

The City of Fairhope Board of Adjustments and Appeals met on Monday, June 16, 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; Cathy Slagle; Stan Grubin; Suzanne Winston; Louis Agee; Barry Fulford, Building Official; Jonathan Smith, Planner; and Emily Irby, Secretary. Absent: Vice Chairman Teddy Joe Faust

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

Members were asked to review the May 19, 2008 minutes for consideration and make a motion to approve. Louis Agee made a motion to approve the minutes as written. Cathy Slagle seconded the motion. Motion carried unanimously.

ZBA 08.02 Request of Pamela Sterrett for a rear setback variance for property located at 8550 Southwood Court.

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

STAFF INTERPRETATION: The Subject property is zoned R-4 (Low Density Multi-Family Residential District). Pamela Sterrett is seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structure in the Fairhope Zoning Ordinance.

Table 3-2 requires that all principle structures in the R-4 zoning district adhere to a minimum rear-yard setback of thirty-five foot (35'). The attached survey (Exhibit A) shows an approximate five-foot (5') encroachment of a covered porch into the required R-4 thirty-five foot (35') rear setback. The encroachment is on the east side of the unit labeled "D" on the survey.

The applicant has constructed the majority of a 14' x 14' enclosed and covered porch five feet (5') within the required thirty-five foot (35') rear setback. The Building Department issued the applicant a Stop Work Order on November 29, 2007 due to the applicant not obtaining a Building Permit and the porch encroachment into the rear setback.

The property is bordered to the north and east by City of Fairhope R-4 zoned property. West of the site is City of Fairhope R-4 property and City of Fairhope zoned R-3 (High Density Single-Family Residential) property. South of the subject property is un-zoned land in Baldwin County.

A variance is a deviation from the literal provisions of the Zoning Ordinance, which is granted by the Board of Zoning Adjustment when strict conformity to the Zoning Ordinance would cause an unnecessary hardship owing to circumstances unique to the property on which the variance is granted. In order to authorize any variance from the terms of this Ordinance, the Board of Zoning Adjustment must and 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 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.

It is incumbent upon the applicant to demonstrate that a combination of the zoning regulations and uncommon physical conditions inherent in the property prevent making reasonable use of the land as permitted by the zoning regulations.

Facts to be considered in this case:

1. Four (4) dwelling units currently exist on the property.
2. The applicant is requesting a variance from Ordinance provisions to accommodate an approximated five-foot (5') encroachment into a required thirty-five foot (35') rear setback.
3. The encroachment exists and was erected without the issuance of a Building Permit.
4. The granting of the variance will confer on the applicant special privileges that are denied by this Ordinance to other lands, buildings, or structures in the same zoning district.
5. If a variance is not granted, the applicant will have to remove the structure from within the required thirty-five foot (35') rear setback.

STAFF RECOMMENDATION: Staff recommends the Board of Adjustment deny the variance request due to the application not meeting the mandatory criteria established in the Zoning Ordinance for the issuance of a Variance.

Chairman Mannich opened the meeting as a public hearing.

No representative was present for the applicant.

James Scopolitee of 8613 Gayfer Road Extension came forward. Mr. Scopolitee wanted to know if this variance would affect the setback of his property at the corner of Bishop and Gayfer. Chairman Mannich responded that this variance would only apply to Mrs. Sterrett's property.

Having no other comments Chairman Mannich closed the public hearing.

Chairman Mannich asked when the original construction of the structure had taken place. Jonathan Smith responded that it had begun 2-3 months prior to the Stop Work Order.

Cathy Slagle made a motion to accept Staff Recommendation to deny the request. Stan Grubin seconded the motion. Motion carried unanimously.

New/Old Business – Jonathan Smith introduced Mr. Anil Vira as the newest member of the Board of Adjustments.

A motion to adjourn was made by Cathy Slagle. Motion seconded by Louis Agee. Motion carried unanimously. The meeting was adjourned at 5:15 PM.

Minutes were reviewed and approved by the Board of Adjustments on Monday, July 21, 2008.