



**City of Fairhope  
Board of Adjustment and Appeals  
5:00 PM  
City Council Chambers  
July 16, 2018**

Karin Wilson  
*Mayer*

*Council Members*

Kevin G. Boone

Robert A. Brown

Jack Burrell, ACMO

Jimmy Conyers

Jay Robinson

Lisa A. Hanks, MMC  
*City Clerk*

Deborah A. Smith, CPA  
*City Treasurer*

1. Call to Order
2. Approval of the June 18, 2018 minutes
3. Consideration of Agenda Items:
  - A. BOA 18.09 Public hearing to consider the request of A&A Corte Family Limited Partnership for a Special Exception to allow a Clinic for property located on the north side of Fairhope Avenue directly across from Hoffern Drive.  
**PPIN #: 63508**
4. Old/New Business
5. Adjourn

161 North Section Street

P.O. Drawer 429

Fairhope, Alabama 36553

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, June 18, 2018 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

**Members Present: Anil Vira, Chairman; Harry Kohler; Christina Stankoski; Dick Schneider; John Avent; Cathy Slagle; Wayne Dyess, Director of Planning; Buford King, Planner; and Emily Boyett, Secretary.**

**Absent: Troy Strunk, Vice-Chair**

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

The minutes of the May 21, 2018 meeting were considered. Cathy Slagle moved to accept the minutes as corrected and was 2<sup>nd</sup> by John Avent. Motion carried with an abstention by Dick Schneider.

**BOA 18.08 Public hearing to consider the request of Brian and Gretchen Dixon for a variance to the side setback requirements for property located at 307 Equity Street.**

Mr. King gave the staff report.

**Summary of Request:**

The subject property is zoned R-2 Medium Density Single Family Residential District and includes the following building setbacks: front – 35’, rear – 35’, side – 10’ and side street – 20’.

A building permit was issued for the subject property and during construction the applicant discovered the concrete slab for the home under construction on the property was not constructed as shown on the stakeout survey dated 12/22/2017. The home to be constructed on the subject property includes a window projection across the side building setback line that is allowable by Article III Section 3 of the Zoning Ordinance.

Otherwise, the proposed home falls within the building setbacks of the property. The applicant furnished a foundation survey as an additional supporting document dated 4/16/2018 which indicates the actual placement of the proposed home’s concrete slab. The orientation of the slab’s as-placed located the northern window project inside the side building setback line on the property’s north side rather than across the setback line, and as a result a carport/garage encroaches upon the side building setback line on the property’s south side by approximately 2’-10”. The building setback line variance requests the allowance of the 2’-10” encroachment. The subject property is a parallelogram lot generally rectangular in shape approximately 13,435 sf in size. The shape of the lot is not particularly uncommon and is greater than the minimum 10,500sf lot size required for R-2 zoning. The lot has no visible extraordinary or exceptional topographical conditions. The subject property’s setbacks do not prevent the reasonable use of the property for residential purposes. The stakeout survey indicates the proposed home fits within the building setback lines.

Staff believes that a setback variance allowing the encroachment not warranted and the stakeout survey clearly depicts the proposed home within the building setbacks of the property. As a result, no relief is recommended.

**Recommendation:**

Staff recommends that this variance be **DENIED** as no hardship created by the subject property's size, shape, or topography has been proven as required by the criteria established by the *City of Fairhope Zoning Ordinance* Article II.C.3.e.

Mr. Vira asked if adjacent property could be purchased and Mr. King said he could not speculate. Ms. Slagle asked if the land adjacent is the access for the property to the east and Mr. King explained it is part of the adjacent property which is a flag lot and is their driveway. Mr. Avent noted the northern setback is shown as 15' on the survey provided by the applicant and only 10' is required. He stated the applicant would have an extra 5' if the survey would have been correct.

Bryan Broderick of Sawgrass Builders, LLC addressed the Board saying the encroachment was not intentional and was found when a foundation survey was completed for the bank. Mr. Broderick asked for leniency and cited a recent case that was very similar to this situation but there is no fire separation issue in this case and no adjacent house. He stated this request will not adversely affect the neighbors.

Brian Dixon, applicant, addressed the Board saying he currently lives in the Fruit and Nut area and this is their second home they have built here. He stated the neighbors support their request.

Mr. Vira opened the public hearing.

Christy Guepet of 317 Equity Street – She asked the Board to approve the Dixon's request. She said the encroachment was a mistake and was not done deliberately.

Having no one else present to speak, Mr. Vira closed the public hearing.

Mrs. Stankoski asked if there is a fire code violation and Mrs. Boyett responded no. Mr. Schneider asked how much of the home is encroaching the setback and Mr. King responded 2'9" and approximately 14 square foot. Mr. Avent stated the previous case was due to survey equipment error and Mrs. Boyett responded there was no proof of equipment malfunction. Mr. Avent asked why the northern setback is shown as 15' not 10' and Mr. Broderick explained the house would have been moved north 5' if they had realized the error on the survey. Mr. Schneider asked what the correction is for this situation and Mr. Broderick stated it would be catastrophic to tear the home down. Mr. Schneider stated it would be reasonable to approve the variance. Ms. Slagle stated this is the third request in 6 months and Mr. Schneider said the Board has approved the others so how can this one be denied. Mr. Broderick noted this request is almost exactly the same as the previous case.

Dick Schneider made a motion to approve the 2'10" side setback variance. John Avent 2<sup>nd</sup> the motion and the motion failed with the following vote: AYE – Christina Stankoski, Dick Schneider, and John Avent. NAY – Anil Vira and Cathy Slagle.

Mr. Broderick asked Ms. Slagle why she voted in favor of the last case but not this one which is a better situation. He asked the Board to reconsider their decision. Mr. Vira said he was not at that meeting and did vote on that case. Ms. Slagle said the Board is having more cases and what stops people from building over the setbacks and then coming before the Board and saying it was an accident. Mr. Dixon explained they wanted the house in the middle of the lot but would have resituated to the north 5' if they knew the error. Mr. Broderick reiterated this case is a better situation than the previous case the Board approved in December.

Dick Schneider made a motion to approve the 2'10" side setback variance to be consistent. John Avent 2<sup>nd</sup> the motion and the motion carried unanimously with the following vote: AYE - Christina Stankoski, Dick Schneider, John Avent, Anil Vira and Cathy Slagle.

Having no further business, Dick Schneider made a motion to adjourn. Christina Stankoski 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 6:01 PM.



# City of Fairhope Board of Adjustment

July 16, 2018

Case: BOA 18.09 Lot 1-B Planters Plaza

**Project Location:**

Lot 1-B Planters Plaza

**General Location:**

North side of Fairhope Avenue  
between Greeno Road and  
Bishop Road

**Request:**

Approval of a clinic through a  
use appeal pursuant to  
Article III. Section B. Table 3-1

**Applicant:**

A & A Corte, FLP  
A & D Corte, FLP  
Angelo A. Corte

**Zoning District:**

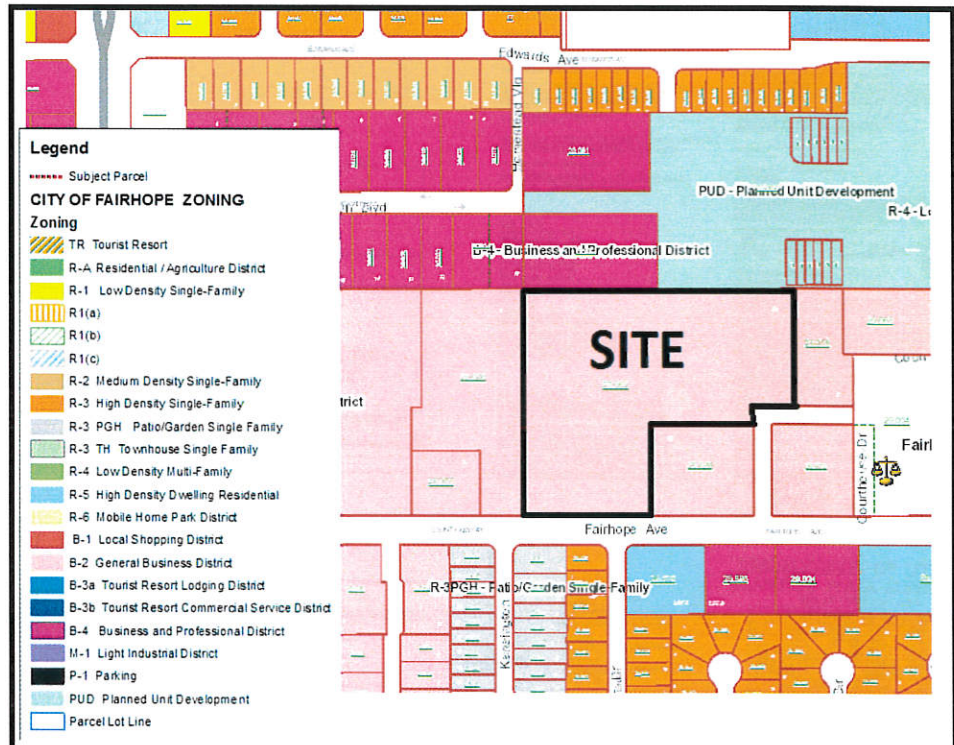
B-2 General Business District

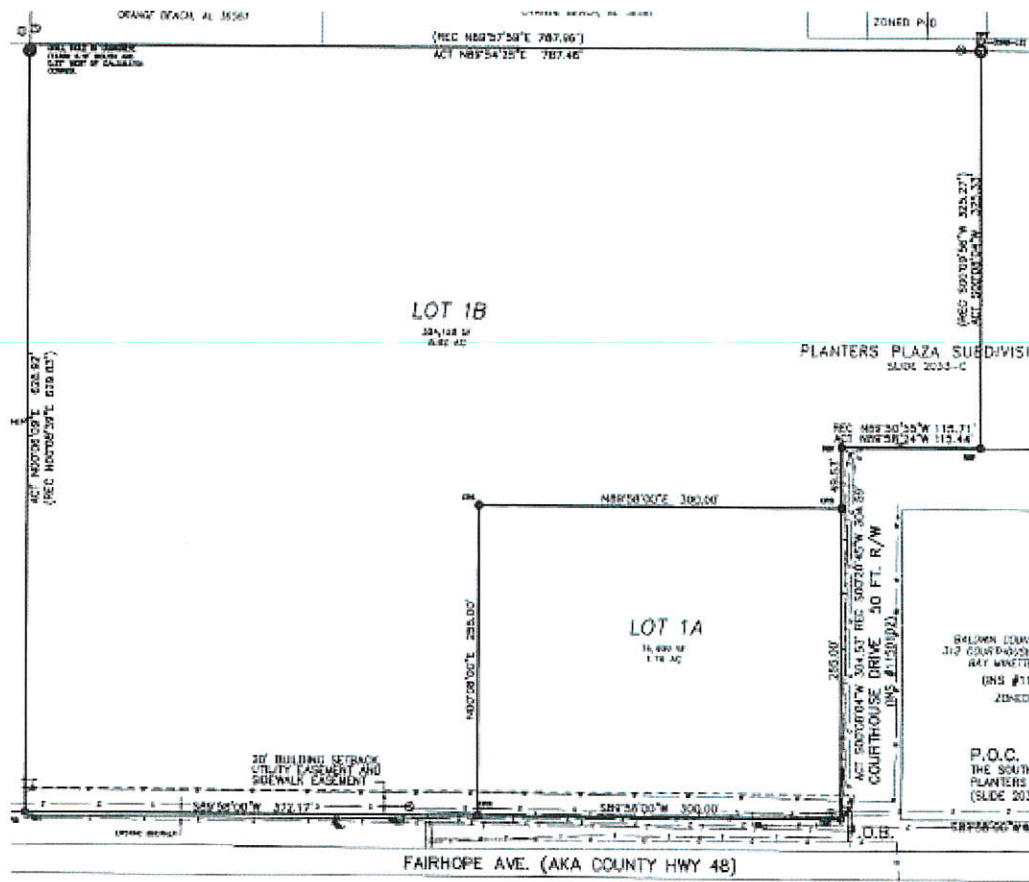
**PPIN Number:**

63508

**Recommendation:**

Staff recommends **Approval**





**Comments:**

The subject property is zoned B-2 General Business District which is designed to accommodate the following:

***B-2 General Business District: This district is intended to provide opportunity for activities causing noise and heavy traffic, not considered compatible in the more restrictive business district. These uses also serve a regional as well as a local market and require location in proximity to major transportation routes. Recreational vehicle parks, very light production and processing activities are included.***

The term “clinic” is defined by the Fairhope Zoning Ordinance in Article IX. Section B.5. as follows:

***5. Service Use Category***

***The Service Use category is for businesses that offer clients, customers, or patrons goods for consumption on the premises, or offer services for performance and delivery on the premises.***

***b. Clinic – a place used for the care, diagnosis and treatment of ailing, infirm, or injured persons, and those who are in need of medical and surgical attention, but who are not provided with board.***

The table of permitted uses Table 3-1 provides that a clinic in the B-2 District is only allowed on appeal. See below.

Table 3-1: Use table

Zoning District	R-A	R-1(a,b,c)	R-2	R-3 TH	R-3 P/GH	R-3	R-4	R-5	R-6	B-1	B-2	B-3a	B-3b	B-4	M-1	M-2	PUD	VRM	NVC	CVC
Service																				
Convalescent or Nursing Home	○	○	○			○	○	○		○	○	○		○	○	○				
Clinic	○	○	○			○	○	○		○	○	○			○	○	○			
Outdoor Recreation Facility	○	○	○			○	○	○			○	○	●	○	○	○	○			
Day Care	○	○	○			○	○	○			○	○			○	○	○			
General Personal Services										●	●				●	●				
Mortuary or Funeral Home											○			○	○	○				

● Permitted subject to general ordinance standards and conditions.  
 ○ Permitted subject to special conditions listed in the ordinance  
 ○ Permitted only on appeal and subject to special conditions

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 ○ Permitted subject to special conditions listed in the ordinance  
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**Analysis and Recommendation:**

The review criteria for a use appeal is as follows:

**Article II. Section C.e(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;**

Response: The Comprehensive Plan does not mention medical uses from a land use planning perspective. However, on page 5, Stakeholder Interview Summarization says “The largest economic engine in Fairhope is medical. The city needs to support the hospital and doctors as much as possible.” The development of appropriate medical office uses will further this goal.

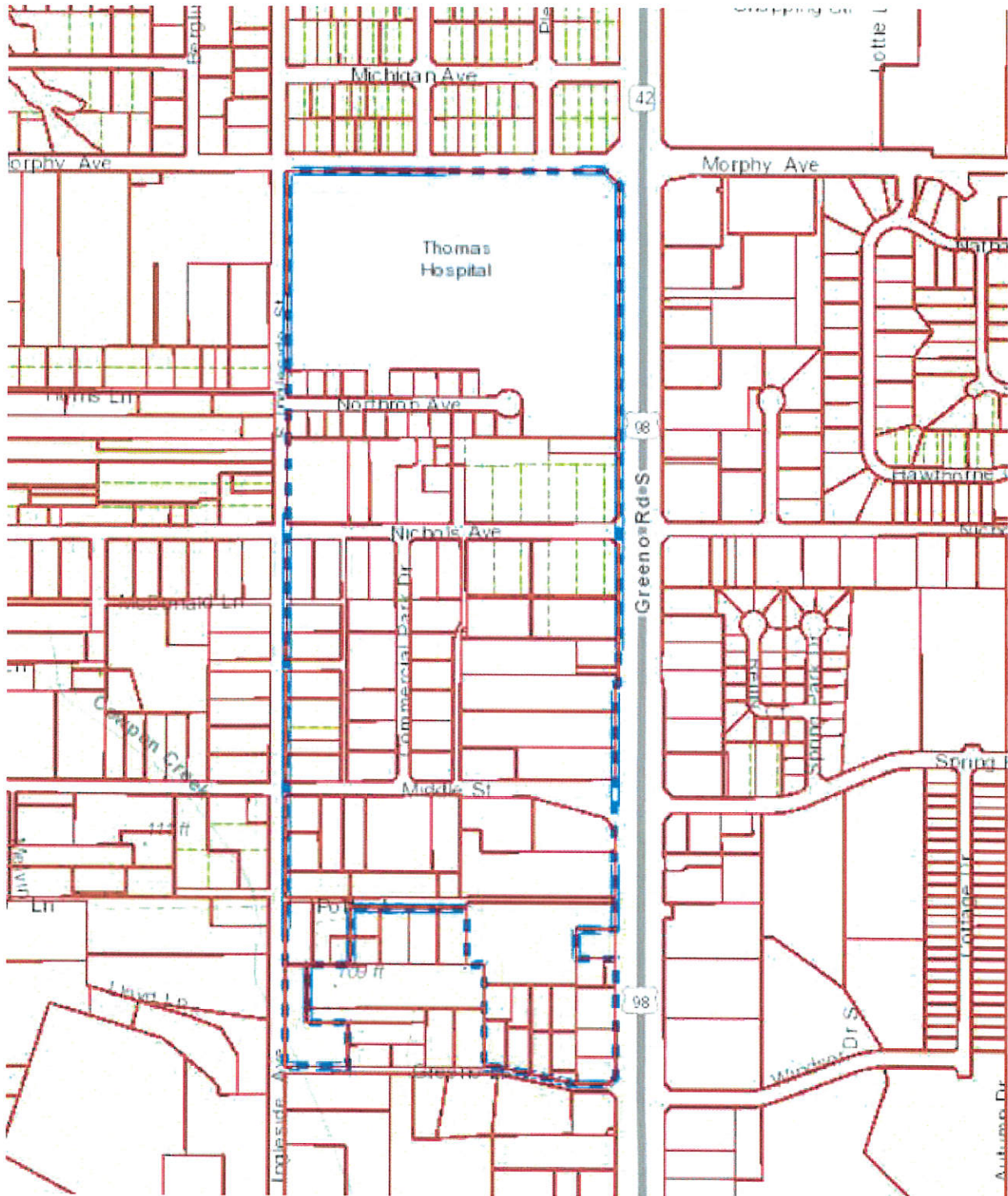
**(b) Compliance with any other approved planning document;**

Response: None noted.

**(c) Compliance with the standards, goals, and intent of this ordinance;**

Response: The Fairhope Zoning Ordinance does have a medical overlay district (Article V Section H. Medical Overlay District). The boundaries of the overlay are near and around Thomas Hospital at the following location: “North to parcels abutting the south side of Morphy Avenue, South to those parcels that are in the City of Fairhope abutting the north side of Greeno Lane, East to parcels abutting the west side of Greeno Road, and West to parcels abutting the east side of “South Ingleside Street.

Medical Overlay Map is outlined by the blue dotted line below.



The intent of the overlay is as follows: “The MO District is also intended to establish and accommodate highly specialized, unique uses and development types related to the medical field and to accommodate additional specialized needs and growth of the medical field and community.”

The subject property **is not** in the Medical Overlay District. However, it is adjacent to the new USA Mitchell Cancer Institute Kilborn Clinic and located near the Baldwin County Satellite Courthouse. After reviewing the current Medical Overlay District, it appears that there is not sufficient and available lot area within the overlay boundaries to accommodate the proposed medical use. Therefore, additional sites should be explored.



***(d) The character of the surrounding property, including any pending development activity;***

Response: The character of the surrounding property includes a medical facility (USA Mitchell Cancer Institute Kilborn Clinic), public facility (Baldwin County Satellite Courthouse), senior living facility (Homestead Village Retirement Community), and residential (southside of Fairhope Avenue and north of subject property).

***(e) Adequacy of public infrastructure to support the proposed development;***

Response: No issues noted.

***(f) Impacts on natural resources, including existing conditions and ongoing post-development conditions;***

Response: No issues noted.

***(g) Compliance with other laws and regulations of the City;***

Response: Construction on subject property must comply with all applicable municipal building codes, zoning ordinance and other applicable ordinances or regulation.

***(h) Compliance with other applicable laws and regulations of other jurisdictions;***

Response: If applicable, State and Federal requirements will be required.

***(i) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values;***

Response: The proposed medical is anticipated to have limited hours of operation consistent with a medical office. It should be noted that the medical use is less intense than most of the allowable uses in the B-2 General Business District.

***(j) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.***

Response: The proposed is not expected to impact property values negatively.

***(k) Overall benefit to the community;***

Response: The proposed use would serve medical needs of growing community as well support the economic aspect of community development.

***(l) Compliance with sound planning principles;***

Response: The proposed use is consistent with the existing development pattern and does not pose a threat to sound planning principles.

***(m) Compliance with the terms and conditions of any zoning approval; and***

Response: No issues noted.

***(n) Any other matter relating to the health, safety, and welfare of the community.***

Response: No issues noted.

**Recommendation:**

Staff recommends **APPROVAL** of the appeal to establish a medical clinic on the subject property.

May 30, 2018

RE: PPIN # 063508

PARCEL #: 46-05-16-0-000-020.002

DESCRIPTION: 8.8 AC LOT 1 B RESUB OF LOT 1 OF PLANTERS PLAZA SUB SLIDE 2544-F LYING IN  
THE CITY OF FAIRHOPE SEC 16-T6S-R2E (WD) IN1127129 BALDWIN COUNTY ALA.

To Whom It May Concern:

This written narrative is provided in connection with the accompanying request for a special exception concerning the proposed Medical Office/Clinic to be constructed on the above parcel of land that is currently zoned B-2.

As a reference, this land has been in my family for 60 plus years. The entire parcel at one time was 70 acres. Years ago, the City, through Mayor Jim Nix, requested that the subject property be annexed into the City, with the north half of the property to be zoned B-3 and the south half to be zoned B-2. We complied with the City's request, conditioned upon the ability to use the property in accordance with the B-2 and B-3 zoning as they existed at that time. Under our vested B-2 zoning rights, this parcel would not have required a special exception to build Medical Offices/Clinics. However, through the years, it appears that the definitions for B-2 have changed and although it is allowed in B-2, it is my understanding that the additional requirement of a special exception has been added. As you are aware, a portion of the original parcel currently has a Medical Office/Clinic operating on it, the University of South Alabama Mitchell Cancer Institute Kilborn Clinic. Therefore, the proposed use is consistent and compatible with the neighboring usage. In order to expedite the development of this project, we are requesting a special exception. However, this application is submitted with full reservation of rights and without waiver or relinquishment of vested zoning rights in and to the subject property.

It is our desire to continue supporting the medical needs of our community, therefore, I am asking the Board to approve this request.

Sincerely,



A & A Corte, FLP

A & D Corte, FLP

Angelo A. Corte (Member)



APPLICATION FOR BOARD OF ADJUSTMENTS

Application Type: [X] Administrative Appeal [ ] Special Exception [ ] Variance

Property Owner / Leaseholder Information
Name: 1/2 A & A CORTE, FLP 1/2 A & D CORTE, FLP Phone Number: 251-421-2031
Street Address: 23100 STATE HWY 181
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.

A & A CORTE, FLP A & D CORTE, FLP
Property Owner/Leaseholder Printed Name

[Handwritten Signature]
Signature

05/30/2018
Date

Fairhope Single Tax Corp. (If Applicable)



**VARIANCE REQUEST INFORMATION**

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

- |                                      |                                    |   |
|--------------------------------------|------------------------------------|---|
| <input type="checkbox"/> Too Narrow  | <input type="checkbox"/> Elevation | <input type="checkbox"/> Soil                       |
| <input type="checkbox"/> Too Small   | <input type="checkbox"/> Slope     | <input type="checkbox"/> Subsurface                 |
| <input type="checkbox"/> Too Shallow | <input type="checkbox"/> Shape     | <input checked="" type="checkbox"/> Other (specify) |

Describe the indicated conditions: Property is zoned B-2 and "Clinic" is permitted on appeal and subject to special conditions.

How do the above indicated characteristics preclude reasonable use of your land?

What type of variance are you requesting (be as specific as possible)?

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.

A & A CORTE, FLP A & D CORTE, FLP  
Property Owner/Leaseholder Printed Name

*Angelito D. Corte*  
Signature

05/30/2018  
Date

Fairhope Single Tax Corp. (If Applicable)