

The City of Fairhope Board of Adjustments and Appeals met on Monday, June 18, 2007 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Chairman Ray Clark; Vice Chair Bob Mannich; Cathy Slagle; Teddy Joe Faust; Suzanne Winston; Louis Agee; Stan Grubin; Barry Fulford, Building Official; Jonathan Smith, Planner; and Emily Irby, Secretary.

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

Members were asked to review the April 16, 2007 minutes for consideration and make a motion to approve. Cathy Slagle made a motion to approve the minutes as written. Bob Mannich seconded the motion. All approved. Louis Agee abstained.

ZBA 07.04 Public Hearing to Consider the Request of Danny Smith and the Fairhope Planning Department for zoning clarification and a possible use variance for property located at 211 South Section Street.

Jonathan Smith, Planner came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The zoning classification of the subject parcel is unclear. Mr. Smith purchased the property in 2004 with the impression that it was zoned B-1 Local Shopping District. Mr. Smith had received a letter from Christopher Baker stating his property had such zoning, but cannot produce the letter. However, when Mr. Smith approached the City of Fairhope in 2007, wanting to open a furniture sales and consignment store, the current Zoning Map labeled the property as R-4 Low Density Multi-Family Residential District. After further research of numerous zoning maps Staff was unable to precisely determine the property's zoning designation. 1961 was the oldest map of record staff researched and it indicated the property zoned R-1 (Residential District Single Family). The 1976 map shows R-3 (Multi-Family) zoning, the 1988 map shows R-4 (Low Density Multi-Family), and the 1999, 2000, and 2001 maps show R-4 zoning. Staff and the City Clerk (Geniece Johnson) researched City records and were unable to find any ordinance establishing zoning for the subject parcel. Therefore, the planning staff and City Clerk take the position that the property is zoned R-1 (Low Density Single Family Residential). R-1 is the base zoning designation for land that is annexed into the City of Fairhope.

Chairman Clark asked Mr. Smith to come forward and state his case.

Danny Smith of 34300 Catherine Drive, Lillian, Alabama came forward. He explained that he purchased the property in 2004 under the assumption that it was zoned B-1. The property consists of a 100-year old house and a vacant lot. He stated that all the property between his and the downtown area is zoned business. Mr. Smith provided the Board with a handwritten map showing the subject property as B-1. He explained that he had received the map with the zoning letter from Christopher Baker, the City Planner at the time. Mr. Smith and his wife lived in the house for a year and a half, until 2006 when

they decided to sell or lease the property. No one showed interest so they decided to open their own business. Mr. Smith stated that they bought 50 to 70 thousand dollars in merchandise to start their business. The Smiths' visited the Planning Department in 2007 to notify the City of their plans, at which time they were told that the property was zoned R-4 Low Density Multi-Family Residential District and a business was not allowed. The Smiths' leased space on DeLaMare to house their business until the zoning could be verified. The Staff researched the property and could not find where the property had been rezoned. Therefore, Staff told them the property reverted back to R-1 Low Density Single Family Residential District because no ordinance establishing zoning could be found. Mr. Smith explained the property to the north is zoned business, to the west is a church, to the south is business, and to the east is multi-family. Mr. Smith stated that he filed for rezoning from R-1 Low Density Single Family Residential to B-1 Local Shopping District and was denied. Now he is before this Board to request his property be zoned B-1 Local Business District because it is surrounded by business.

Chairman Clark opened the meeting as a public hearing.

No speakers were present. Chairman Clark closed the public hearing.

Bob Mannich asked Mr. Smith what caused him to question the zoning. Mr. Smith responded that Christopher Baker had stopped and questioned if they had a permit. Mr. Smith said that his property is in the public eye and wanted the City to be aware of a business at that location.

Mr. Mannich asked if Mr. Smith was still planning on having his business there if it is rezoned to B-1 Local Business District. Mr. Smith explained that he was not planning to continue with his business, that he only wanted to sell what merchandise he had left. Mr. Smith said he wants the B-1 zoning because that's what they purchased it under and they might want to lease it as a furniture store.

Cathy Slagle questioned if the property was represented as B-1 by a realtor. Mr. Smith responded that they bought it from an individual, but were told that it was business. Mrs. Slagle asked if the property was zoned business, where would the parking be located. Mr. Smith responded that they would put in a circle drive or customers could park across the street in the church parking.

Jonathan Smith explained that Mr. Smith would have to provide his own parking.

Louis Agee asked why Mr. Smith is requesting B-1 zoning if there is no proof that it ever was B-1. Mr. Smith responded that the City sent him a map and letter stating the property was B-1, but he could not produce the letter. Mr. Agee asked if this is a historical building. Mr. Smith said it does not have a historical listing, but it is one hundred years old. Mr. Agee stated if a variance is granted he would include a condition that no structural changes be made to the building.

Ray Clark asked if the only reason Mr. Smith was requesting B-1 was for the resale of the property. Mr. Smith said no, but in the future it could help the resale.

Cathy Slagle wanted to know what business is allowed in R-4. Jonathan Smith informed the Board that no business is allowed in R-4. Bob Mannich asked for the uses under B-1. Jonathan Smith listed the uses for B-1. Mr. Mannich asked if a B-1 zoning could be given with restrictions or contract zoning. Jonathan Smith said he would not recommend that.

Bob Mannich asked Mr. Smith if he would be satisfied with the R-4 zoning. Mr. Smith said no, he wants B-1.

Teddy Faust made a motion to establish the zoning as R-4 Low Density Multi-Family Residential District with a use variance for six months to liquidate remaining merchandise. Bob Mannich seconded the motion.

Louis Agee asked to amend the motion to include hours of operation that are limited to 8:00 am to 6:00 pm; to maintain the integrity of the house within the six month use variance; and that there be no outside displays.

Teddy Faust amended his motion as such. Bob Mannich amended his second. Motion carried with one no vote by Cathy Slagle.

A motion to adjourn was made by Louis Agee. Motion seconded by Bob Mannich. Motion carried unanimously. The meeting was adjourned at 6:05 PM.

Minutes were reviewed and approved by the Board of Adjustments on Monday, November 19, 2007.