

**The City of Fairhope Board of Adjustments and Appeals met on Monday, May 19, 2008 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

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

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

Members were asked to review the March 17, 2008 minutes for consideration and make a motion to approve. Cathy Slagle made a motion to approve the minutes as written. Louis Agee seconded the motion. Motion carried with one abstention by Teddy Faust.

Chairman Mannich announced that Case ZBA 08.02 would be tabled until next month. Jonathan Smith said that Staff had received an e-mail at approximately 1:30 pm from the applicant requesting the case to be tabled for one month.

**ZBA 08.03 Request of J. Clark Stankoski for Administrative Review for clarification on the determination of whether a structure located at 361 South Section Street is a fence or trellis.**

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

STAFF INTERPRETATION: The applicant is making a formal application for Administrative Review. Administrative Review is a process outlined in the Zoning Ordinance for the Board of Adjustment “to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Director of Planning and Building, or other administrative official, in the enforcement of this ordinance” (Article II, Section A.4.).

The owner of property located at 361 S. Section Street (Arnold Tassin) erected a structure that is approximately twenty feet (20'±) in height along his southern property line with the long-term intention of screening his back yard from his neighbors directly to the south.

Staff made the determination that the structure is a fence and it exceeds the maximum fence height allowed in a residential district [eight feet (8')]. The property owner was given a letter by the City's Building Official to remove the structure within ten (10) days on March 27, 2008.

The structure is built to follow the property's southernmost property line and screen the subject property's backyard from any potential on-lookers view from a second story window located on the property adjacent to the south.

The subject property is zoned R-2 Medium Density Single-Family Residential District.

The Zoning Ordinance specifically addresses fences in residential and non-residential zoning districts. “Fences in all residential zoning districts are subject to the following requirements:

- (1) No fence shall be higher than eight feet. Any fence forward of the front building line shall not be higher than four feet.
- (2) No corrugated metal sheets, solid sheets of metal, plywood, particleboard, or similar materials shall be allowed.
- (3) No barbed wire, razor wire, or similar materials shall be allowed except for fences used for agricultural purposes in the RA – Residential Agriculture zone.” (Article IV, Section B. 5. b.)

At the March 17, 2008 Board of Adjustment meeting, staff requested the Board informally determine if the structure erected at 361 South Section Street is considered a fence or a trellis. The Board made the informal determination that the structure is a fence.

The Merriam-Webster’s Online Dictionary defines a “Fence” as **a**: “a barrier to prevent escape or intrusion or to mark a boundary; especially: such barrier made of posts and wire or boards **b**: an immaterial barrier or boundary line”.

**STAFF RECOMMENDATION:** Staff recommends the Board of Adjustment render a formal decision declaring the subject structure a fence or a trellis.

Chairman Mannich opened the meeting as a public hearing.

Mr. Clark Stankoski came forward as the applicant’s attorney and representative. Mr. Stankoski explained that the applicants have lived at 361 South Section Street for 17 years and recently four new townhomes have been built next door. He further explained that prior to the construction of the first three townhomes the Tassins had spoken with the builder and had reached an agreement that there would not be any windows on the north side of the buildings. However, the fourth townhome was built by a different individual and was constructed immediately adjacent to the Tassin’s residence with a window on the north side that looks over into their backyard. The applicants had an existing six-foot (6’) privacy fence along the shared property line, but applied for a permit from the City to add an additional two-feet (2’) in order to have an eight-foot (8’) fence. The applicants then asked the City for a trellis permit, but were told a permit is not required. The Tassins began construction of the trellis, but were given a Stop Work Order from the City for a Fence Ordinance Violation. Mr. Stankoski stated that “fence” is not clearly defined in the City’s Zoning Ordinance. He said the structure in question is free-standing and not part of the existing fence and the fence could be removed without interference of the trellis. Mr. Stankoski gave the *Webster’s Dictionary* definition of a fence: a barrier intended to prevent escape or intrusion or to mark a boundary; such a barrier made of posts and wire or boards; to keep in or out. He also gave the definition of a trellis: a frame of latticework used as a screen or as support for climbing plants. He stated that this is not a fence it is a trellis for vines to grow on.

Mr. Stankoski passed out a packet with pictures of the subject structure and examples of fences, pergolas, arbors and trellises. He asked the Board to review the handout as he went over it. He stated that given the nature of the structure, open, the Board should define this structure a trellis.

Steve Thomas of 318 Nicholas Avenue came forward to speak. He stated that he felt the structure was a trellis. He also said that the Tassins have improved the neighborhood and considers it a windbreak.

Arnold Tassin, the applicant, addressed the Board saying that the trellis was to block out the lights from the townhouse as well as the view of their backyard from the window.

Gene Haze of 362 Azalea Street came forward to speak. He stated that he was in favor of the structure.

Chairman Mannich closed the public hearing.

Chairman Mannich asked for the definitions to be read again. He then stated that the examples provided weren't twenty-feet (20') tall. He said he sees the structure as a fence. He asked the applicant if they had considered or tried planting trees or shrubs. Mr. Tassin responded that trees are planted but don't grow fast enough and the vines would achieve the same result. Mr. Stankoski said that there are time conditions with trees. Cathy Slagle suggested that mature trees could be planted.

Louis Agee asked if they received a Building Permit for the structure. Mr. Stankoski responded that the City told the applicant that a permit was not needed.

Teddy Faust asked if the Tassins have spoken to the neighbors and asked them to install shutters. He asked if there were any requirements for visual encroachments. The City's Building Official Barry Fulford responded that there are not any requirements for visual encroachments. Mr. Tassin stated that the builder wouldn't change the window.

Cathy Slagle asked what would hold the vines up as they grow. Mr. Tassin said as the vines grow he will add strings or wires to hold them up. Mrs. Slagle referred to the definition of a fence that was given as "posts, wire or boards."

Suzanne Winston asked if the structure was attached to the fence. Mr. Stankoski responded that it is not attached it is free standing.

Cathy Slagle asked if there are two separate structures. Mr. Tassin explained that there is a large oak tree along the existing fence that separates the two. Mrs. Slagle questioned the purpose of the second structure. Mr. Tassin responded that it was to protect them from the balcony.

Chairman Mannich asked Staff what requirements, guidelines or restrictions the City has for trellises. Jonathan Smith responded that it would be an accessory structure and would have to meet all requirements as such.

Chairman Mannich stated that he understands the need for privacy, but to him this is a fence. He also stated that this Board does not set precedents that each decision is based on the individual case.

Suzanne Winston made a motion to define the structure as a trellis. Motion fails for lack of a second.

Louis Agee made a motion to define the structure as a fence. Cathy Slagle seconded the motion. Motion carried with one objection by Suzanne Winston.

A motion to adjourn was made by Louis Agee. Motion seconded by Cathy Slagle. Motion carried unanimously. The meeting was adjourned at 5:22 PM.

**Minutes were reviewed and approved by the Board of Adjustments on Monday, June 16, 2008.**