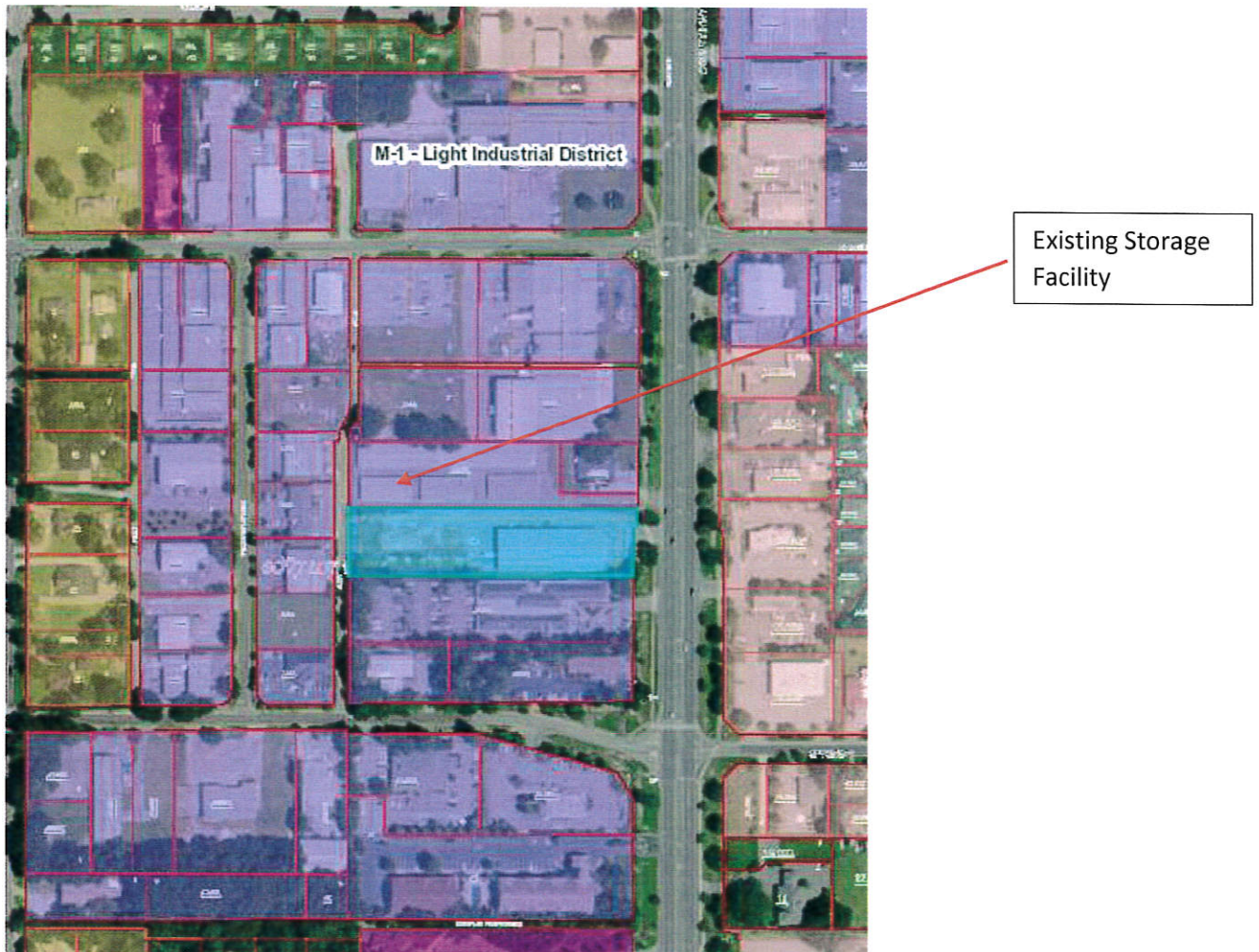


**Summary of Request:**

The applicant is requesting a special exception to allow storage units at 362 S. Greeno Road, which is the location of Fairhope Floor Covering. The storage unit facility will be located immediately west of the Fairhope Floor Covering Building, but does not create a Multiple Occupancy Project (MOP) because the proposed storage unit facility does not appear to create three or more units on the same real property for occupancy. The subject property is zoned M-1 Light Industrial District. According to the *City of Fairhope Zoning Ordinance Article III, Section A.*, the M-1 zoning district is intended to provide a suitable protected environment for manufacturing, research and wholesale establishments which are clean, quiet and free of hazardous or objectionable emissions, and generate little industrial traffic. The dimension standards for this zoning classification are summarized in the table below:

Zoning District	Min. Lot Area	Lot Width	Front Setback	Rear Setback	Side Setback	Street Side	Max. Lot Coverage	Max. Height
M-1	NONE	NONE	NONE	NONE	NONE	N/A	NONE	45'

A similar storage facility, Doc's Storage, is located immediately north of the subject property and the storage facility's buildings are immediately west of Fairhope Animal Clinic. The subject property is bordered by M-1 zoning to its north, south, and west, Greeno Road to the east, and B-2 General Business District east of Greeno Road, as seen in the enlarged map below (subject property marked with a blue outline):





**Comments:**

The *City of Fairhope Zoning Ordinance* defines a special exception as follows:

***Special Exception: Permission granted by the Board of Adjustment for a use indicated in this ordinance as a use limited to a special exception procedure, subject to conditions specified in this ordinance and any conditions the Board deems necessary to ensure that community interests are furthered by permission of the use.***

The Board of Adjustments is authorized to grant special exceptions through Article II.A.d(2) which states the following:

***d. Duties and Powers: The Board shall have the following duties and powers:***

***(2) Special Exceptions - To hear and decide special exceptions to the terms of this ordinance upon which the board is required to pass under this ordinance.***

The Ordinance provides guidance for special exception requests through the following criteria:

Article II.C.3.e.

**Criteria - (2) Any other application to the Board shall be reviewed under the following criteria and relief granted only upon the concurring vote of four Board members:**

- (a) Compliance with the Comprehensive Plan;**
- (b) Compliance with any other approved planning document;**
- (c) Compliance with the standards, goals, and intent of this ordinance;**
- (d) The character of the surrounding property, including any pending development activity;**
- (e) Adequacy of public infrastructure to support the proposed development;**
- (f) Impacts on natural resources, including existing conditions and ongoing post-development conditions;**
- (g) Compliance with other laws and regulations of the City;**
- (h) Compliance with other applicable laws and regulations of other jurisdictions;**
- (i) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values;**
- (j) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.**
- (k) Overall benefit to the community;**
- (l) Compliance with sound planning principles;**
- (m) Compliance with the terms and conditions of any zoning approval; and**
- (n) Any other matter relating to the health, safety, and welfare of the community.**

When a special exception is granted by the Zoning Board of Adjustment it has the following effect:

Article II.C.3.f.

***Effect of Appeal – An appeal to the Board stays all legal proceedings in furtherance of the application appealed from unless the Director certifies to the Board that a stay would cause imminent peril to life and property. In such cases, proceedings will not be stayed, unless by operation of a court of competent jurisdiction. If an appeal fails for any reason, the stay shall be lifted.***

**Analysis and Recommendation:**

Special Exception Criteria:

**(b) Compliance with any other approved planning document**

Response:

“Personal Storage” is an allowable use within the M-1 zoning classification as indicated in the City of Fairhope Zoning Ordinance Article III, Section B., Table 3-1 Use Table. However, “Personal Storage” is not allowable by right and a special exception is required to allow personal storage as an allowable use. Further, Table 3-1 indicates the use is allowed “only on appeal and subject to special conditions”. The applicant is proposing to construct the storage facility immediately west of the existing Fairhope Floor Covering & Interiors facility, which will partially shield the storage facility from the view from Greeno Road, in similar fashion to the manner in which the existing Doc’s Storage facility is shielded from view from Greeno Road by the Fairhope Animal Clinic. The existing nearby storage facility as well as the nearby printing company, glass company, and an HVAC contractor are examples of compatible uses with the proposed storage facility.

**Recommendation:**

Staff recommends the Board of Adjustment APPROVE the proposed Special Exception for the subject property to allow a storage facility as depicted on the survey drawing dated October 24, 2017.

Prepared by:

J. Buford King  
LEED AP, QCI  
City Planner

**Site Photos:**



Subject property looking north from S. Grand Blvd. Subject property is on the right (east) and the existing Doc’s storage is shown beyond (orange garage doors).



Subject property looking southeast from S. Grand Blvd. Subject property is on the right (south) of the chain link fence line running out of the picture. The existing Fairhope Floor Covering & Interiors is shown beyond.





Subject property looking east from S. Grand Blvd. Subject property is on the right (south) of the chain link fence line running out of the picture. The existing Fairhope Floor Covering & Interiors is shown beyond. The existing Doc's storage is shown on the left (north – orange garage doors).



Subject property looking southeast from S. Grand Blvd. Subject property is straight ahead in the photo. The existing Fairhope Floor Covering & Interiors is shown beyond.



**APPLICATION FOR BOARD OF ADJUSTMENTS**

**Application Type:**  Administrative Appeal  Special Exception  Variance

**Property Owner / Leaseholder Information**

Name: LANCE W. Hill Phone Number: 251-379-0562  
 Street Address: 3362 Greend RD  
 City: Fairhope State: AL Zip: 36532

**Applicant / Agent Information**

If different from above.  
Notarized letter from property owner is required if an agent is used for representation.

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

- Site Plan with Existing Conditions Attached:  YES  NO
- Site Plan with Proposed Conditions Attached:  YES  NO
- Variance Request Information Complete:  YES  NO
- Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:  YES  NO

**Applications for Administrative Appeal or Special Exception:**

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

LANCE W. Hill  
Property Owner/Leaseholder Printed Name

Lance W. Hill  
Signature

11-21-17  
Date

\_\_\_\_\_  
Fairhope Single Tax Corp. (If Applicable)

**RECEIVED**  
 DEC 18 2017  
 BY: EB





**VARIANCE REQUEST INFORMATION**

What characteristics of the property prevent / preclude its development?:

- Too Narrow                       Elevation                       Soil
- Too Small                           Slope                               Subsurface
- Too Shallow                       Shape                             Other (specify)

Describe the indicated conditions: Request to construct a storage unit on PPIN 5318 located in M-1 Light Industrial District.

How do the above indicated characteristics preclude reasonable use of your land?  
Storage units are allowable upon special exception in this zoning district requiring approval of a special exception prior to issuance of a building permit.

What type of variance are you requesting (be as specific as possible)?  
Special exception to allow construction of a storage unit.

Hardship (taken from Code of Alabama 1975 Section 11-52-80):  
 "To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:	Residential	Commercial
Filing Fee:	\$100	\$500
Publication:	\$20	\$20
<b>TOTAL: \$</b>	<b>520.00</b>	

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Lance W. Hill  
 Property Owner/Leaseholder Printed Name

Lance W. Hill  
 Signature

1-11-2013  
 Date

\_\_\_\_\_  
 Fairhope Single Tax Corp. (If Applicable)