

The City of Fairhope Board of Adjustments and Appeals met on Monday, June 15, 2009 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; Louis Agee; Anil Vira; Jonathan Smith, Director of Planning & Building; and Emily Boyett, Secretary. Absent: Suzanne Winston

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

Members were asked to review the April 20, 2009 minutes for consideration and make a motion to approve. Stan Grubin made a motion to approve the minutes as written. Cathy Slagle seconded the motion. Motion carried with one abstention by Louis Agee.

ZBA 09.01 Request of Wells and Elizabeth Hammock for a two-foot (2') side-yard setback variance for property located at 254 N. Bayview Street.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: This request was scheduled to appear before the Board of Adjustments on May 18, 2009. Due to the lack of a quorum, a decision by the Board was not rendered.

The subject property is zoned R-2 (Medium Density Single Family Residential). Wells and Elizabeth Hammock are seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structures in the Fairhope Zoning Ordinance.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum side-yard setback of ten feet (10'). The applicant would like to reduce the south side-yard setback to eight feet (8') in order to construct an office/bedroom addition on their existing home.

The applicant has identified a “treasured tree” as a hardship on the subject property. In meetings with staff, the applicant’s representative, Lea Verneuille of Walcott, Adams and Verneuille Architects, mentioned they looked at the possibility of adding a second floor on the rear side of the home, but in order to do this, it would require significant trimming of the existing “treasured tree” on the south side of the lot, possibly killing the large oak tree.

Per conversations with the applicants’ architect, the proposed addition on the south side of the property is larger than the possible second floor addition.

Staff feels that it is possible to add on to the house and trim off two feet (2') of the proposed eleven foot (11') additions to meet the required ten foot (10') side-yard setback. The applicant’s architect (Lea Verneuille) mentioned that it is very atypical to have a

bedroom with less than a twelve foot (12') dimension on one side, but due to the fact that there is an existing residence and accessory structure on the property and the lack of a true hardship, staff feels that the literal provisions of the zoning ordinance should be followed in this case.

The property is bordered on all sides by R-2 zoned property.

Facts to be considered in this case:

1. The applicant is requesting a two foot (2') side-yard setback variance. The required side-yard setback is ten feet (10'), if a variance is granted, the side-yard setback will decrease to eight feet (8').
2. There are not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.
3. The application of the Fairhope Zoning Ordinance to this particular piece of property does not create an unnecessary hardship.
4. The "treasured tree" on the property does not present uncommon physical conditions, which will prevent "reasonable use" of the land.

STAFF RECOMMENDATION: Due to the subject property not meeting the minimum criteria established for the issuance of a variance, staff recommends the Board of Adjustment deny the variance request.

Chairman Mannich opened the public hearing. The applicant's architect, Lea Verneuille came forward to address the Board. He stated he felt like they were asking for the absolute minimum variance needed for this addition. He said they chose this proposed location for the addition because of the four large "treasured" oaks on the property and the owners do not want to trim them. Mr. Verneuille stated that the additional two feet (2') is needed in order to have an eleven foot (11') wide bedroom instead of just nine feet (9') wide. He also added that the neighbors were not opposed to the addition.

Property owner, Wells Hammock came forward to address the Board. He explained that the first plan that was proposed was to add on to the back of the house, but that would have required them to trim the large oaks and they definitely did not want that. Mr. Hammock said that the extra bedroom will be a nursery for their unborn child or for their young son.

Having no other comments Chairman Mannich closed the public hearing.

Chairman Mannich opened the floor to the Board for discussion. Chairman Mannich asked if the trees on the property are designated "Treasured Trees". Mr. Verneuille stated that yes all of the trees have plaques. Chairman Mannich questioned whether the tree

beside the air conditioner would have to be trimmed. Mr. Verneuille answered no, that those limbs are growing straight up and will not be in the way. Chairman Mannich stated that even though the trees are designated as “Treasured Trees” they can be cut because it is a residential lot. Mrs. Slagle asked what the length of the new bedroom would be. Mr. Verneuille responded twelve and a half feet (12’6”). Mr. Grubin asked what the distance would be between the neighbors’ deck and the proposed addition. Mr. Verneuille said he was not sure. Chairman Mannich asked if the Hammocks had a privacy fence. Mr. Hammock answered no, but there are eleven foot (11’) and twelve foot (12’) camellias between the two properties, which serve as a privacy buffer. Mr. Agee asked if the applicants felt as though they have exhausted all other possible options. Mr. Verneuille responded yes, they have tried all of the scenarios. Mr. Agee asked if they are opposed to the Staff’s recommendation. Mr. Verneuille said he respected Mr. Smith and his work, but he feels that this is the best option. Mr. Vira questioned whether the addition would encroach on the front setback line. Mr. Verneuille responded that they would not be increasing the front setback. Mr. Smith added that the front setback is an existing non-conforming setback and will not be an issue with the addition. Mr. Grubin reiterated his concern with the close proximity of the proposed addition to the neighbor’s deck. Chairman Mannich expressed his concern with the lots becoming thick along the front. Mr. Vira asked what size limbs would have to be trimmed and how that would affect the life of the tree. Mr. Verneuille explained that the tree is growing in thirds and to have the addition in the back would require the owners to ultimately cut a third of the tree. He also added that the reason for having a tree designated as a “Treasured Tree” was to discourage people from cutting them. Mr. Agee stated he did not feel that the request satisfied the requirements to warrant a variance. Louis Agee made a motion to accept the Staff’s recommendation to deny the request. Cathy Slagle seconded the motion. The motion carried with one nay by Anil Vira.

ZBA 09.02 Request of Wayne Loudermilch for a variance to the provisions of Article VII, Section B. Non-Conforming Structures of the Fairhope Zoning Ordinance. The property is located at 111 Magnolia Avenue.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned R-2 (Medium Density Single Family Residential). Mr. Wayne Loudermilch is requesting an extension to (a variance from) the provisions of Article VII, Section B. (Non-Conforming Structures) in the Fairhope Zoning Ordinance which states: “A non-conforming structure, which is damaged or destroyed, may be restored within one year from the date of the event. If the structure is not re-constructed in one year all restorations and improvements shall be in compliance with applicable ordinances. The burden of proof of date of damage or destruction shall be on the person proposing the restoration.”

Mr. Loudermilch is requesting an eighteen (18) month extension to the twelve (12) month rebuild provision outlined above (18 months from the date of the one-year expiration).

A fire destroyed the non-conforming principle structure located at 111 Magnolia Avenue on September 24, 2008. The property also contains an accessory structure that was not destroyed by the fire.

The approximated setbacks for the primary structure prior to the September 2008 fire are: 36'-Front, 32'-Rear and 6'-Side. These approximate setbacks were generated via aerial photography maps produced by the City's GIS Manager (David Powell).

The principle structure that existed on the property did not meet the required R-2 setbacks (35'-Front, 35'-Rear and 10'-Side).

Facts to be considered in this case:

1. The applicant is requesting a variance to the provisions of Article VII, Section B. (Non-conforming Structures) in the Fairhope Zoning Ordinance.
2. The application of the Fairhope Zoning Ordinance to this particular piece of property appears to create an unnecessary hardship.
3. The eighteen (18) month extension request does not appear to be unreasonable.

STAFF RECOMMENDATION: Due to the facts to be considered in this case, staff recommends the Board of Adjustment approve an eighteen (18) month extension to the provisions of Article VII, Section B. in the Fairhope Zoning Ordinance.

Chairman Mannich opened the public hearing. Property owner, Wayne Loudermilch, was present and addressed the Board. He explained that this request is based on two circumstances. The first is the fire that completely destroyed his home and the second is the death of his wife. Mr. Loudermilch informed the Board that he just has not had time to consider rebuilding.

Having no other comments Chairman Mannich closed the public hearing.

Chairman Mannich opened the floor to the Board for discussion. Chairman Mannich asked if the eighteen (18) months would start from the date of the Board's decision or would it be an additional six (6) months from the year provided in the ordinance. Mr. Smith answered that the eighteen (18) months would be in addition to the one year in the ordinance. Chairman Mannich asked what the setbacks were from Boise Lane. Mr. Loudermilch said he was not sure. Mrs. Slagle asked for the difference between the required setbacks and the previous setbacks. Mr. Smith responded that the differences would be: 0'-front, 3'-rear and 6'-side. Mrs. Slagle questioned if the applicant was going to build back to the original building footprint. Mr. Loudermilch said he did not know at this time, he has not had time to think about it. Mrs. Slagle asked if the new building could be a larger footprint. Mr. Smith answered that the applicant would not be allowed to exceed the previous non-conforming setbacks. Mr. Vira asked when this approval

would expire if approved. Mr. Smith answer it would expire March 2011. Cathy Slagle made a motion to accept the Staff's recommendation to approve as requested. Anil Vira seconded the motion. Motion carried unanimously.

ZBA 09.03 Request of Mac and Virginia Walcott for a Special Use Permit for an outdoor sales lot (open air market). The property is located on the southwest corner of Bancroft Street and Equality Street, at 85 N. Bancroft Street.

Jonathan Smith, Planning and Building Director, came forward and gave the Staff Interpretation.

STAFF INTERPRETATION: The subject property is zoned B-2 (General Business) and is in the Central Business District (CBD).

In the B-2 zoning district an outdoor sales lot (open air market) is "permitted only on appeal and subject to special conditions", according to Article III, Table 3-1: Use Table. Therefore, the Board of Adjustments must hear the proposed use and decide if the use is compatible and in character with the surrounding area.

Due to the existing open-air structure and condition of the subject property, staff feels that the proposed use is not incompatible with surrounding uses or the intent of the Central Business District.

It appears that the applicant wishes to incorporate many "green building" features into the proposed project (e.g., "Grey Water Garden" and "Cistern for Water Harvesting").

Within the same proposal the applicant would like the Board to approve a 40' tall windmill for the proposed property. Pictures of the windmill are attached. The maximum building height for all non-residential structures is 35' in the Central Business District. The proposed windmill is not a building or typical accessory structure; therefore, staff felt it is appropriate to seek Board of Adjustment approval for this type structure and height request.

STAFF RECOMMENDATION: Staff recommends the Board of Adjustment approve the proposed outdoor sales lot (open air market) use for property located on the southwest corner of Bancroft Street and Equality Street. Staff also requests/recommends the Board approve or deny the proposed 40' tall windmill.

Chairman Mannich opened the public hearing. The applicant, Mac Walcott came forward to address the Board. He passed out renderings showing the alterations and additions they would like to do. He explained the function of the market will be to rent out on Saturdays and Sundays to sell local crafts, wares and art. Mr. Walcott said they want the market to be "Green" and include a windmill for electricity and a rain garden. He added that they would rent the stalls out during the week if needed and that they would like to open in October or November. Mark Polon of 464 Equality Avenue came

forward to address the Board. He posed concerns with the noise from the proposed windmill. He stated the neighborhood is currently dealing with excessive noise from the Library and the nearby bars. He added that he likes the concept of the windmill, but he is worried about the noise. Mr. Polon also questioned the hours of operation and the type of goods that would be sold. He said he was concerned that the "street parties" would migrate to the site if it is open. Maureen Ralston of 462 Equality Avenue came forward with parking concerns and security issues. Having no other comments Chairman Mannich closed the public hearing.

Chairman Mannich asked what security measures the site would have. Mr. Walcott said the fence that is currently there would remain and be locked. He also added that the windmill they have chosen to use is designed for residential use which cuts down on the noise. Mr. Grubin asked if the windmill was for energy or a proto-type for selling them. Mr. Walcott responded that the windmill is only for "green" purposes. Mr. Grubin questioned if the height was necessary. Mr. Walcott said the taller the windmill the more air it gets. He added the telephone poles are close to the same height and that it will only be five feet (5') taller than the apartments across the street. Mrs. Slagle asked if they have 50 stalls and at least 50 vendors, then where will the visitors park. Mr. Walcott said they would have a time for set-up and ask the vendor to then park further out. Mrs. Slagle asked if designated parking was required. Mr. Smith responded that in the Central Business District only residential uses are required to provide additional parking. Mr. Grubin asked if they considered the recent approval of the open air market behind the Library. Mr. Walcott said he does not necessarily want farmers, but other local goods to draw more people to downtown. Mr. Grubin asked what the noise level was for the windmill. Mr. Walcott said he did not know the exact decimal, but that it is very low. Mr. Agee questioned if the City had received noise complaints on the current uses in the neighborhood. Mr. Polon said in the last four months they have made several complaints on the bars. Mr. Walcott stated the use would be limited from 9:00am to 5:00pm. Chairman Mannich asked if that location could be a bar or restaurant. Mr. Smith responded yes, as provided in the Zoning Ordinance the B-2 zoning district does allow bars and restaurants. Mrs. Slagle asked if each of the vendors would be required to have a City Business License. Mr. Walcott said he will purchase a blanket license that will cover all of the vendors. Mrs. Slagle asked if that meant they would control who and what would come in. Mr. Walcott said hopefully they would have enough interest to be able to pick and choose the vendors they want. Mrs. Slagle asked if a study had been done on the wind in that location. Mr. Walcott said no, it is mainly for looks and just to get people thinking. Mrs. Slagle said if it is just for looks then why does it have to be so tall. Mr. Walcott said that he would like to get some power from it. Mr. Agee reminded the Board that this is a two part request. Chairman Mannich stated he likes the market and the hours of the market, but he is not sure about the windmill. Mr. Polon added that the noise travels down Equality from west to east and amplifies as it moves down the street. Anil Vira made a motion to accept the staff recommendation to approve the special use permit for the outdoor sales lot (open air market). Louis Agee seconded the motion. The motion carried unanimously.

Mr. Agee stated he thought the windmill should go before the Planning and Zoning Commission to set forth standards for this type request. Mrs. Slagle stated she feels that the Board will get more and more requests for these and the Board does not have any guidelines on which to base their decisions. Chairman Mannich added his concerns are not so much the height of the windmill, but the lack of knowledge he has; however, he does think it would be good for commercial areas. Mr. Walcott said he would like to withdraw the windmill request. Mr. Smith said Staff will gather information on this issue and will provide it to the Board.

Old/New Business – Mr. Smith reminded the Board that the City is offering Ethics Training for all of the boards and committees on Thursday, June 18, 2009 from 1:00pm until 3:00pm at the Civic Center.

Having no further business, Cathy Slagle made a motion to adjourn. Stan Grubin seconded the motion. Motion carried unanimously. The meeting was adjourned at 6:12pm.

Minutes were reviewed and approved by the Board of Adjustments on Monday, July 20, 2009.