



City of Fairhope
Board of Adjustment and Appeals
5:00 PM
City Council Chambers
March 18, 2019

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

Michael V. Hinson, CPA
City Treasurer

1. Call to Order

2. Approval of Minutes

- December 17, 2018
- February 18, 2019

3. Consideration of Agenda Items:

- A. BOA 19.02 Public hearing to consider the request of Superb Foods, Inc. for a Special Exception to allow a Junk/Salvage Yard at 8330 Nichols Avenue.
PPIN #: 214349
- B. BOA 19.03 Public hearing to consider the request of James Frederick for a variance to the front setback requirements of accessory structures for property located at 308 Miller Avenue.
PPIN #: 14142
- C. BOA 19.04 Public hearing to consider the request of Jan Fleming for a variance to the rear setback requirement of the principal structure for property located at 214 Rock Creek Parkway.
PPIN #: 114788

4. Old/New Business

- Election of Officers

4. Adjourn

161 North Section Street

P O. Drawer 429

Fairhope, Alabama 36535

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251-928-6776 Fax

www.fairhopeal.gov

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The City of Fairhope Board of Adjustments and Appeals met on Monday, December 17, 2018 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.

Members Present: Harry Kohler; Dick Schneider; Christina Stankoski; John Avent; Cathy Slagle; Wayne Dyess, Director of Planning; Buford King, Planner; Mike Jeffries, Planning Tech.; and Emily Boyett, Secretary.
Absent: Anil Vira, Chairman; and Troy Strunk, Vice-Chair

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

Dick Schneider made a motion

BOA 18.11 Public hearing to consider the request of Magnolia Church, LLC for a Special Exception to allow parking in the front for property located at 301 Magnolia Avenue.

Mr. King gave the staff report.

Summary of Request:

The applicant is requesting a special exception from the parking requirements of City of Fairhope Zoning Ordinance *Article V, Section B.4.d.(2)* to allow “front screened parking on the Church St. frontage only”. The subject property is zoned B-2 General Business District and is located within the Central Business District. A supporting drawing depicting a future development on subject property containing three (3) residential units, two buildings with an unspecified unit count that are likely to be mixed-use commercial/residential, a 20-space onsite parking area, additional on-street parking along North Church Street, and reconfigurations of existing on-street parking along Magnolia Avenue. The residential units along Church Street reflect 20’ front building setbacks as required by Table 3-2, Dimension table, and the mixed-use buildings are shown at the right-of-way line as required by Article V, Section B.4.a. The intent of the development is to create individual lots for each residential unit, likely in a future subdivision application, as well as construct parking and an unknown number of potential mixed-use units likely in a future Multiple Occupancy Project (MOP) application. The applicant states the indicated conditions of the subject property include a “grade differential across the site (that) is approximately 15’. The use of retaining walls and terraced building areas makes it difficult to have vehicle access to the rear of the Church St. frontage lots”. The applicant states the indicated conditions preclude reasonable use of the land because the “rear parking as required for residential use presents an extraordinary use of land for circulation”.

The 20-space off-street parking area located behind (north) of the two proposed commercial units is not required in the CBD as explained in the zoning ordinance and parking for the residential units is required. However, Article IV, Section E.2. states “businesses in the CBD Overlay are encouraged to provide off-street parking facilities” for commercial uses. It appears the rear (north) parking area satisfies the parking loading of the two proposed mixed-use units based upon the square footage of the commercial units, as if onsite parking was required for those commercial units, and that parking is

located behind the mixed-use buildings as required by *Article V, Section B.4.d.(1)*. However, the exact use of the two proposed commercial buildings is not known and therefore the exact parking requirements for this area is not known and pending the necessary development applications needed for the site. The subject application is related to the parking requirements of the Church Street residential units, however the potential hardship related to furnishing the required parking affects the grading of the site.

The subject property is rectangular in shape and approximately 22,400 sf, or slightly more than ½ acre in size. The shape of the lot is not uncommon, and no minimum lot size is required for B-2 zoning. The extraordinary or exceptional topographical conditions are not immediately noticeable visually, however the applicant illuminates the grade differential on the lot is 15' and the effect of the grade differential.

The applicant states the hardship created by the topography of the subject property affects the grading necessary to develop the site. Specifically, the applicant asserts the proposed 20-space parking area will have a finished elevation of approximately 10' higher than the finished floor elevation of the residential units fronting Church Street, complicating the drainage design of both areas. Staff understands the conceptual need to allow front, screened parking for the residential units along Church Street and does not necessarily object to the screened parking. Staff believes the applicant has a reasonable request for a relief from the zoning ordinance due to extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, and more specifically its topography. The applicant requested a variance in their application, but the type of relief requested is actually a request for special exception. This review will consider the applicant's request for a variance and review the criteria for a variance as a means of evaluating the application, but the staff recommendation will be in terms of a *special exception*.

The requested special exception is in relation to the residential uses to be constructed on subject property, with each unit likely located on its own lot to be created by a future subdivision request. The dimensions of the property do not appear to prevent the reasonable use of the property for residential purposes. The applicant's proposed method of developing the subject property involves cutting and filling of the site.

The applicant wishes to construct the residential units at the lower elevation along Church Street, with street access from Church Street rather than the CBD requirement for rear loading. The applicant further states the intended development desires to use the cut material from the site to fill and "build up" the proposed parking area so that the parking area will have the required elevation to drain from the parking area and connect to an existing drain inlet at the intersection of Magnolia Ave and N. Church Street. Staff requested the applicant clarify the various alternatives that would not require approval of a variance from the parking requirements within the CBD and construct the proposed development with the required rear parking. The applicant indicated reducing the elevation of the proposed parking area and raising the finished floor elevation (FFE) of the proposed residential units is possible and would allow rear access to the residential units by traversing the parking area and reducing the number of parking spots in the parking area. However, reducing the elevation of the parking area would reduce the elevation of the drain inlet to the parking area to an elevation where gravity flow drainage from the parking area's drain inlet to the existing conveyance system would not be possible. Further, deep (4' approximately) excavation would occur immediately adjacent

to the existing residential property north of subject property, with possible undercutting and stabilization of the adjacent property occurring as a result.

Staff understands the conceptual need for and does not necessarily object to the requested screened front parking. The application provided additional clarification indicating the drain inlet for the parking area with an elevation of 105'. If the parking area is constructed with this drain inlet at 105', the parking lot will adequately drain to the existing drain inlet at an elevation of 102'.

Staff met with the applicant multiple times to gain a better understanding of the request and the conditions of the existing site. Though it is possible the northernmost residential unit could be moved southward to allow a drainage easement for connection of the parking area's drainage to N. Church Street, the deep excavation needed to allow rear parking to the residential units would still be required,

Many of the existing residences on the west side of N. Church Street, which are outside of the CBD, contain front loaded parking with driveways not unlike those requested by this request for variance (special exception), and as a result staff understands the potential compatibility the proposed front loaded parking of the proposed residences provides if they were not located within the CBD. The proposed development depicted in this case requires substantial cutting and filling of soil and construction of retaining wall systems regardless of the type of construction system utilized, and therefore believes the applicant has not necessarily submitted subject application to avoid financial hardship. Staff believes the hardship caused by the site's topography is the ability to construct an adequate drainage system while also avoiding deep excavation immediately adjacent to existing residences, which is a possible detriment to the public good. As a result, the staff recommendation for subject application will be for approval, and staff believes no relief is recommended to be granted that would cause substantial detriment to the public good and impair the purpose and intent of the zoning ordinance.

Staff Recommendation:

Staff recommends this request for special exception be **APPROVED**.

Mr. Vira asked if the timeframe for the approval can be limited and Mr. Dyess stated the Board can make it a condition of approval. Mr. King added the Notice of Action Taken will be recorded and any conditions are included.

Mr. McCown addressed the Board saying the request is to allow the proposed townhomes to have parking at grade and to match the existing homes on the opposite side of the street. He noted on-street parking would only accommodate 5 spaces but the proposed parking lot will net 44 spaces.

Mr. Vira opened the public hearing.

Ronny Holifield of 55 N. Church Street – He spoke in favor of the proposal and said the townhomes will fit with the rest of the residential use on the street.

Mrs. Boyett stated she received two calls from surrounding property owners in favor of the request.

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

Cathy Slagle made a motion to accept the staff recommendation to **APPROVE** the special exception to allow front parking along N. Church Street for PPIN 15164 with the following conditions:

1. The Notice of Action Taken shall be recorded.
2. The Special Exception shall be acted upon within 365 days.

Mr. McCown stated he did not know if the project can be done within a year. He asked if the approval can be tied to the applicant and this proposal. Mr. King explained the submittal of a development application, such as a subdivision request or site plan application, would constitute the approval being acted upon.

Harry Kohler 2nd the motion and the motion carried unanimously with the following vote: AYE – Harry Kohler, Christina Stankoski, Dick Schneider, Anil Vira, and Cathy Slagle. NAY- none.

Having no further business, Harry Kohler made a motion to adjourn. Christina Stankoski 2nd the motion and the motion carried unanimously. The meeting was adjourned at 5:19 PM.

The City of Fairhope Board of Adjustments and Appeals met on Monday, February 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; Dick Schneider; John Avent; Cathy Slagle; Wayne Dyess, Director of Planning; Mike Jeffries, Planning Tech.; and Kim Burmeister.

Absent: Troy Strunk, Vice-Chair; Christina Stankoski; Buford King, Planner; and Emily Boyett, Secretary

The meeting was called to order at 5:00 PM. There were no minutes available to approve from previous meetings. December 2018 minutes will be tabled for review and approval at the next meeting (there was no quorum at January 2019 meeting).

BOA 18.14 Public hearing to consider the request of Rick Gambino for a variance to the side and rear setback requirements for property located at 151 S. Mobile Street.

Mike Jeffries presented the case. Applicant is asking for a front setback variance of 5' making the front setback 25' instead of the required 30'. Mr. Jeffries said staff is recommending approval. Cathy Slagle said most of the other lots along S. Mobile Street were compliant with setbacks of 30 or 30+ feet of frontage. She wondered why this project is being considered for a 5' variance on the front. Wayne Dyess commented that the lot is smaller than the average lot in that area and the overall footprint of the house as proposed is not unreasonable. Applicant reduced the variance request from the previous meeting in December in which it was heard. Anil Vira asked for clarification of the 10' separation rule between principle structure and accessory structure. Cathy Slagle was concerned that the house might block the view of neighbors if the variance was approved. John Avent commented that it did not appear the variance would cause an obstruction of view for neighbors.

No one from the public spoke or objected to the project.

Kathy Heard spoke on behalf of the applicant, who was not there. She said the existing house (which will be demolished to build the new house) is already non-compliant at 25.9' off the front instead of 30'. She said Mr. Gambino will be living in this house and he is not building it for resale.

John Avent made a motion to approve. Dick Schneider seconded the motion. Motion passed unanimously.

BOA 19.01 Public hearing to consider the request of ADHD Medical Clinic of Mobile, PC, for a Special Exception to allow a Clinic at 101 Lottie Lane, Unit 6.

Mike Jeffries presented the case and added that staff recommends approval since the use would be similar to other businesses along Lottie Lane.

No one from the public spoke or objected.

Dr. Westbrook, applicant, spoke about the project. It will be a clinic for adolescents 12 years old to adult. Cathy Slagle asked what portion of the building would be used as the clinic. Dr. Westbrook said it would be an interior office space at the southwest side of the building, second floor.

Cathy Slagle made a motion to approve. John Avent seconded the motion. Motion passed unanimously.

Having no further business, the meeting was adjourned at 5:35 PM.



City of Fairhope Board of Adjustment

March 18, 2019

Case: BOA 19.02 8330 Nichols Avenue

Project Location:

8330 Nichols Ave

Applicant

Joe Roszkowski

General Location

8330 Nichols Ave 5/16 mile east of Greeno Road

Request

Special Exception to allow a Junk Yard or Salvage Yard

Project Acreage

1.3 acres approximately

Zoning District

City of Fairhope M-1 Light Industrial

PPIN

214349

Report prepared by

J. Buford King
City Planner

Recommendation

Approval with conditions



Summary of Request:

The applicant is requesting a special exception to allow a junk or salvage yard at 8330 Nichols Avenue, which is the existing location of the Superb Foods office facility. Planning Commission case number ZC 18.13 proposed the re-zoning of subject property from R-1 Low-Density Single-Family District to M-1 Light Industrial District, with first reading before the City Council occurring on March 7, 2019. Final consideration of Case number ZC 18.13 will likely occur on March 25, 2019. The site plan included with Case number ZC 18.13 proposes a conveyance of a portion of PPPIN 214349 to PPIN 20371. The existing use of PPIN 20371 is a junk or salvage yard operated by Tony’s Towing, and proposes to extend the existing junk/salvage yard use of PPIN 20371 onto the portion of PPIN 214349 to be conveyed. 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'

An existing junk / salvage yard facility operated by Tony’s Towing is located immediately west of the subject property. The map below depicts subject property and the existing Tony’s towing property, and the portion of subject property proposed for conveyance to the Tony’s Towing property, with associated PPINs:



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:

“Junk Yard or Salvage Yard” 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, “Junk yard or Salvage Yard” is not allowable by right and a special exception is required to allow the use. Further, Table 3-1 indicates the use is allowed “only on appeal and subject to special conditions”.

During the review of Case number ZC 18.13, which considers the rezoning of subject property from R-1 Low-Density Single-Family District to M-1 Light Industrial District, the following criteria were considered:

Article II Section C.1.e.(3) The character of the surrounding properties

The subject property is bordered to the west by the existing Tony's Towing Office and support facilities, zoned M-1 Light Industrial; to the south by the Belle Chase Phase I subdivision, zoned R-3 PGH High Density Single-Family Patio Garden Home Residential District; to the east by PPIN 36272 located within unzoned Baldwin County, and to the north by Hawthorne Glen subdivision, zoned R-3 PGH High Density Single-Family Patio Garden Home Residential District. A replat of PPIN 214349 and 20371 is included as a supporting document reflecting a proposed conveyance/common lot line movement of a portion of PPIN 214349 to PPIN 20371 for a possible expansion of the Tony's Towing facility and serves as the site plan for the proposed re-zoning. A re-zoning of PPIN 34502 was approved by the Fairhope City Council on September 10, 2012 which re-zoned PPIN 34502 from R-1 District to M-1 via ordinance number 1473. The character of the existing neighborhood is a combination of commercial and high-density residential properties, with a "corridor" of properties zoned M-1 following Nichols Avenue beginning near Ingleside Street and proceeding east along Nichols Avenue, crossing Greeno Road, and continuing to subject property. An excerpt of the zoning map depicting the Nichols Avenue M-1 "corridor" is shown below with subject property outlined in black:



Article II Section C.1.e.(6) Compliance with other laws and regulations Subject property falls within the police and permit jurisdictions of the City of Fairhope and the various ordinances (Tree/Landscape, Erosion Control, Signage, Greeno Road Buffers, etc.) will apply to any development activities. The proposed conveyance replat for subject property includes a note indicating compliance with ordinance 1444, Tree/Landscaping ordinance is required so that proper screening is included between the proposed M-1 zoning district and the existing adjacent R-3PGH zoning district immediately south of subject property.

Article II Section C.1.e.(8 & 9) Impacts on adjacent and neighboring properties including noise, traffic, visible intrusions, potential physical impacts, and property values. As described in detail in the comments related to Article C.1.e.(3) above, the adjacent property to the west of subject property is the office and support facilities for Tony's Towing. PPIN 20371 that contains the Tony's Towing operation was annexed into the City of Fairhope, conditional upon establishment of M-1 zoning, in July 1997 via ordinance number 1016. The existing office space located upon PPIN 214349 is an existing non-conformity as it is located upon an area zoned R-1 low density residential. Pending approval of Case number ZC 18.13, subject property's zoning district will be aligned with the zoning district of the adjacent western properties, as well as the M-1 zoned properties within 150' to the west and southwest of subject property. With the exception of an automobile repair facility, the most intense uses, such as automobile service centers, junk yards, salvage yards, outdoor sales yards, or personal storage facilities require approval by the Board of Adjustments prior to establishment of that type of land use. The nature of the existing use of the adjacent property to subject property, the screening

requirements of the tree/landscape ordinance, as well as the additional vetting required via subject application mitigates any impacts to the adjacent and surrounding properties.

Recommendation:

Staff recommends the Board of Adjustment APPROVE the proposed Special Exception for the subject property to allow a Junk Yard or Salvage Yard facility as depicted on the survey drawing dated October 2018 subject to the following condition:

- 1) City Council approval of Case number ZC 18.13, rezoning of PPIN 206820 and 214349 from R-1 Low-Density Single-Family Zoning District to M-1 Light Industrial Zoning District.

Prepared by:

J. Buford King

LEED AP, QCI

City Planner

Site Photos:



Subject property looking south along border between PPIN 20371 and PPIN 214349



Subject property looking south along border between PPIN 214349 and PPIN 206820



Subject property looking southwest from Nichols Ave



Looking toward subject property southeast from PPIN 20371



City of Fairhope Board of Adjustment

March 18, 2019

Case: BOA 19.03 308 Miller Avenue

Project Name:

308 Miller Ave

Property Owner / Applicant:

James Frederick

General Location:

Approximately 250' west of the intersection of N. Section Street and Miller Avenue.

Request:

Accessory Structure front setback variance

Project Acreage:

4/10 acre approximately

Zoning District:

R-2 Medium Density Single Family Residential District

PPIN Number:

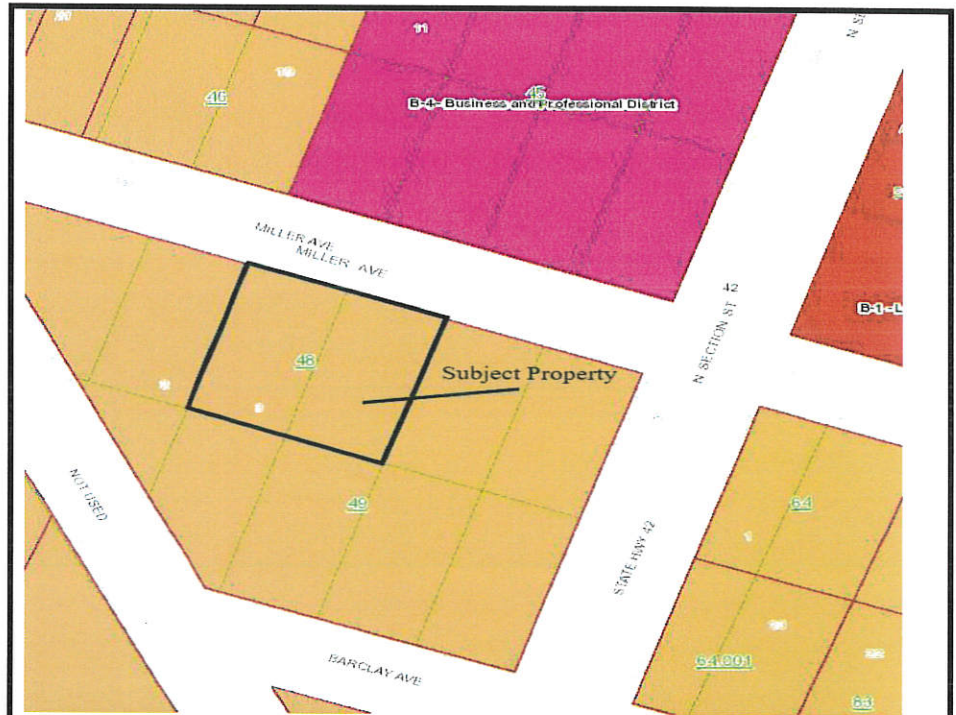
14142

Report prepared by:

Mike Jeffries
Planning Technician, QCI

Recommendation:

Approval



Summary of Request:

The applicant is requesting a variance from the accessory structure front setback which requires the structure to be built behind the rear building line of the principle structure per City of Fairhope Zoning Ordinance *Article III, Section C.1 Table 3-2*. The applicant wishes to build the accessory structure even with the front building line of the principle structure and 5.5' from the side property line.

The applicant has provided supporting drawings showing the proposed location for the accessory structure and Topographic overlay.



Viewer Map



February 7, 2019

— Misc
□ County Boundary
□ Parcels
--- Lot Lines

RECEIVED
FEB 11 2019
BY: [Signature]

James Pierce Frederick
308 Miller Ave
Fairhope, AL
05-46-37-0-001-048.000

1:1,128
0 50 100 200 ft
0 15 30 60 m
KCS Sources: Esri HERE Garmin USGS Intermap INCREMENT P NRCAn

Comments:

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

Variations: 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. Variations 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 variance through Article II.A.d(3) which says the following:

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

(3) Variations - 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: The subject property has a topography that slopes towards Volanta Gulley. The principle structure and pool are located on the flattest part of the lot. The remaining part of the property behind the rear building line of the principle structure has worsening slope.

(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: Building the accessory structure behind the principle building line would require the removal of several trees and dirt work on the slope leading to a gulley.

(c) Such conditions are peculiar to the particular piece of property involved; and

Response: The site is unique to itself as it is at a dead end street and a large portion of the property would require extensive engineering to be built upon.

(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.

Response: Relief, if granted, would not cause any detriment to the public nor impair the intent of this ordinance. The property is at a dead end street that leads to Volanta Gulley which is heavily wooded.

Additionally, the entire block that the subject property is located on is owned by the applicant and has stated that it will be donated as a park to the City in the future. The lot and surrounding area all drain water to Volanta Gulley. By allowing the accessory structure to be built even with the front building line there will be less land disturbance to the area.

Staff Recommendation:

Staff recommends this request be approved.

Prepared by:
Mike Jeffries
Planning Technician, QCI



City of Fairhope Board of Adjustment

March 18, 2019

Case: BOA 19.04 214 Rock Creek Pkwy

Project Name:

214 Rock Creek Pkwy

Property Owner / Applicant:

Jan Fleming

General Location:

Approximately 300' west of the intersection Rock Creek Pkwy and Clubhouse Dr.

Request: Variance to rear Setback

Project Acreage:

4/10 acre approximately

Zoning District:

PUD

PPIN Number:

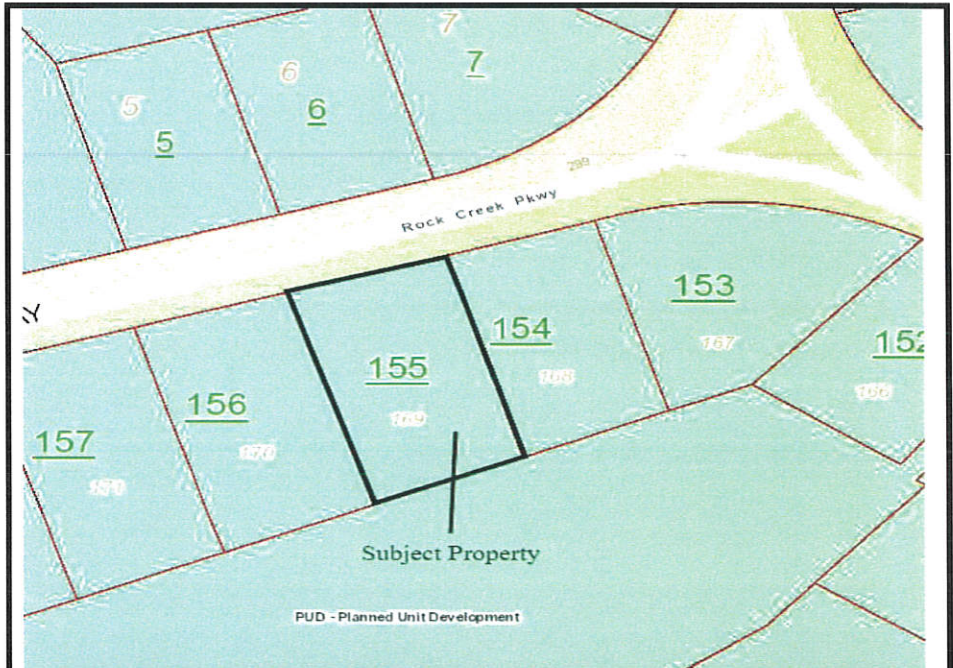
114788

Report prepared by:

Mike Jeffries
Planning Technician, QCI

Recommendation:

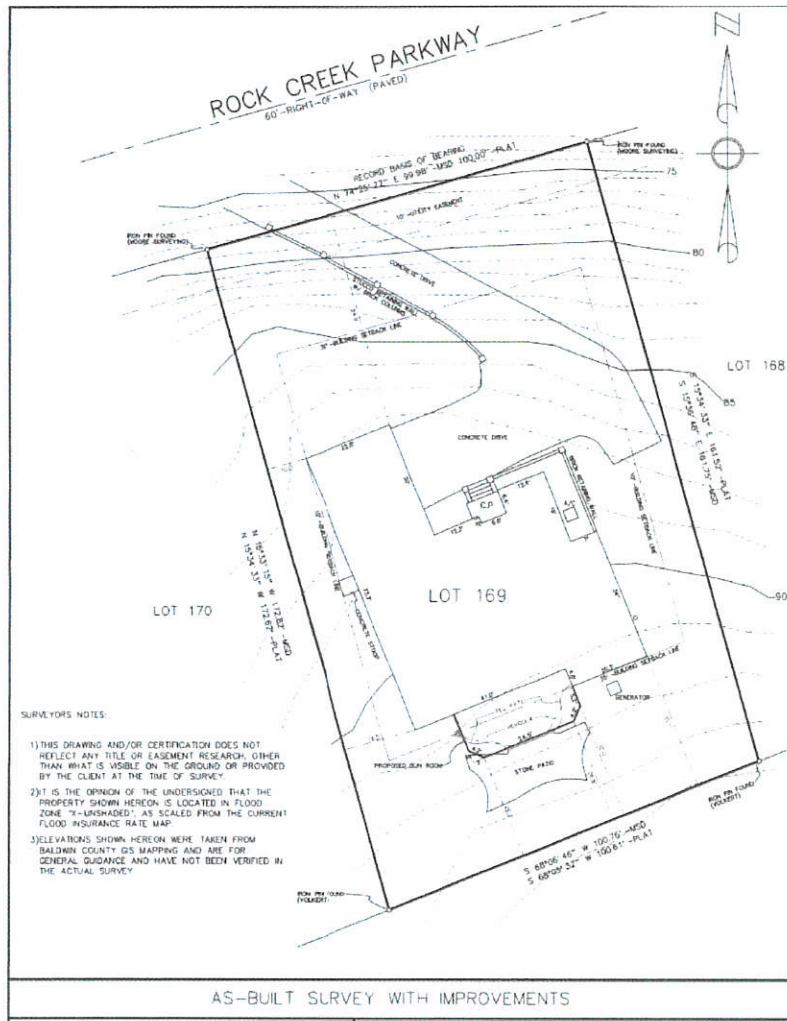
Denial



Summary of Request:

The applicant is requesting a variance from the rear setback of the principle structure per City of Fairhope Zoning Ordinance Article III, Section C.1 Table 3-2. The applicant wishes to build a sunroom that is attached to the house over an existing patio.

The applicant has provided a survey showing the proposed dimensions and location of addition.



Comments:

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

Variations: 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. Variations 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 variance through Article II.A.d(3) which says 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.

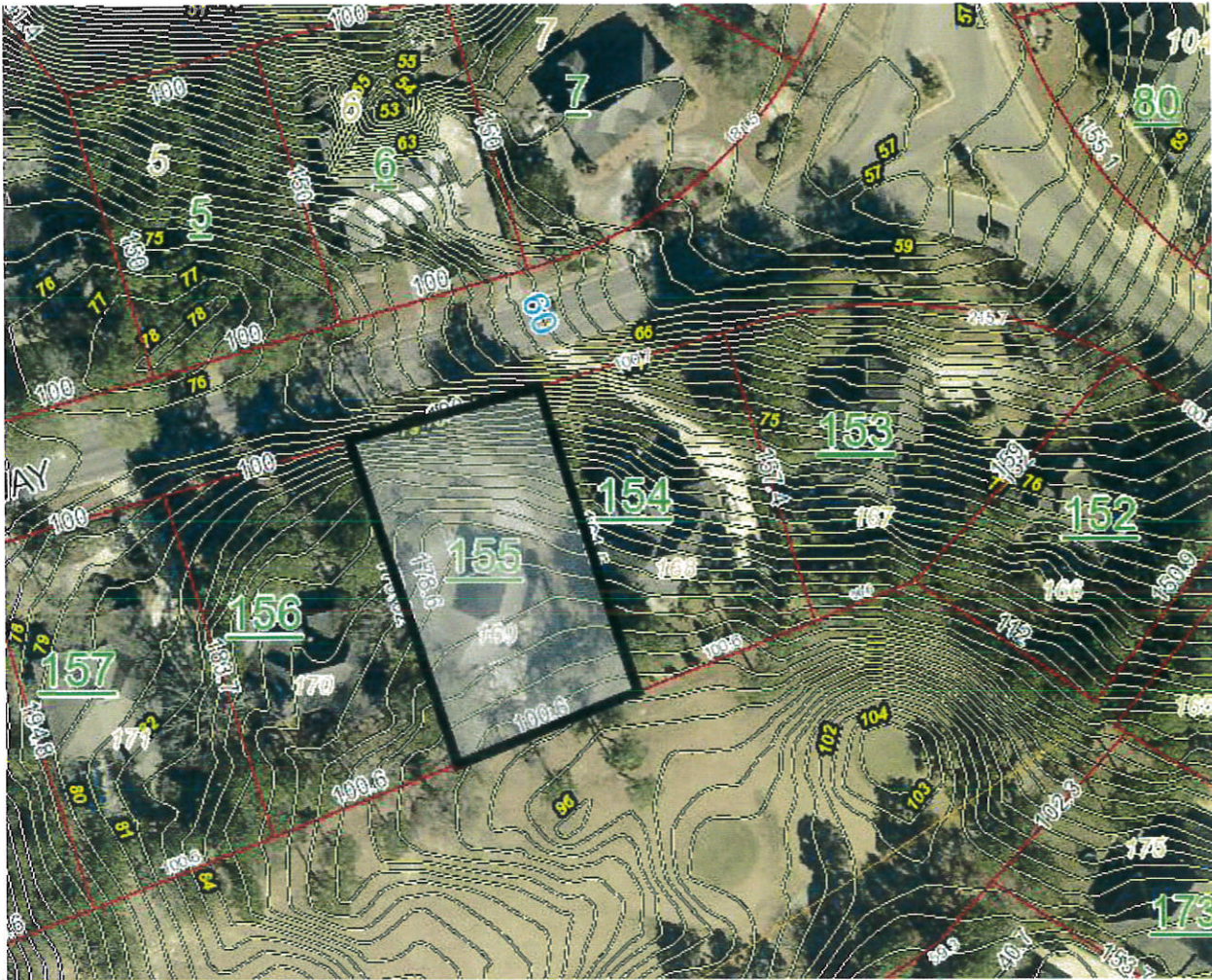
Effect of Variance - Any variance granted according to this section and which is not challenged on appeal shall run with the land provided that:

- (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: The subject property has a topography where the front of the lot slopes towards the street. The surrounding properties have the same characteristics



(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: The hardship for the request due to the applicant's health needs which is not recognized by the zoning ordinance.

(c) Such conditions are peculiar to the particular piece of property involved; and

Response: The conditions are not peculiar to this site alone as the surrounding properties have similar topography.

(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.

Response: Relief, if granted, would impair the purpose and intent of this ordinance. The PUD was created for the overall development. By making Rock Creek a PUD instead of a regular residential zoning district it allowed the developers to create different setbacks for the different areas in the subdivision taking different variables such as topography into account.

Comments:

Staff empathizes with the applicant wanting the variance based on health needs. The Zoning Ordinance does not recognize health needs as hardship and the extraordinary conditions that the topography may pose is not particular to the subject property but, is shared by the surrounding properties.

Staff Recommendation:

Staff recommends this request be denied.

Prepared by:

Mike Jeffries

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