

The Board of Adjustment met Monday, April 19th at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Anil Vira, Chairperson; Richard Schneider; Cathy Slagle Christina Stankoski; Hunter Simmons, Planning and Zoning; Samara Wiley, City Planner; Kim Burmeister, Planning and Zoning (minutes);

Alternates on standby: David Martin, Donna Cook

Chairman Vira called the meeting to order at 5:05 PM.

Minutes: There were no minutes for approval

**BOA 21.03** Public hearing to consider the request of MGC, LLC, dba Sportsman Marine and Outdoor, for a Special Exception to allow Outdoor Sales for property located at 306 De La Mare Avenue (zoned B-2), PPIN# 14358

Hunter: In B-2 outdoor sales are only allowed on appeal. Zoning reference: *Article III, Section B, Table 3-1 Use Table.*

The applicant is seeking an appeal which will allow golf carts to be located outside the building in the gated courtyard abutting De La Mare. The shop is being advertised as a "boutique" dealership which will be selling and renting high end LSV's. A schematic was presented for representation, showing seven (7) golf carts outside. The similar golf cart business at Morphy and Section was cited as a good visual example of the intended business.

Staff recommends approval with condition:

1. Revise the site plan to identify where the outdoor sales area as well as specifically state the items that will be located outside and available for purchase.

Applicant Hank Miner spoke and answered general questions on access and egress and anticipated traffic. Loading and delivery operations will be done in the back of property. Staff, not customers or delivery agents, will operate golf carts being brought onto and off site. Sidewalk will not be used for travel and will not be blocked. He intends to run a clean and viable business.

Dick is concerned about customers test driving the carts and the danger this could pose to street safety. He also wanted to make sure there would be no golf cart activity on sidewalks.

Hunter said traffic will be heavily policed.

Christina noted there is a lot of traffic on De La Mare already, and it is a concern. There is also a lot of pedestrian traffic on the sidewalk.

Cathy asked about Bernhardt Lane, the side street. Hunter said Bernhardt Lane is a one way private lane used to exit the community park parking lot.

Cathy asked if this would be a sales and service site. Mr. Miner said sales only, no service.

There were no public comments.

Dick made a motion to accept staff's recommendation of approval as presented with condition:

1. Revise the site plan to identify where the outdoor sales area as well as specifically state the items that will be located outside and available for purchase.

John 2<sup>nd</sup> the motion. Unanimously passed.

Votes to accept staff's approval to recommend approval:

Anil Vira: Aye

Cathy Slagle: Aye

Dick Schneider: Aye

Christina Stankoski: Aye

John Avent: Aye

Motion passed unanimously

#### BOA 20.05 TABLED

BOA 21.06 Public hearing to consider the request of FST Provision Investments, LLC, for a Parking Variance for property located at 9979 Windmill Road (zoned B-4), PPIN# 77607

Samara: The applicant is requesting a parking variance from the maximum allowable parking, the compact parking requirement and the requirement that all parking over the required amount be pervious. She referenced the Zoning Ordinance, *Article VI, Section E. 2. Table 4-3 – Parking Schedule*. The site plan provide by applicant shows two commercial buildings at 3,022 s. f. each. Total required parking as per the Zoning Ordinance would be 22 parking spaces for both buildings (11 per building). The site plan provided by applicant indicates 42 parking spaces.

*Article IV, Section E. 3. A. Compact Car Requirement* in the Zoning Ordinance states "compact car parking spaces shall be a minimum of 30% of the required parking spaces and no more than 40 of the required parking spaces". Applicant shows no compact parking spaces according to site plan.

Reference Zoning Ordinance *Article IV, Section E. 4. C (2)*. According to this requirement, 20 parking spaces would be required to be pervious. Site plan shows only 12 of the 42 parking spaces as being pervious.

Samara reviewed the variance criteria as listed in the Zoning Ordinance:

1. Extraordinary and exceptional conditions pertaining to the particular piece of property in question because of size, shape or topography
2. Application of ordinance to this property would create unnecessary hardship. Personal finance hardship is not a justification for variance.
3. Such conditions are peculiar to the particular piece of property involved, and
4. 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.

Staff finds criteria is not appropriate for the review of an application of this type.

Staff recommends DENIAL of the parking variance. Reason: these four points deal specifically with the land itself. Additionally, the applicant has not presented a substantial hardship that would justify the request for nearly double the maximum allowable parking. In summary, the zoning ordinance would require:

1. 22 parking spaces (proposing 42)
2. 30% of the 22 should be compact (proposing zero)
3. Any parking over and above the 22 should be pervious (proposing 12 out of 42)

If the Board would like to approve the variance, conditions would have to be met within 365 days.

Hunter: This is a procedural issue. Staff has no problem with the request. The zoning ordinance does not currently have a mechanism to review a case of this nature involving parking. A variance, in this case, is not an appropriate request. A special exception would seemingly be more appropriate. However, at this time, the Zoning Ordinance does not address criteria for a special exception for parking. Hunter said he is working with applicant on other options.

The building on the north side will be housed by S. E. Civil, the engineer of record Larry Smith. S. E. Civil has 17 employees plus 5 company vehicles which will remain in the parking area overnight. This brings the total parking to be used by one business/building to 22 parking spaces and that does not include potential visitors.

Cathy asked if applicant would have to wait a year to reapply if variance is denied? Hunter said yes. But if scope or zoning ordinance changes, it can be heard again without waiting for a year.

John said this proposed site is over 6,000 s. f. of commercial space with only 22 allowed parking places. It seems to be encouraging parking on the street. He asked Hunter if staff intends to change the zoning regulations to allow for more parking spaces in B-4. One size does not fit all. The proposed project does not look like it has enough parking even with if variance was approved. This zoning restriction on parking spaces seems to discourage development in Fairhope.

Cathy asked if zoning changes could happen in 2 months.

Hunter said zoning changes and parking requirement changes are on the short list, but best-case scenario is 3 months for changes.

Applicant Larry Smith spoke in support of the variance. His office will be moved to this new location once developed. He said he has a Plan B (MOP process) if the variance is not approved, he will likely apply for a MOP. He said the zoning of this property creates a hardship. Most all of his vehicles (company and employees) are full size trucks. Most of his company work is done digitally and he does not anticipate much customer traffic. He could not answer for the real estate company that intends to be in the second building. Larry said MOP approval is not guaranteed and he encouraged BOA members to consider this case uniquely from other cases. He does not feel a precedent will be made of this variance is approved, however Hunter disagrees. He feels there is an issue with the Zoning Ordinance in regard to the parking issue.

Dick is concerned with traffic and parking when this site is developed.

Larry said his operation is mostly developmental and digital with very minimal customer traffic. He cannot answer for the real estate company that will occupy the building next door.

John asked what the hold up would be if going with Plan B. Larry said the MOP process is not guaranteed and would likely be a long process.

Cathy asked if parking would be sufficient if it was only one building. Larry said if there was only one 3,000 s. f. building there then they would only be allowed 11 parking spaces.

John noted his personal office having to use off-site parking because of limited parking spaces. He anticipates same issue with this property.

Larry said he has field crews and inspectors in and out all day.

Christina asked Larry if other materials have been considered for parking to add extra parking without the variance.

Anil suggested gravel as parking places. Hunter said this idea could be considered as green space in the MOP process.

Hunter cautioned the Board to be mindful of their decision; they could be making a precedent for future cases. He said the MOP process would not be a lengthy process.

John said it is his understanding, per conversations with attorneys, that precedent will not be made since each case is heard separately.

Larry said if he is not allowed to build here with variance, he may be forced to move his building across the street to a county building. Work on site has started. He didn't perceive this as an issue to begin with. He concurred with John, no precedent since each case is unique.

Cathy asked for clarification on the special exception procedures vs. variances.

Hunter gave clarification.

Anil opened the public comment period but there was no one to speak against the project.

Cathy made a motion to accept staff's recommendation for denial for reasons stated (no hardship).

Christina 2<sup>nd</sup> the motion.

Votes to accept staff's recommendation for denial:

Anil Vira: Aye

Cathy Slagle: Aye

Dick Schneider: Abstain

Christina Stankoski: Aye

John Avent: Aye

Motion passed with 4 for DENIAL with Dick abstaining his vote.

Reason for denial: Has not proved hardship

**\*CHRISTINA HAD TO LEAVE AT 5:50 P.M. ALTERNATE DAVID MARTIN ATTENDED IN HER PLACE\***

**BOA 21.04** Public hearing of Harold Thompson, Belgrove Estates, Inc. requesting a rear set back variance for 325 Pecan Ridge Boulevard, Lot 5, property zoned R-2.

Hunter: The staff report is incorrect. Applicant is requesting 2' not 7' variance. Staff report says set backs are 35' in rear. Front set back is 45'. BOA past case April 16<sup>th</sup>, 2018 BOA 18.04. The applicant received a variance for 35' in the front and rear set back of 30'. Application is correct; it reflects a variance for 2' variance for 30' rear set back.

This is a unique shaped lot. Rear set back is 30' as per previous variance. Margin of error of 2' is the request. No hinderance to neighboring properties. Similar issues and resolution with similarly shaped lots in the area.

Summary: The applicant is requesting a 2' variance to the rear property.

Hunter said there are extraordinary and exceptional conditions pertaining to this lot; lot is irregularly shaped. The site is unique. Relief, if granted, would not cause detriment to the public nor impair the intent of this ordinance.

Staff recommends approval of this 2' (not 7' as stated in staff report) variance with no conditions.

Anil opened the session for Public Comments:

Frank and Lisa Vitello, residents of Carya Pointe Estates, spoke on behalf of the applicant, in favor of the project. They are the potential buyers of the property. The property has been listed for sale for over 1500 days. Builders have said no house can be built on this property, but they are in contact with an architect and builder who has drafted a plan for a house to be built on this property if a 2' variance is approved. Proposed house is 2,250 s. f. and this lot backs up to 32 acres of undeveloped acreage.

Dick asked if this would impact anyone else's property. Frank said the property rear abuts a large wooded area. Anil said all surrounding property owners have been notified as per zoning requirements.

Mr. / Mrs. Vitello have not heard from any of the neighbors.

Cathy asked if the house could be built at 2,000 s. f. (which is the minimum for this subdivision) without the variance. Lisa said the house as proposed could not be built within the existing footprint without the variance. Reducing the s. f. of the home is not feasible.

Anil asked for clarification on the past variance passed for this property. Hunter said there was a variance passed for 10' in the front, 5' in the rear.

No one spoke against the project.

Anil closed the public comment period since no one spoke for or against the property.

Dick made a motion to accept staff's recommendation and approve the 2' rear yard set back variance.

David 2<sup>nd</sup> the motion.

Motion: Accept staff's recommendation to approve the 2' variance.

Anil Vira: Aye

Cathy Slagle: Aye

Dick Schneider: Aye

David Martin: Aye

John Avent: Aye

Motion passed unanimously.

Anil reminded applicant to record the variance with probate within 365 days.

**Old/New Business:**

Anil asked if there was any old or new business to address.

Cathy would like packets printed and delivered again, or she can pick them up.

Hunter said he will honor her request and can work with members one on one if they wish to receive printed copies of the packets. He appreciates any of the members who request only digital.

Cathy made a motion to adjourn. Dick 2<sup>nd</sup> the motion.

Adjourned at 6:05 p.m.



Anil K. Vira  
Anil Vira, Chairman



Kim Burmeister  
Kim Burmeister, Planning and  
Zoning