

Sherry Sullivan *Mayor* 

Council Members

Kevin G. Boone

Robert A. Brown

Jack Burrell, ACMO

Jimmy Conyers

Corey Martin

Lisa A. Hanks, MMC *City Clerk* 

Kimberly Creech *City Treasurer*  City of Fairhope Board of Adjustment Agenda 5:00 PM Civic Center November 15, 2021

1. Call to Order

2. Approval of MinutesSeptember 20, 2021

3. Consideration of Agenda Items

**A. BOA 21.11** Public hearing to consider the request of the Applicant, Walcott Adams Verneuille Architects, acting on behalf of the owner, Patti Rogers, to allow for a five-foot Street Side Setback Variance for property located at the southeast corner of Pecan Avenue and Kumquat Street, Lot 1 in the J. Henry Place Subdivision. **PPIN #: 12191** 

**B. BOA 21.12** Public hearing to consider the request of John Hadley to allow for a nine-foot Side Setback Variance for property located at the northwest corner of Young Street and Fairland Avenue. **PPIN #: 86972** 

**C. BOA 21.13** Public hearing to consider the request of the Applicant, Watershed, on behalf of the owner, Dione Heusel, to allow for their accessory building to be two-feet taller than their principle building. This property is located at 56 White Avenue. **PPIN #: 109133** 

**D. BOA 21.14** Public hearing to consider the request of the Applicant, CMI Acquisitions, acting on behalf of the owner, C-Spire Wireless, to allow for a Utility Use, installation of a fiber infrastructure. This property is located at 750 Middle Street. **PPIN #: 59857** 

- 4. Old/New Business
- 5. Adjourn

161 North Section Street P.O. Drawer 429 Fairhope, Alabama 36533 251-928-2136 251-928-6776 Fax www.fairhopeal.gov Princed on royected paper

#### The Board of Adjustments met Monday, September 20, 2021, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Anil Vira, Chairman; Cathy Slagle; David Martin, Alternate I; Donna Cook; Frank Lamia; Hunter Simmons, Planning and Zoning Manager; Samara Walley, City Planner; and Allie Knutson, Secretary.

Absent: Michael Baugh; and Ryan Baker, Alternate II.

Chairman Vira called the meeting to order at 5:00 PM.

#### Minutes

• August 16, 2021

#### Motion:

Cathy Slagle made a motion to approve the minutes with no changes.

Donna Cook seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and David Martin.

Nay: None.

# BOA 21.09 – Public hearing to consider the request of Richard and Julie Clay for a Side Setback variance to allow for a swimming pool for property located at 306 N. Bayview St. PPIN # 14512

Samara Walley, City Planner, presented the case summary:

The applicant, Robert Brown, is requesting a side setback variance to allow a swimming pool on the property located at 306 N. Bayview Street. The property is zoned R-2, Medium Density Single Family Residential. According to the Zoning Ordinance, accessory structures, such as pools, shall be situated no nearer than the principle structure along side streets and behind the rear building line of the principle structure.

The applicant has noted three justifications for their request:

- 1. The lot is smaller than the minimum lot area required. The subject property is 9,483.65 sq ft. The requirement is 10,500 sq ft.
- 2. The lot does not meet the minimum width requirement. The subject property is 60' in width at Bayview Avenue. The requirement is 75'.
- 3. The subject property has an extreme uphill slope. According to the applicant, the property is relatively level from the west front of the house to the east rear of the

house. Then the property slopes steeply uphill with the final 35' being approximately 8'-0" above the grade of the remainder of the property.

The applicant is proposing a pool that will be 6'-6" from the property line, a fence along Blakeney Avenue and other additions to the rear of the existing home.

The existing and proposed site plan was shown on the screen. The existing home is currently encroaching in the required setbacks and the existing carport exceeds the allowed 25% of the rear yard. Staff finds that it could be possible to place the pool within the required setbacks (site plan with staff's placement of pool shown on screen) as the intent of the side street setback on corner lots is to preserve the street view.

There are large street trees that could be disturbed as result of the addition of a pool and fence/wall. A ROW permit may be required and review by the City Horticulturalist prior to the issuance of a building permit. There is currently a small wooden bridge on the north side of property. The pool would be located in its place. If the variance is approved, further review may be required by the Public Works Department.

#### Staff recommends denial of BOA 21.09.

Chairman Vira confirmed that the image of the pool that was drawn in was drawn by staff to show where it could be placed within the setbacks.

Hunter Simmons, Planning and Zoning Manager, stated that the Planning Department receives a lot of variance requests for substandard lots. A smaller lot is not unique. This case does have a hardship and staff has looked at ways that this could be done. However, the expansions to the house could limit it. The street side setback is to preserve a street frontage. This one is a tough decision for the Board.

David Martin asked if other homes had been granted this type of variance in that area and if the pool is considered an accessory structure if it does not have a roof.

Mr. Simmons stated that the Zoning Ordinance does not distinguish between pools and other accessory structures and to his knowledge, there have not been any variances like this in that area recently.

Chairman Vira asked if the pool that staff drew in, was the same size as the applicant had submitted.

Mr. Simmons stated that the pool would be the same size, but the extended deck area would not be put in if the pool were to be placed in the required setbacks.

David Martin asked if there were any regulations for the height of the proposed wall.

Mr. Simmons stated that the wall meets the requirements and would be in compliance at 8-feet.

Applicant, Robert Brown, spoke on behalf of Richard and Julie Clay. He wondered what difference the pool would make if the privacy wall were to be allowed. He also mentioned several other homes that have pools in their side yards and that the owners are trying to restore a historic home that belonged to Mr. Clay's parents. The house would have to be torn down if the variance was not granted.

Cathy Slagle asked why the house would have to be torn down.

Mr. Brown stated that Mr. and Mrs. Clay have hired an architect to come up with an appealing design for improvements, the home currently has a second floor on it, but they are trying to minimize the height of the house because of the way the lot slopes. There would be no way to achieve first floor improvements and have the pool be 10-feet away from the primary structure.

Frank Lamia asked about the relation of the proposed wall to the trees.

Mr. Brown was not sure and stated it would be taken into consideration but would have to go through the City.

Mr. Simmons explained that if the Board were to approve this variance, they could make it a condition of approval that a ROW permit be obtained for the trees.

Chairman Vira opened the Public Hearing.

Hunter Simmons, Planning and Zoning Manager, stated that we received three letters of opposition from adjacent property owners that were concerned about their view of the bay.

David Martin stated that whether there is a pool or not, the view will be blocked by the wall.

Leon McLaughlin, 108 Blakeney, brought several photos up to the board members that were taken from his front porch. He had built his home with the idea that he would be able to look at the bay form the front porch, but the proposed wall would block the view. His lot is also only 48-feet wide, smaller than the Clay's lot. His neighbor at 110 Blakeney, Mr. De Gutz, also sent a comment in regarding the wall blocking the view of the bay. Mr. McLaughlin does not object to the pool, but objects to the wall.

Mr. Simmons stated that there could possibly be some compromise regarding the height of the wall and proceeded to show Mr. McLaughlin the hard copy of the site plan.

Donna Cook asked if they could enclose the pool if the Board approved the variance.

Mr. Simmons stated no, they would need a permit.

Frank Lamia stated that he did not understand how this could be considered a "hardship" if the owners cannot put the pool in the setbacks because of the other additions they are adding to the home, it seems like they are creating their own hardship.

Mr. Simmons stated that the hardship is about the size, shape, and slope of the lot. In this case, there is a hardship because the lot is undersized and irregularly shaped.

Chairman Vira closed the Public Hearing.

Chairman Vira asked if the addition could be modified so the pool could be put between the rear of the house and the garage.

Mr. Brown stated that they are trying to save as much of the house as possible while also trying to add additional square footage on the first floor to make it comfortable for modern living. The hardship is created by trying to save the historic house with the typography presenting a challenge. The existing carport is higher than the house and is already going to come down as it is non-compliant and needs to be smaller. The carport will be rebuilt in the same footprint.

Cathy Slagle suggested that they could put the pool in the required setback if they made the covered patio smaller.

The Board Members had no further questions.

#### Motion:

David Martin made a motion to approve BOA 21.09, subject to staff recommendations:

- 1. Requirement of a ROW permit for review of drainage and arborist.
- 2. Shall not encroach on the maximum lot coverage.

Mr. Martin's motion was not seconded, the motion failed.

#### Motion:

Cathy Slagle made a motion to deny the variance request for BOA 21.09.

Frank Lamia seconded the motion and the motion carried with the following vote:

Aye: Anil Vira, Cathy Slagle, Donna Cook, and Frank Lamia.

Nay: David Martin.

#### **Old/New Business**

Hunter Simmons, Planning and Zoning Manager, stated that there is going to be a Public Community Meeting this Wednesday, regarding the Comprehensive Land-Use Plan. There will be other meetings until February of 2022.

#### Adjournment

Cathy Slagle made a motion to adjourn, and the motion carried unanimously.

Adjourned at 5:53 PM.

Anil Vira, Chairman

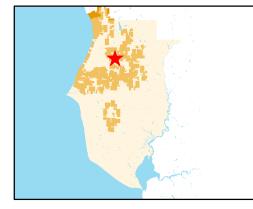
Allie Knutson, Secretary

### City of Fairhope Board of Adjustment

November 15, 2021



## BOA 21.11 Lot 1, J Henry Place Subdivision



**Project Name:** Lot 1, J. Henry Place Subdivision Application Type: Variance Variance Type: Street Side Setback Variance Jurisdiction: City of Fairhope **Zoning District:** R-2, Medium Density Single Family Res. **PPIN Number:** 12191 **General Location:** Southeast corner of Pecan Ave. and Kumquat St. Surveyor of Record: Architect of Record: Walcott Adams Verneuille Architects **Owner / Applicant:** Patti Rogers/Walcott Adams Verneuille Architects **Recommendation:** Denial Prepared by: Hunter Simmons





#### **APPLICATION FOR BOARD OF ADJUSTMENTS**

Application Type:

Administrative Appeal

Special Exception

**V**ariance

Property Owner / Leaseholder Information			
Name: Patti Roge	rs Phone Number:		
Street Address: L	ot 1 J Henry Place Sub (Corner of Pecan & Kumquat) Parcel: 46-03-37-0-011-129.000		
City: Fairhope	State: <u>AL</u> Zip: <u>36532</u>		

Applicant / Agent Inf If different from above Notarized letter from property owner is required if an Name:Walcott Adams Verneuille Architects Phone Nu Street Address: <u>1S School Street</u>	e. agent is used for representation.
City: Fairhope State: AL	Zip: <u>36532</u>
Site Plan with Existing Conditions Attached:	YES NO
Site Plan with Proposed Conditions Attached:	YES NO
Variance Request Information Complete:	YES NO
Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:	YES NO

#### Applications for Administrative Appeal or Special Exception:

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Patti Rogers

Property Owner/Leaseholder Printed Name

Date

Signature N/A

Fairhope Single Tax Corp. (If Applicable)

DCT 11 2021 BY:\_\_AK

Page	5	of	6



RECEIVED OCT 11 2021 AL BY:

#### VARIANCE REQUEST INFORMATION

What characteristics of the property prevent / preclude its development?:

Too Narrow	Elevation	Soil
Too Small	Slope	Subsurface
Too Shallow	Shape	✓ Other (specify) Trees/Gulley

Describe the indicated conditions: The lot is 80' wide with mature trees on it and is adjacent to a gulley/un-used easement.

How do the above indicated characteristics preclude reasonable use of your land?

The location of mature trees including a nice magnolia tree on the property line and live oak, both on the eastern side of the lot will push our driveway towards the west, further than the sideyard requirements. This, along with the very mature oaks on the western property line which would push the driveway further than the 20' sideyard setback, would equate in a reduction on either side of the buildable footprint width of the house. There is also a gulley to the south which is obviously an always moving condition and requires some concern in the placement of the structures in relation to the rear or southern limits. Finally, the slope of the lot from east to west along with the above mean that our best placement of the driveway and garage will be on the eastern side of the lot to help save trees, help keep the garage and house near same grade for less steps between the two structures.

The request of a variance is a 5' reduction of a 20' side yard abutting a street requirement on the west. Note there is not a street, just an easement.

Hardship (taken from Code of Alabama 1975 Section 11-52-80):

"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

<b>BOA Fee Calculation:</b>			
	Residential	Commercial	
Filing Fee:	\$100	\$500	
Publication:	\$20	\$20	
TOTAL:	\$		

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

#### Patti Rogers

Property Owner/Leaseholder Printed Name

0/7/21

Signature

N/A

Fairhope Single Tax Corp. (If Applicable)

September 23, 2021

Hunter Simmons City of Fairhope Board of Appeals and Adjustments P.O. Box 429 Fairhope, Alabama 36533

Re: Rogers Residence Authorized Agent

Dear Mr. Simmons:

Ed and Patti Rogers, property owners of of the lot west of 116 Pecan Ave, authorize and permit Walcott Adams Verneuille Architects (any employee) to act as their representative and agent in any manner regarding this application which relates to property described as tax parcel ID# 46-03-37-0-011-129.000, PPIN #012191.

Sincerely. WALCONT ADAMS VERNEUILLE ARCHITECTS, INC.

Clay Adams, Principal Architect

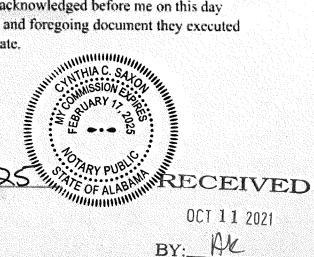
Ed or Patti Rogers, Owner

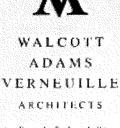
I, <u>Cynthia Saxon</u>, a Notary Public in and for the State of Alabama at Lard, hereby certify that <u>Clay Adams and Pattic Koacha</u>, whose names are signed on the foregoing document, and who are known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing document they executed the same voluntarily on the day the same bears date.

thia Saxon

Notary Public:

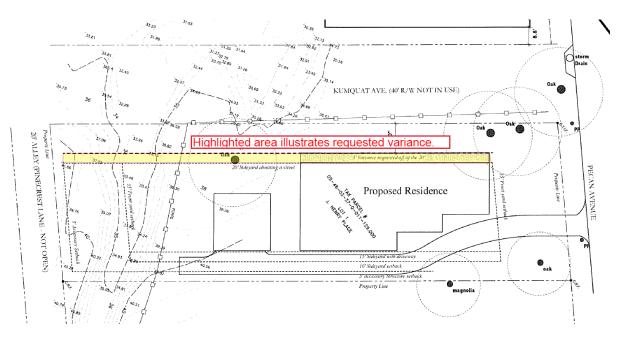
My Commission Expires





Die Suzik Schaaf Street Prithope, AL 30532 251-928-6041 TAX 251-928-6045 www.wayarehitorty.com The applicant, Patti Rogers, is requesting a 5' variance to the street side setback located at the southeast corner of Pecan Avenue and Kumquat Street. The property is zoned R-2 Medium Density Single-Family Residential District.

The applicant is requesting a variance to the street side setback which would result in a 15' side street setback instead of 20'. The section of Kumquat Ave adjacent to the subject property is currently an unopened right-of-way (ROW) but may be utilized in the future. The ROW appears wooded and functions more for drainage back to a gully that is located at the rear of the property. Attempts to vacate the ROW have been unsuccessful and a future detention area has been contemplated by Fairhope Public Works.



Until 2014, the subject property was part of the yard for the home located at 116 Pecan Ave. The property was re-platted in 2014 that created two lots and illustrates the 20' side street setback. A copy of the plat and site plan of the proposed house is included in the packet. The variance request is not tied to the site plan as the variance would 'run with the land' and not be tied to home plans. Note that the re-plat requires a best management practice drainage plan be submitted at the time of building permit.

#### 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 property, generally rectangular, being 80' wide and containing 20,695SF makes the lot larger than the R-2 minimum size requirements of 75' wide and 10,500SF. The property

does have a gully in the rear, but staff believes there to be sufficient space to build a home and accessory building.

### (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: Staff does not believe the side street setback creates an unnecessary hardship. It appears one solution would be to flip the house plan. The driveway can be placed inside the side street setback.

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

Response: The City of Fairhope has many unopened ROW'S where the side street setback applies.

# (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: Without knowing the intentions of the ROW, it is difficult to assess what impact this the requested variance may have on the adjacent ROW. We received two letters from neighboring property owners and their point is well received, why allow one person a variance, when alternatives exist, that is not allowed to others. Relief, if granted, would not cause any detriment to the public nor impair the intent of this ordinance.

#### **Recommendation:**

Staff recommends DENIAL of BOA 21.11.

#### Zoning Ordinance Requirements:

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

Variances: 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. Variances 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 variances 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:

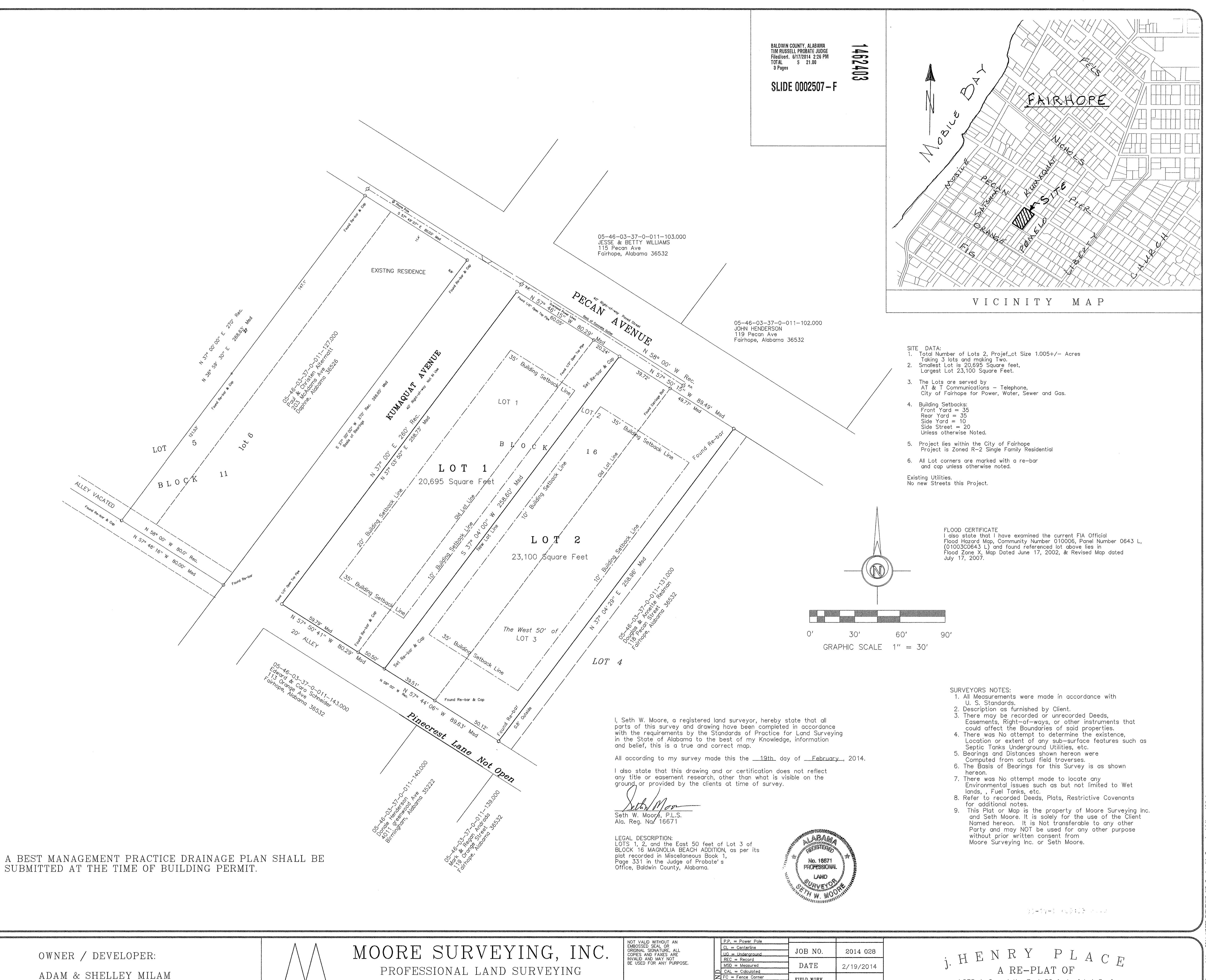
Article II.C.3.g.

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

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
 The variance is recorded with the Judge of Probate.

مهم المعرف المعرف 2507F OWNER S CERTIFICATE OF ACCEPTANCE: STATE OF ALABAMA) COUNTY OF BALDWIN) This is to certify that, We the undersigned do hereby certify that We are the Owners icknowledge and adopt the same under the design and t all easements and dedicate all Streets, to the public or NOTARY PUBLIC: State of Alabama) BALDWIN COUNTY iA LOPER \_\_\_\_, a Notary Public, in and for said State and County, do hereby certify that the above names signed to the within OWNERS ACCEPTANCE and who is known to me, that they voluntarily executed said ACCEPTANCE on this date. Given under my hand and seal this the 154 day of 4 and 2014. ()Notar NPublic - Baldwin County, Alabama My Commission Expires: 6-5-18 APPROVAL OF THE CITY OF FAIRHOPE PLANNING DIRECTOR The undersigned, as authorized by the City of Fairhope Planning Director, hereby approves the within re-plat for the recording of same in the Probates Office, Baldwin County, Alabama, on this the -17 day Of -17mallien City of Fairhope Planning Director





118 1/2 PECAN STREET FAIRHOPE, ALABAMA 36532

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555 NORTH FAIRHOPE, PHONE Email mooresurveying@bellsouth.net

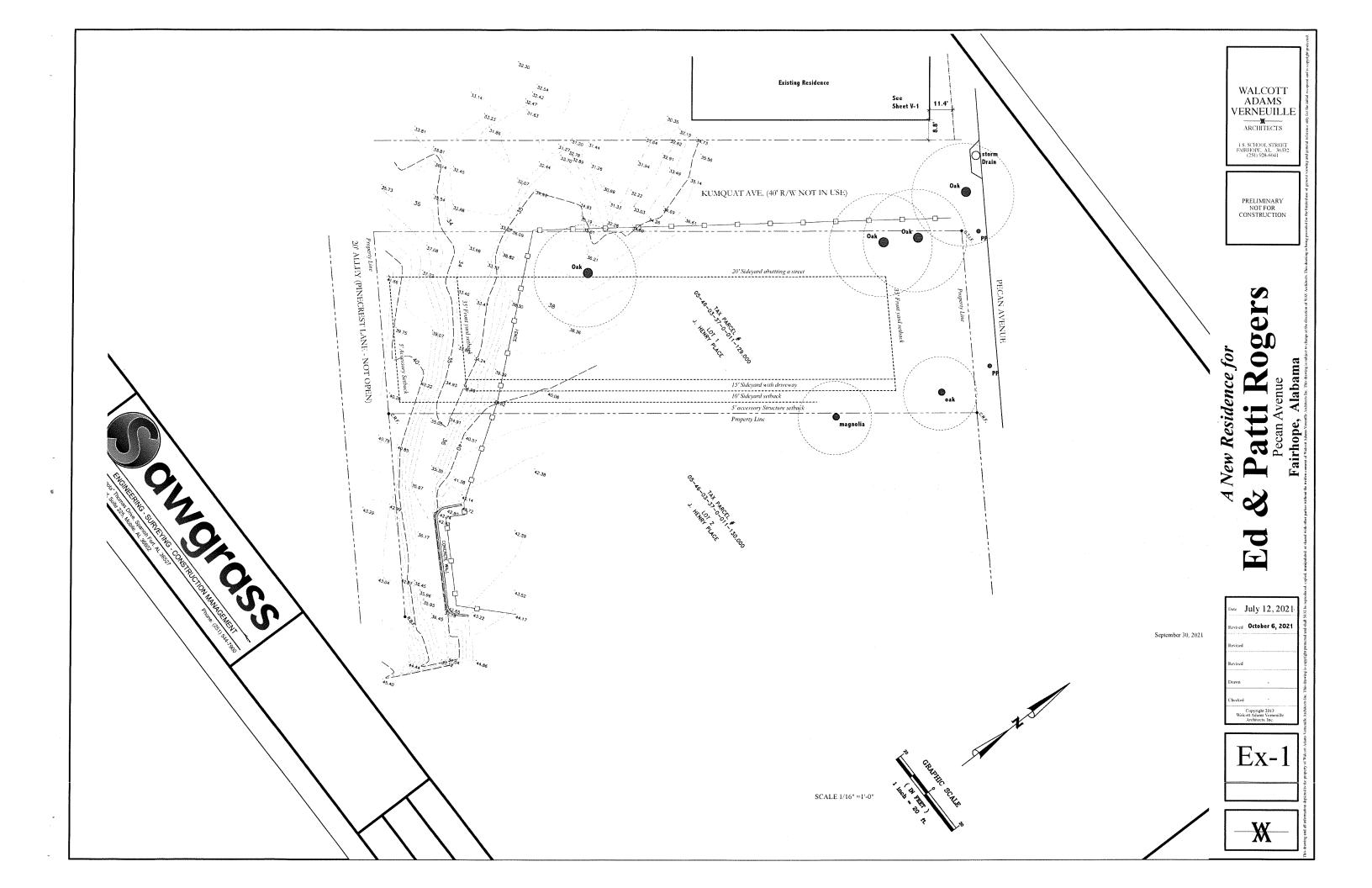
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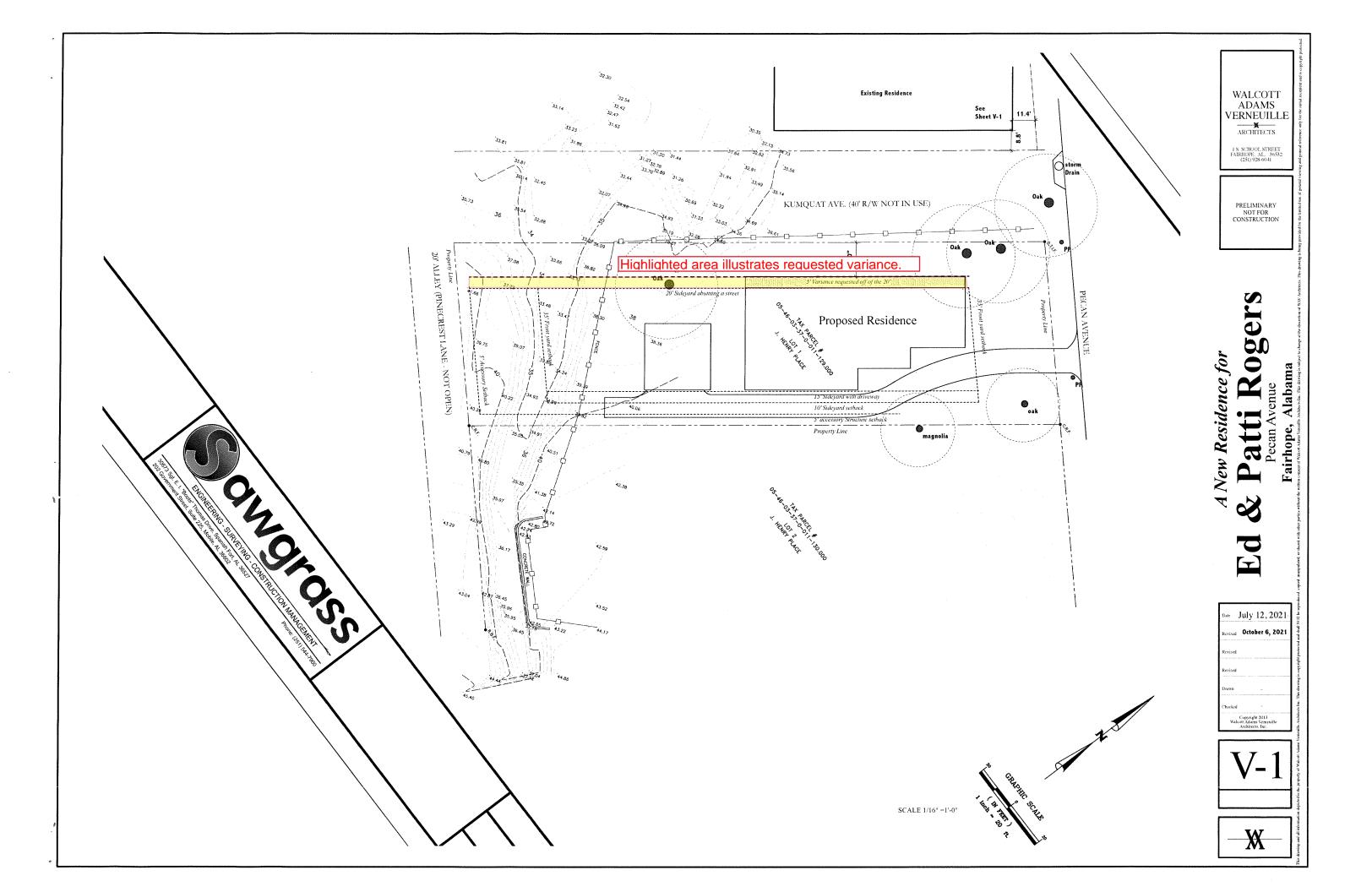
MSD = Measured CAL = Calculated FC = Fence Corner R = RadiusFIELD WORK DATE ARC = Arc Length TEL = Telephone DRAWN BY BM = Bench Mark ELEV = Elevation FRBC = Found Re-bar & ( SCALE FIP = Found Iron Pin SIP = Set Re-bar & Cap REVISIONS

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= 30'	

LOTS 1, 2, and the East 50 feet of Lot 3 of BLOCK 16 OF MAGNOLIA BEACH ADDITION, as per its Plat recorded in Miscellaneous Book 1, Page 331 in the Judge of Probate's Office, Baldwin County, Alabama.







From:	Hunter Simmons
To:	<u>Allie Knutson</u>
Subject:	FW: Response to Request of Street Side Setback Variance Case: BOA 21.11 Property located: Lot 1, J. Henry Place Subdivision
Date:	Monday, November 8, 2021 12:57:45 PM

fyi

From: jacobson86@aol.com <jacobson86@aol.com>

Sent: Monday, November 8, 2021 12:11 PM

**To:** planning <planning@fairhopeal.gov>

**Subject:** Response to Request of Street Side Setback Variance Case: BOA 21.11 Property located: Lot

1, J. Henry Place Subdivision

#### SENT FROM AN EXTERNAL ADDRESS

Ms. Allie Knutson Planning and Zoning Department City of Fairhope

Dear Ms. Knutson

This email is a response to the request made by Walcott Adams Verneuille, acting on behalf of the owner, Patti Rogers, who is asking for a 5 feet variance to the street side setback requirements for the property located at Lot 1, J. Henry Place Subdivision.

Both my wife and I are opposed to the request. We feel the established setback is necessary to keep the consistency of the neighborhood aesthetics. For various reasons there are two homes that show a lack of compliance with the established setback. As legal as that is, it has taken away from the visual balance of our neighborhood where the houses exist. This request shows no consideration for the neighborhood community and it's visual aesthetics.

The described property is large enough for the structure to be built with the established setback. We are a community and the architect, builder, and property owner are not sensitive to this community. A request is not a show of consideration for the community; it is the legal completion of a requirement. It is only when one complies with the established setback does one demonstrate a consideration for the whole community.

How can one (the Board of Adjustment) allow a request for a variance on an established setback and not allow others the same request of a setback variance? I am sure others must have requested such a variance at one time or another and had been denied. This request to ask for a variance to the established setback is a "loophole" to the set rule at hand. If you allow this request, then you may as well throw out the rule, so others who request a variance can do so as they wish...without any consideration for the community. Again, complying to the rule of the established

setback is the only way one demonstrates consideration for the community.

Thank you for your time.

Respectfully Yours,

Dennis Jacobson 100 Pecan Ave. Fairhope, AL 36532 jacobson86@aol.com From: Andy Parvin <andy.parvin@outlook.com>
Sent: Friday, November 5, 2021 1:46 PM
To: planning <planning@fairhopeal.gov>
Subject: BOA 21.11

#### SENT FROM AN EXTERNAL ADDRESS

Re: Street Side Setback Variance

We are against the granting of this variance. One of the reasons we moved to Fairhope to build our new house was the disciplined rules, regulations and inspections the city has implemented. This process insures quality homes are built that are appropriate for the neighborhood and are considerate of the neighbors. Relaxing setbacks is a slippery slope to density of building. This property also has a tremendous challenge with storm water runoff that originates in town and is not tied off at Pomelo-Pinecrest into any drainage system. The city needs to solve the flooding issue before more houses are added. Are the new owners aware of the water issue? Every time there is a hard rain all of our yards are flooded (from Pomelo down to Satsuma on Pecan).

The property in question is of sufficient size to build a home that conforms to city rules regarding setbacks. WAV is a very talented firm. Surely they can design a home within the legal boundaries without needing a concession from the city and its citizens.

Please stand firm and do not grant a variance.

Sincerely,

Andy Farvin

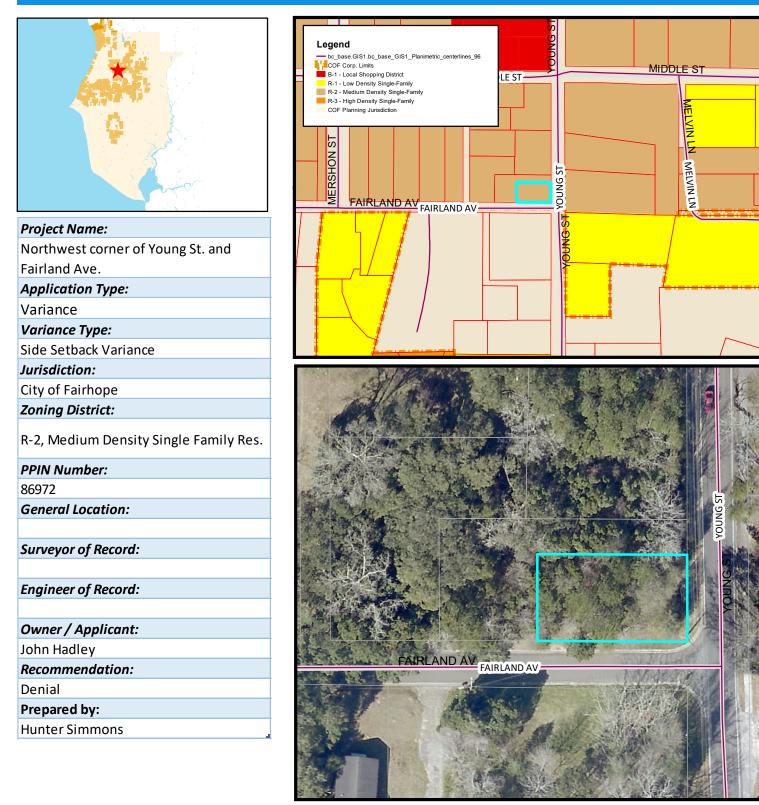
Andy Parvin andy.parvin@outlook.com 404-906-8346 (mobile) 104 Pecan Avenue

## City of Fairhope Board of Adjustment

November 15, 2021



### BOA 21.12 NW Corner of Young St/Fairland Ave





### APPLICATION FOR BOARD OF ADJUSTMENTS

**Application Type:** 

Administrative Appeal

□ Special Exception

□ Variance

Property Owner / Leaseholder Information						
Name: John		Ph	one Numh	er (7	740)405 ·	- 2.881
Street Address:	511 Horton	n Ln	one rearing	····· <u>·</u>		
City: Fairho	ope	State:	AL	Zip:	36532	

Applicant / Agent Ind If different from abov Notarized letter from property owner is required if ar	7 <del>0</del> .	
Name: Phone Number:		
Street Address:		
City: State:	Zip:	
Site Plan with Existing Conditions Attached:	(YES) NO	
Site Plan with Proposed Conditions Attached:	YES NO	
Variance Request Information Complete:	VES NO	
Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:	YES NO	

### Applications for Administrative Appeal or Special Exception:

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

TOHN R. HADLEY Property Owner/Leaseholder Printed Name

9/11/2021

Date

Signature

Fairhope Single Tax Corp. (If Applicable)

RECEIVED

OCT 11 2021

BY: AK

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DCT 11 2021 BY: AK

#### VARIANCE REQUEST INFORMATION

What characteristics of the property prevent / preclude its development?:

Too Narrow	Elevation	Soil
X Too Small	Slope	Subsurface
Too Shallow	Shape	Other (specify)

Describe the indicated conditions: See attached memo (Exhibit 1)

How do the above indicated characteristics preclude reasonable use of your land? See attached memo (Exhibit 1)

What type of variance are you requesting (be as specific as possible)? <u>Allowing 2nd floor deck to be built on North</u> setback

Hardship (taken from Code of Alabama 1975 Section 11-52-80):

"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:			
	Residential	Commercial	
Filing Fee:	\$100	\$500	
Publication:	\$20	\$20	
TOTAL:	\$ 120.00		

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application

JOHN R. HADLEY Property Owner/Leaseholder Printed Name Si 11/2021 Date

	Joh K.	Hadley
ignature		

Fairhope Single Tax Corp. (If Applicable)

The applicant, John Hadley, is requesting a 9' variance to the side setback for the principle structure located at the north west corner of Fairland Avenue and Young Street. The property is zoned R-2 Medium Density Single-Family Residential District.

The applicant is requesting a variance to the side setback which would result in a 1' side setback instead of 10' to construct a landing deck off the second floor. Elevations and the plot plan are attached. The property is a non-conforming lot due the size. Staff is not against relief from the setback, but cannot support building to 1' from the property line.

In Exhibit 1, the applicant states the landing is intended as a "walk-out landing deck" that would also serve as a "emergency exit from the second floor". Neither plans, nor elevations, illustrate a stairway from the deck to the ground.



Figure 1: Property as seen from Google St View

#### 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 property, generally rectangular, being 52' X 102 and containing 5,304SF makes the lot smaller than the R-2 minimum size requirements of 75' wide and 10,500SF. Staff notes that, at this time, we are not able to find evidence of a subdivision that created this lot and the surrounding flag lot, but are reviewing the request as the lot is legal and non-conforming.

### (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: Staff does believe the side setback creates a challenge to building a home. The property being a corner lot also has a 20' street side setback.

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

Response: The majority of the properties are larger lots that conform to requirements of Fairhope's Zoning requirements.

# (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: Staff is concerned with the structure being 1' from the property line. Currently the adjacent property to the north is an irregular flag shaped lot making it unlikely another structure would be placed near the proposed structure. There is no way of knowing if a re-subdivision or moving of lot lines will be done in the future.

#### Comments:

While staff recognizes the size of the lot is substandard and unique, the extent of the variance is of concern. The applicant states "the design of this outdoor space has no negative impact to the adjoining land", but we cannot foresee the use of the adjoining land in the future. By the creation of this parcel and the adjoining parcel, two non-conforming lots were created that will likely require variances. We discussed options such as a five-foot stoop and stairs, a Juliette balcony, or a combination of both, but we cannot support a variance that allows structures 1' from the parcel line.

#### **Recommendation:**

Staff recommends DENIAL of BOA 21.12.

#### Zoning Ordinance Requirements:

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

Variances: 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. Variances 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 variances 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:

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
 The variance is recorded with the Judge of Probate.

#### **EXHIBIT 1**

A variance is requested in order to build a small 29 feet by 32 feet brick home (2 ½ stories) on the NW corner lot of Young and Fairland in Fairhope. This parcel is currently owned by John R. Hadley of Fairhope. The property parcel PIN number is 86972 and measures 102 feet X 59 feet. Building this home is dependent on being able to build a small, attractive home that fits in this small lot.

The home will be built using a new high void brick product manufactured by Ragland Clay Products (Ragland, AL) that is both hurricane/disaster resilient and highly energy efficient. The plan is a 2-car garage and guest bedroom/bath on the first level and the second floor will be living space and an art loft. A key feature of the second floor is the walk-out landing deck. This deck would also provide an additional emergency exit from the second floor. It is this landing deck that exceeds the current setback requirements. The house footprint of 29 feet by 32 feet fits exactly within the setback limits.

The only adjoining parcel is an irregular shaped flag pole lot and is small. The pole side of this flag lot is 24 feet by 102 feet. This area would remain as unimproved woodland or act as a driveway, so therefore the landing deck would not have a negative impact on this area. The larger flag portion of this adjoining lot is 83 feet by 66 feet. With existing setback limits, the building space would be only 13 feet by 46 feet.

The landing deck adds greatly to the safety and aesthetics of the house and property. The lot is small and the house footprint fits beautifully on it. The design of this outdoor living space has no negative impact to the adjoining land, but greatly enhances the space and safety of the proposed home. This is an established yet changing area of Fairhope and this home enhances the beautification of Fairhope.

Please see attached EXHIBIT 2 that is a drawing of lot #86972 and the adjoining lot.

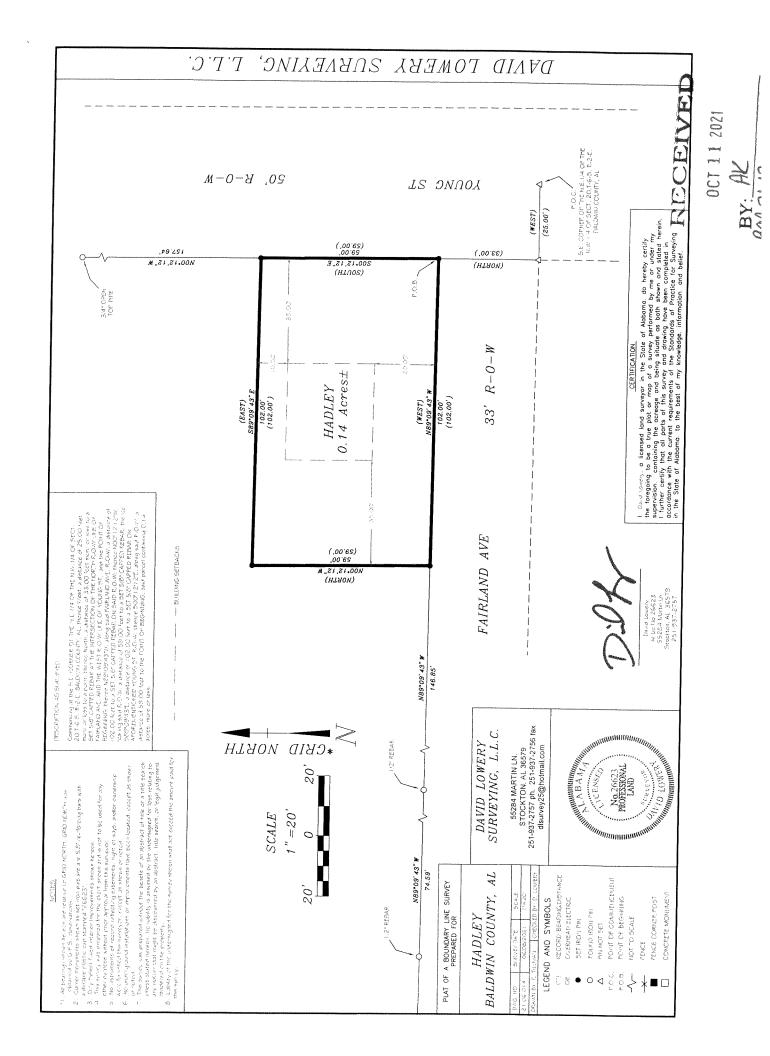
Thank you for your consideration for granting a variance on the property to build this second-floor deck.

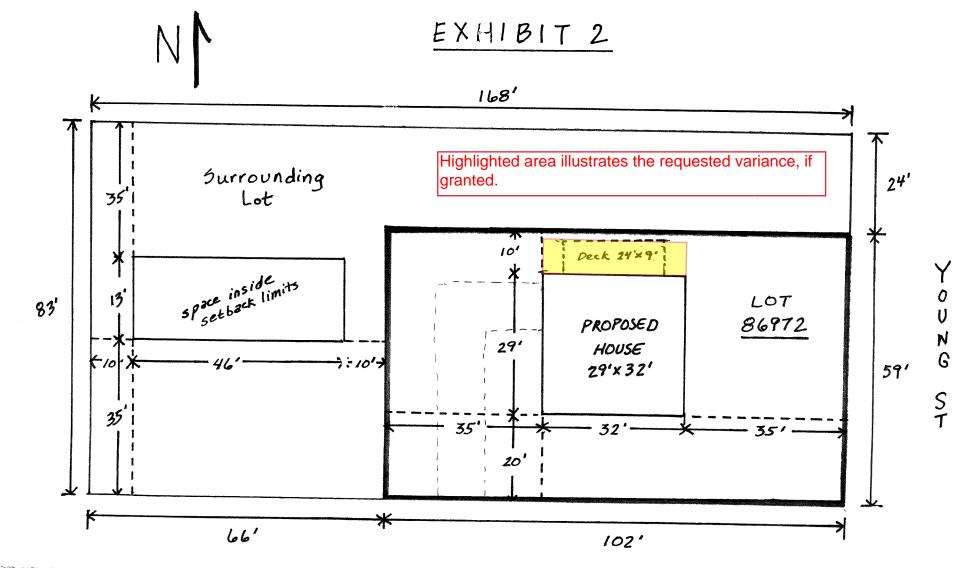
**PROPERTY OWNER** 

John Hadley 511 Horton Ln Fairhope, AL 36532 <u>Sundancer57@hotmail.com</u> (740) 405-2881

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OCT 11 2021 BY: AK



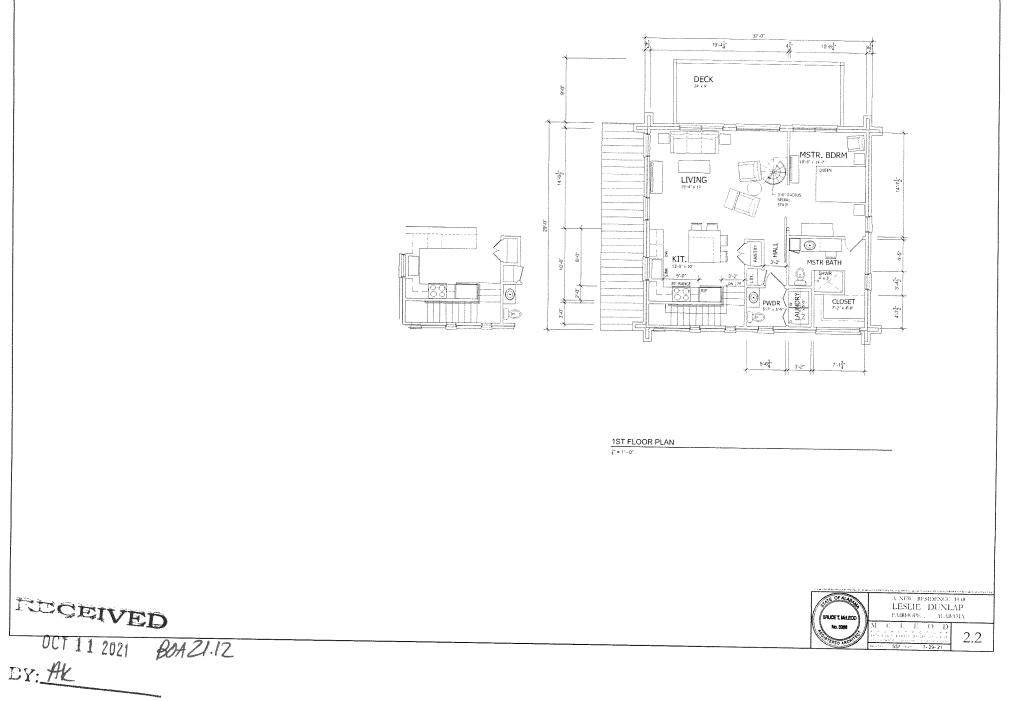


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FAIRLAND AVE

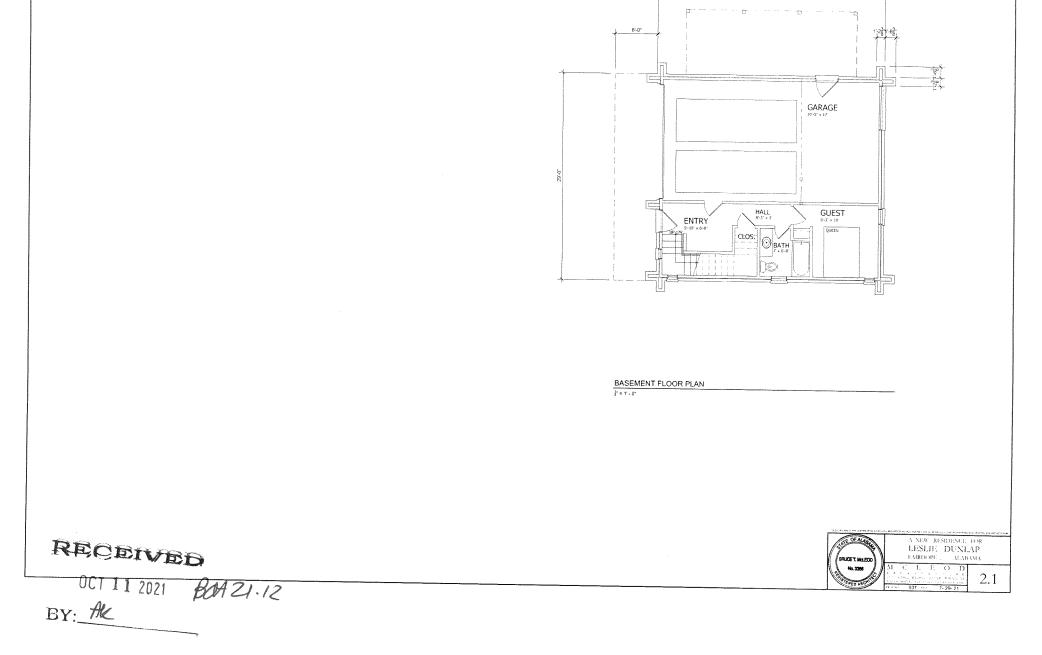
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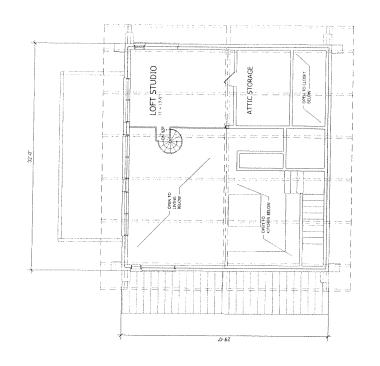
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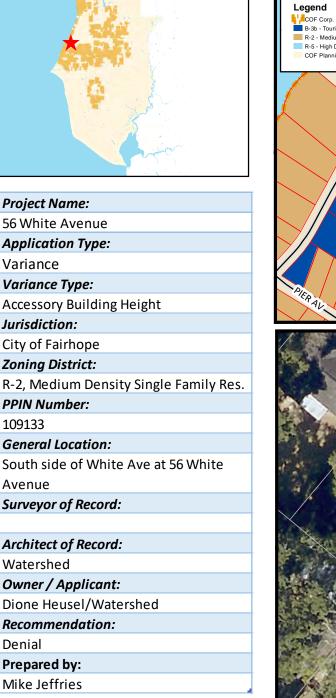
LOFT FLOOR PLAN

## City of Fairhope Board of Adjustments



November 15, 2021

## BOA 21.13 - 56 White Ave







### **APPLICATION FOR BOARD OF ADJUSTMENTS**

Application	Type:
-------------	-------

☐ Administrative Appeal

Special Exception

Variance

	<b>Property Owne</b>	er / Leaseholder Ir	Iformation
Name: Dione Heusel		Phone Numbe	r: 504.495.3986
Street Address:	56 White Avenue		
City: Fairhope		State: <u>AL</u>	Zip:36532

### **Applicant / Agent Information**

Name:	_ Phone Ni	1mber:	
City:	State:	Zip:	
Site Plan with Existing Conditions Attach Site Plan with Proposed Conditions Attac Variance Request Information Complete:	hed:	YES NO YES NO YES NO	
Names and Address of all Real Property 0 within 300 Feet of Above Described Prope		YES NO	

### **Applications for Administrative Appeal or Special Exception:**

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Dione Heusel

Property Owner/Leaseholder Printed Name

Date Date

tor Here

Signature

Fairhope Single Tax Corp. (If Applicable)

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OCT 1 1 2021 BY:\_\_\_\_\_\_



OCT 1 1 2021 BY: AK

#### VARIANCE REQUEST INFORMATION

What characteristics of the property prevent / preclude its development?:

Too Narrow	<b>Elevation</b>	Soil
Too Small	Slope	Subsurface
Too Shallow	Shape	$\bigvee$ Other (specify)

Describe the indicated conditions: See attached narrative and photographs

How do the above indicated characteristics preclude reasonable use of your land? See attached narrative

What type of variance are you requesting (be as specific as possible)? See attached narrative

Hardship (taken from Code of Alabama 1975 Section 11-52-80):

"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:			
	Residential	Commercial	
Filing Fee:	\$100	\$500	
Publication:	\$20	\$20	
TOTAL:	\$120		

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

me Heusel

Property Owner/Leaseholder Printed Name

10/8/21

Here

Signature



#### Describe the existing conditions

The existing historic home at 56 White Avenue is a single story, with a small garage in the back yard. The lot slopes from the street to the rear, South West corner.

The neighborhood contains many historic and new homes with two story accessory buildings, indicated with a star in the attached photographs, including:

- 1. 60 White Avenue. A single story home with an accessory building that is taller than the primary structure, borders the subject site to the east. It is visible from White Avenue and Bayview.
- 2. 54 White Avenue. A two story accessory building with a single story home, directly to the west, mostly obscured by trees from the street.

3. 57 Nichols Avenue. A two story accessory building to a two story home, abutting the rear property line of this home, directly to the South.

4. 57 White Avenue. A two story accessory building with a two story home, directly across the street.

The existing historic home at 56 Avenue is one of the shorter homes in the neighborhood, and uphill neighbors to the east and south tower over it. But it is compatible with the overall neighborhood character and scale, and several years ago the owner chose to invest in renovations of the existing home to make it more resilient and accessible, and to add a rear porch, rather than tearing it down and building new. They value the historic character of this neighborhood.

#### How do the above characteristics preclude reasonable use of their land?

The owner wishes to expand their living space, by building an accessory building with a living room over a garage, like many of their neighbors. Because the lot slopes to the back, it is possible to build a two story accessory building without exceeding the height of the primary residence. However the accessory building would have to have a very low slope oof to provide habitable space on the second floor and not exceed the height of the primary structure. This feels aesthetically incompatible with the existing historic home, and neighborhood. The owner seeks a variance in order to build something more compatible with the fabric of the neighborhood and the spirit of the zoning ordinance.

#### What type of variance are you requesting:

The owner requests a 2' variance to the allowable height for their accessory building, in order to build the desired accessory building with a sloped roof, to match the existing historic home, and be compatible with the neighborhood character and aesthetics. Because of the lot characteristics, context, and sight lines, the additional height should not be perceptible from the street. We feel that the intent of the height restrictions, to prevent accessory buildings from towering over primary structures, and maintain a clear hierarchy between the structures, would be preserved.

RECEIVED

OCT 11 2021

BY: AK

WATERSHED, Building Sustainability | 302 Magnolia Avenue Fairhope, AL | www.watershed.pro | p:251.929.0514

The applicant is Dione Heusel and is requesting a 2' variance to the height limit of an accessory structure located at the south side of White Avenue two lots west of S. Bayview Street. The property is zoned R-2 Medium Density Single-Family Residential District.

The applicant is requesting a variance to the height limit of an accessory structure. An accessory structure cannot be any taller than the principle structure. The variance request would result in the ridge of the accessory structure extending 2' beyond the ridge line of the principle structure. Elevations are attached. The property is not a non-conforming lot due to the size. Staff is not against relief from the maximum allowed height per Accessory Structure Dimensions Table 3-3 but cannot support the request as a variance.

### 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 property, generally rectangular, being 89' X 129' and containing 11,475SF makes the lot larger than the R-2 minimum size requirements of 75' wide and 10,500SF.

### (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: Staff does not believe the application of the ordinance creates an unnecessary hardship.

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

Response: There are no peculiar conditions.

# (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 detriment to the public good. The request is with an attempt to preserve the original home and avoid demolishing it. Unfortunately, the Board of Adjustments is not granted the power to allow a variance for historic or architectural preservation.

### Recommendation:

Staff recommends DENIAL of BOA 21.13.

### Zoning Ordinance Requirements:

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

Variances: 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. Variances 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 variances 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.

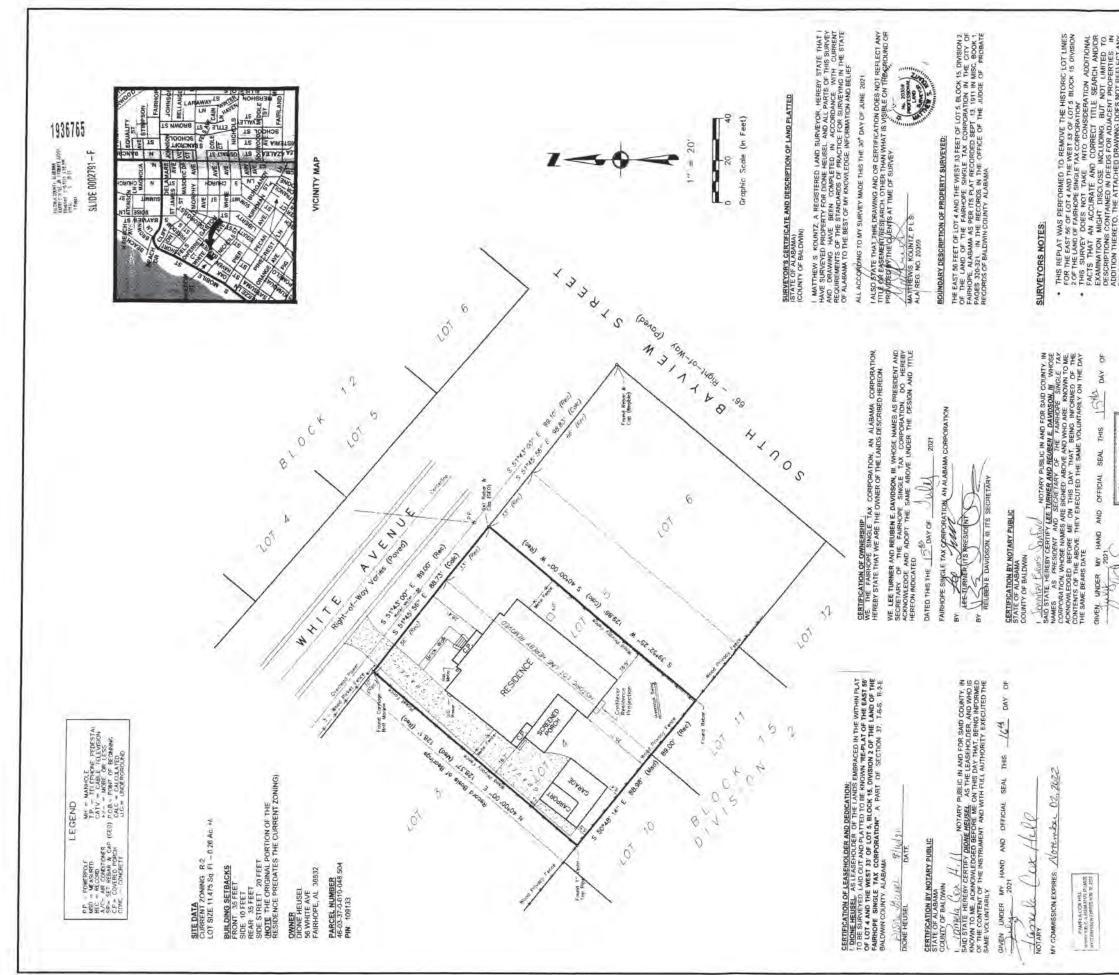
### When a variance is granted by the Zoning Board of Adjustment it has the following effect:

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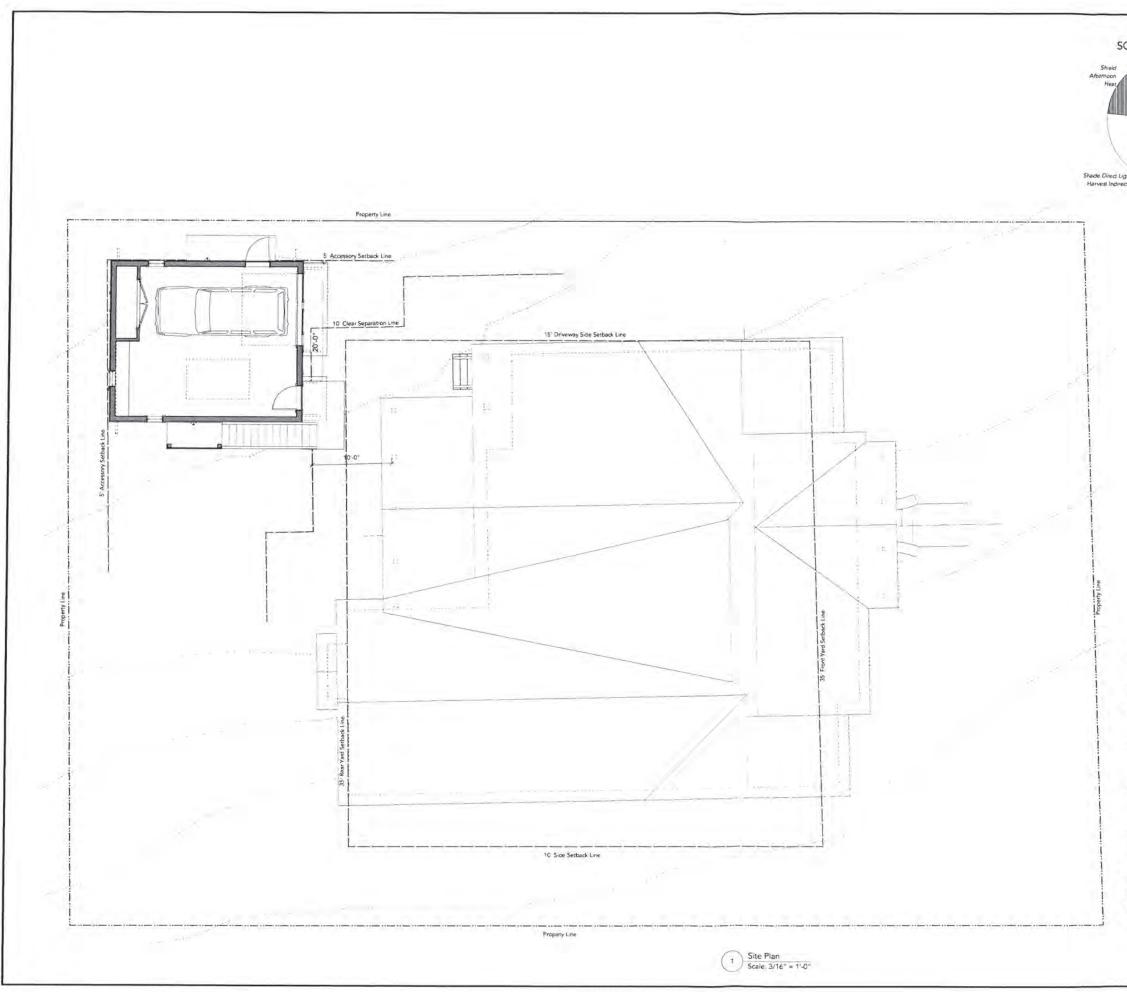
Article II.C.3.g.

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

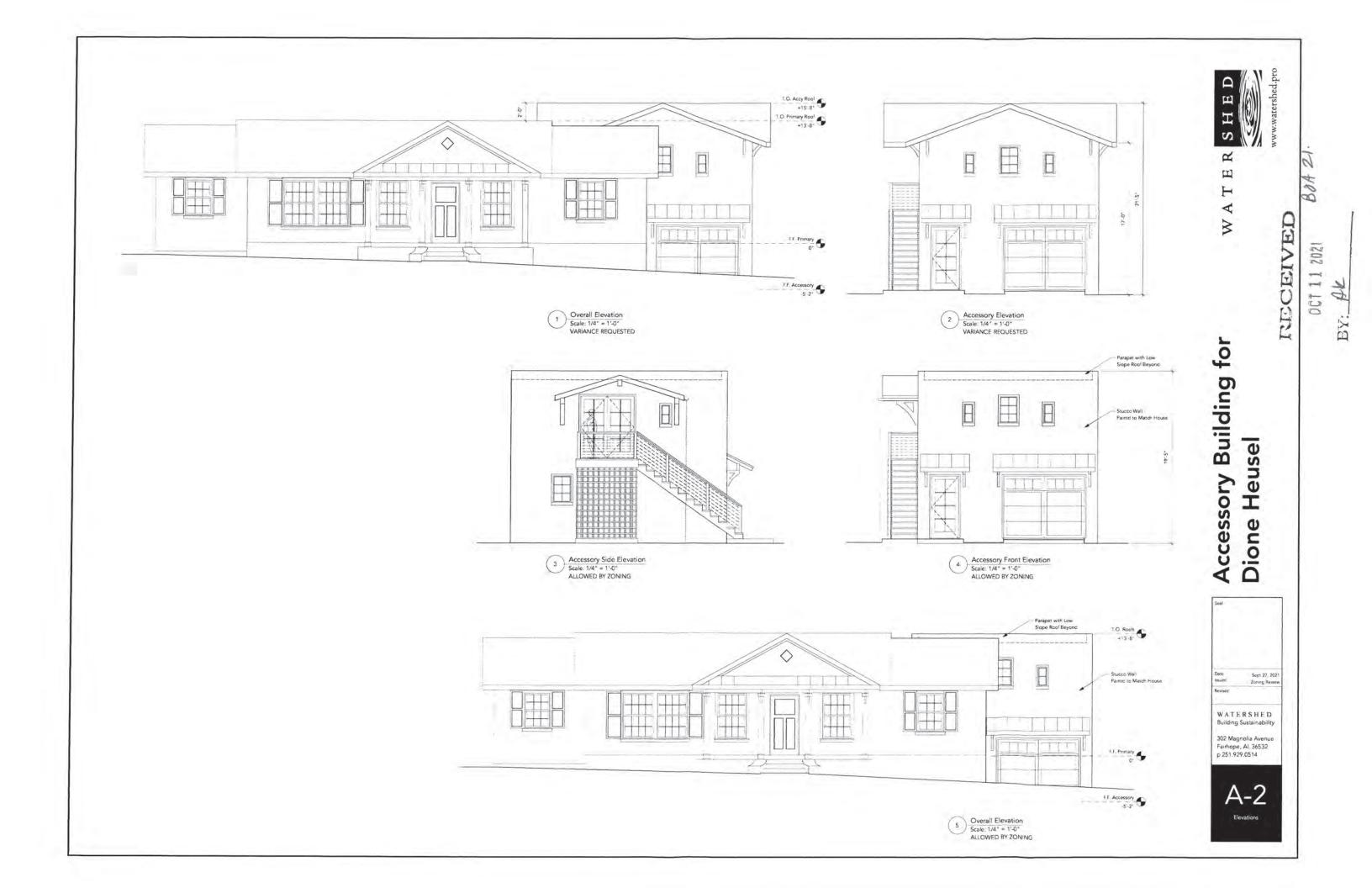
The variance is acted upon according to the application and subject to any conditions of approval within 365 days of the granting of the variance or final decision of appeal, whichever is later; and
 The variance is recorded with the Judge of Probate.

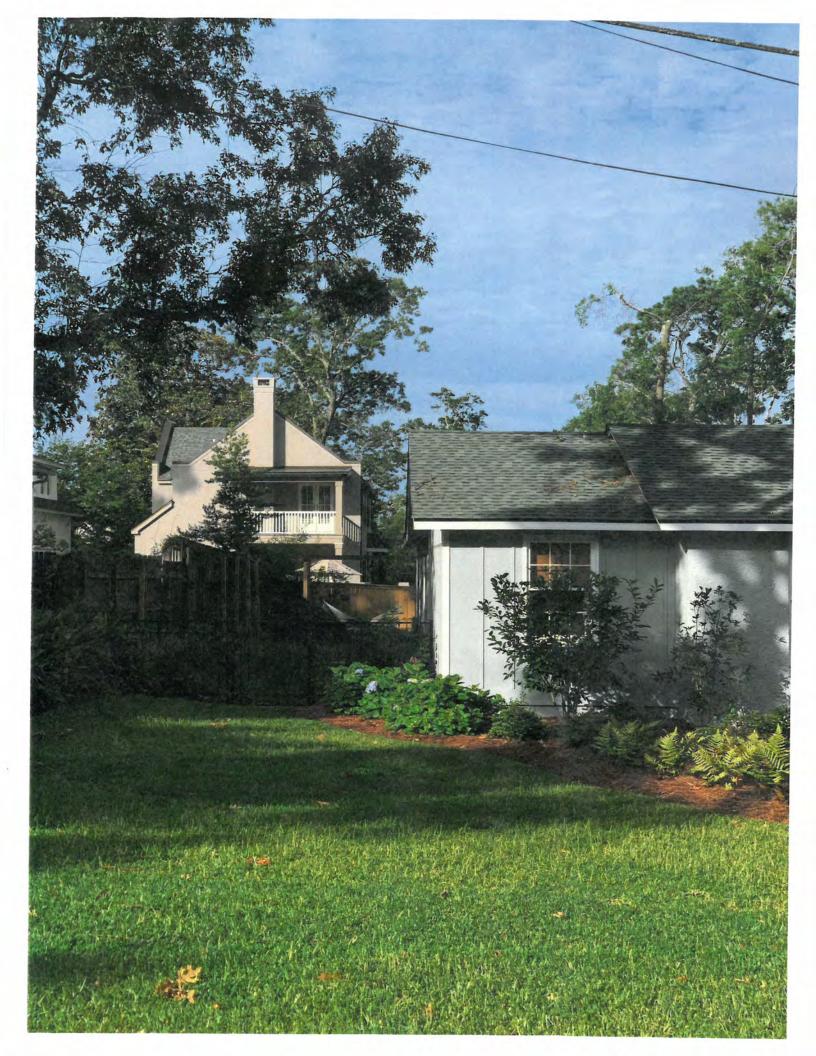


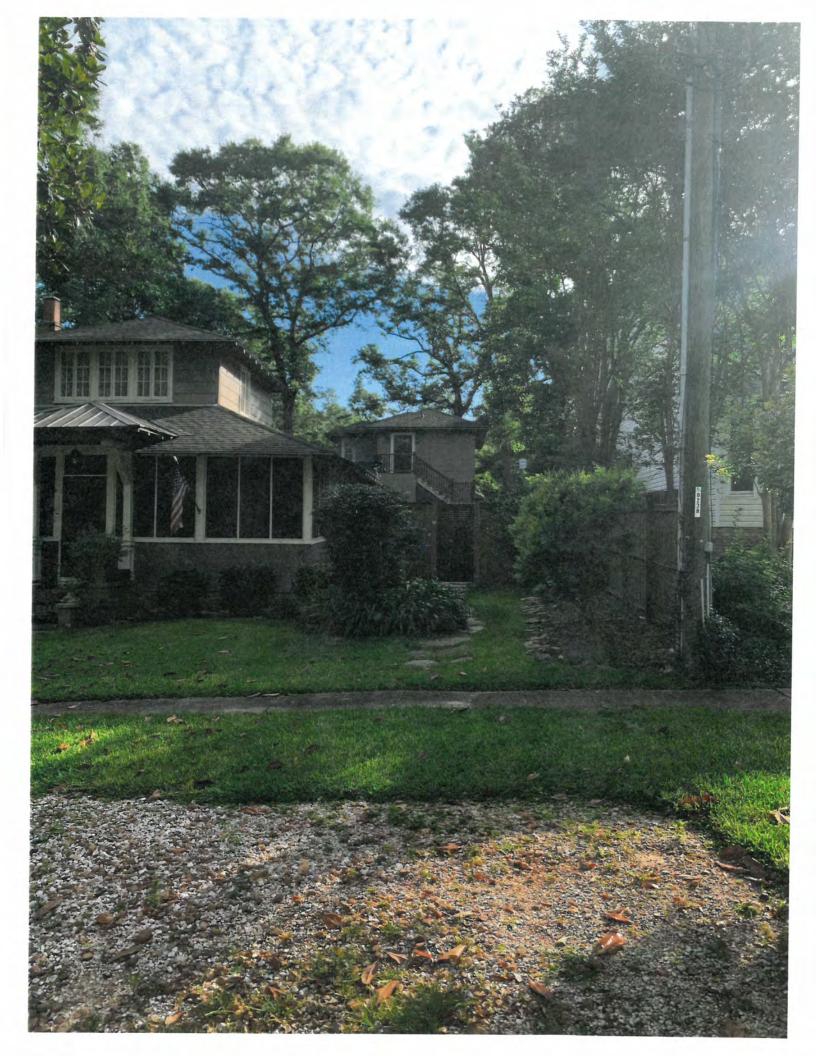
TITLE OR EASEMENT RESEARCH OTHER THAN WORD WITH FOUND THE PROVIDED BY OUR CILENT, OR RECORDS WE HAPPEN TO HAVE ON FILE FURMISHED BY OTHERS. THE BEARINGS AND DISTANCES SHOWN HEREON WERE COMPUTED MEXARMISES AND METALEDES SHOWN HEREON WERE COMPUTED MESSUREMENTS SHOWN HEREON WERE MADE IN ACCORDANCE WITH THE ORIGINAL PORTION OF THE RESIDENCE PREDATES THE CURRENT ZONING. A BUILDING & BUILDING PREDATES THE CURRENT ZONING. THE CRITY OF FAIRHOPE	REVISIONS DESCRIPTION DATE BY DESCRIPTION DATE BY SEAL	
V COMMISSION EXPIRES V COMMISSION EXPIRES	<pre></pre>	
"RE-PLAT" ""RE-PLAT" "OF THE EAST 56' OF LOT 4 AND THE WEST 33' OF LOT 5, BLOCK 15, DIVISION 2 OF THE LAND OF THE FAIRHOPE SINGLE TAX CORPORATION "FOR REMOVING OF HISTORIC PROPERTY LINES"	$\begin{array}{c c c c c c c c c c c c c c c c c c c $	CECEIVED BOA 21.

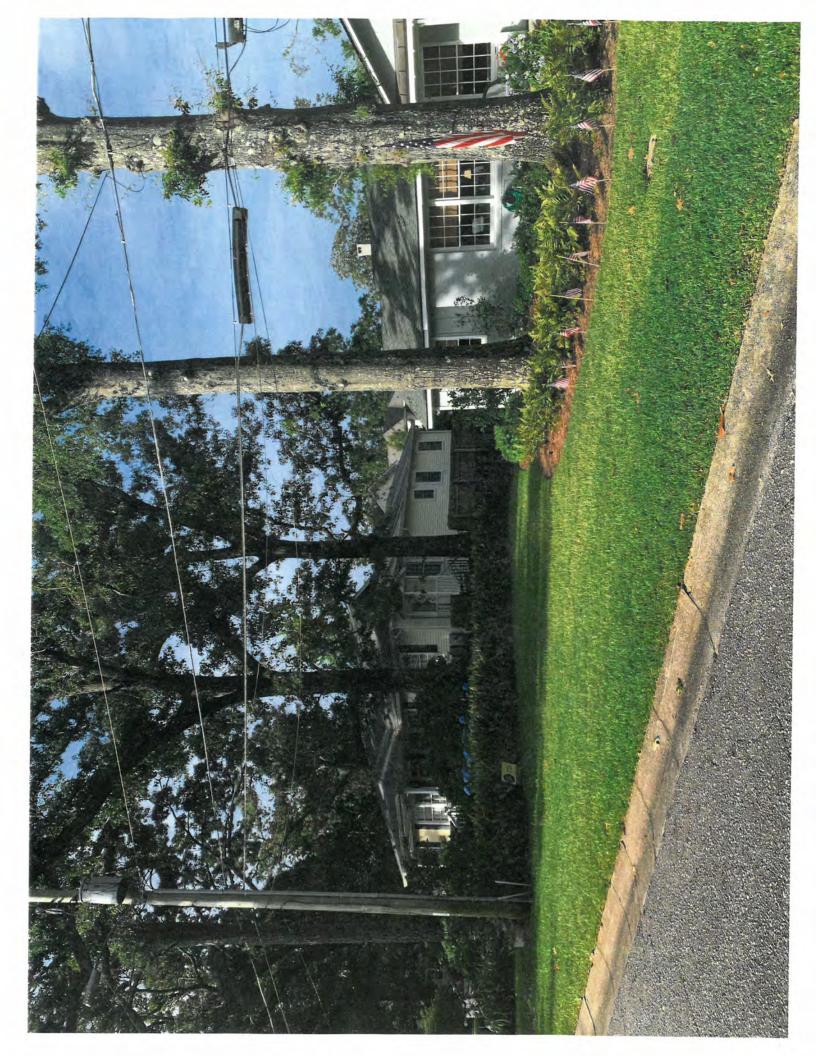


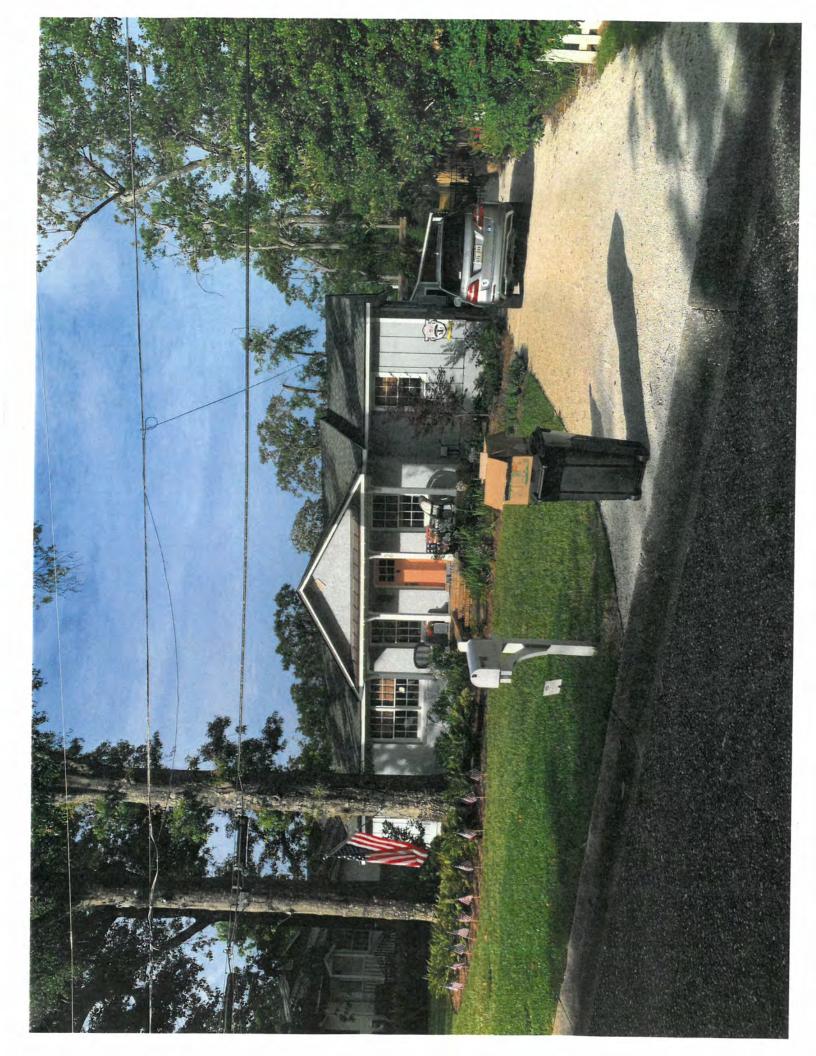
Ma Ma	Harvest Diffuse Light		WATER SHED	www.watershed.pro	Box 21.
Zoning Table Setback	Allowed	Provided	Accessory Building for Dione Heusel	RECEIVED	057 1 1 2021 BY: AL
From Reai Side Driveway Side Accessory Rear Accessory Side	35' 35' 10' 15' 5' 5'	29'-6" 35'-0" 16'-6" 15'-10" 5'-2" 5'-1"	Seal	1	
Principal Lot Coverage Lot Size 11,469sf Max Lot Coverage (under roof, including	4,243sf (37%)	3,320sf (29%)	Date Sept 27,	2021	
Accessory Structure Lot C Rear Yard Size 3,112s <sup>4</sup> Max Rear Yard Coverage	<u>Coverage</u> 778sf (25%)	495s <sup>;</sup> (16%)	Revision WATERSHEI	D	
Building Areas Location First Floor, Main House Studie Garage	Conditioned 2,854 480	Unconditioned	Building Sustainabil 302 Magnolia Aveni Fairhope, AL 36532 p 251,929,0514	ue	
Screened Porch Front Porches Totals Total Under Roof	3,334 SF	332 88 900 SF <b>4,234 SF</b>	C-1		

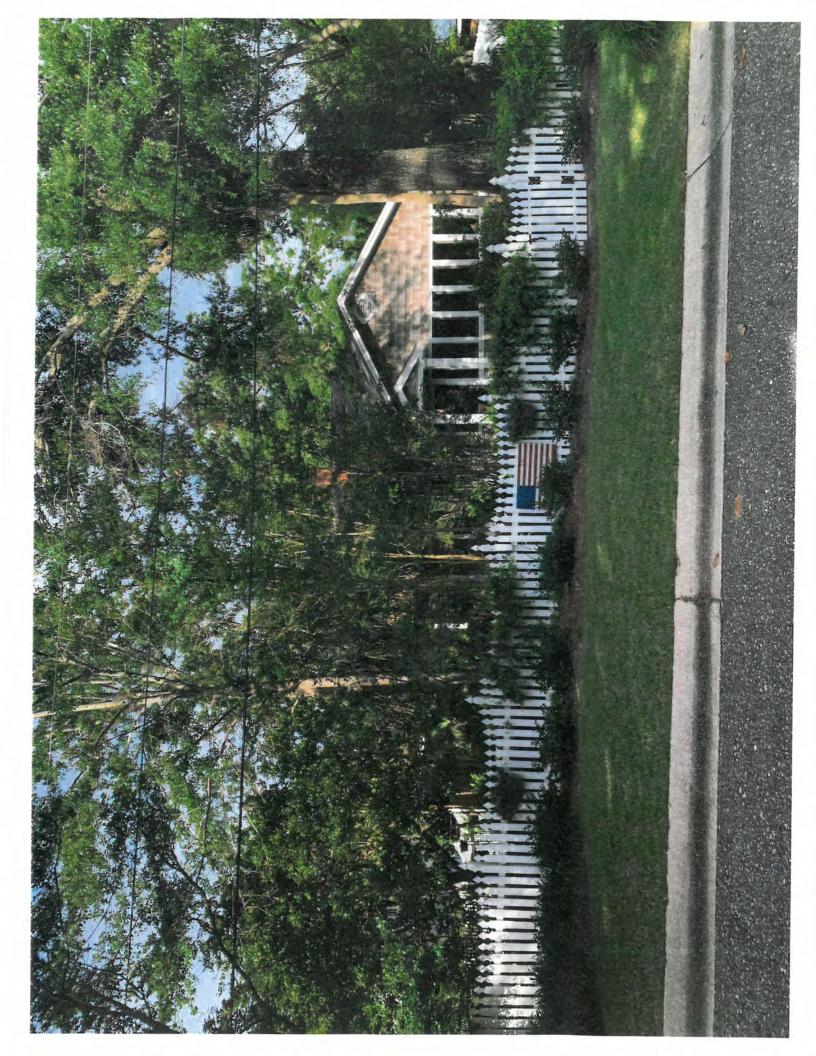


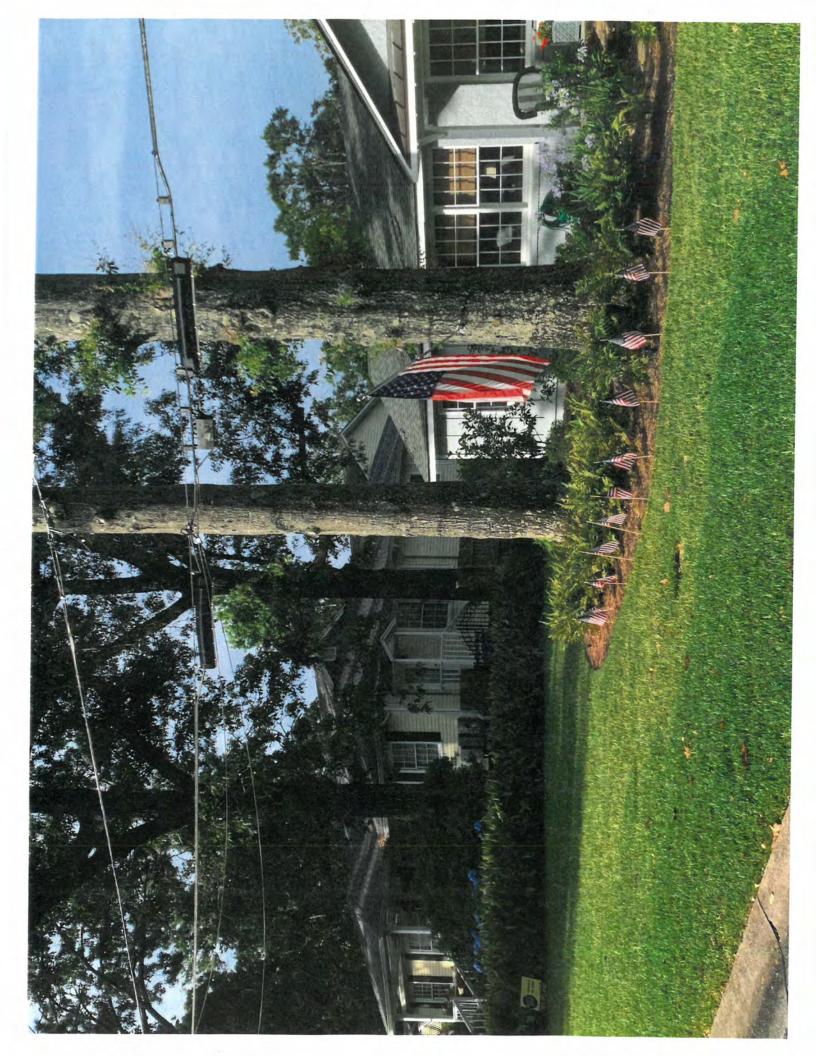


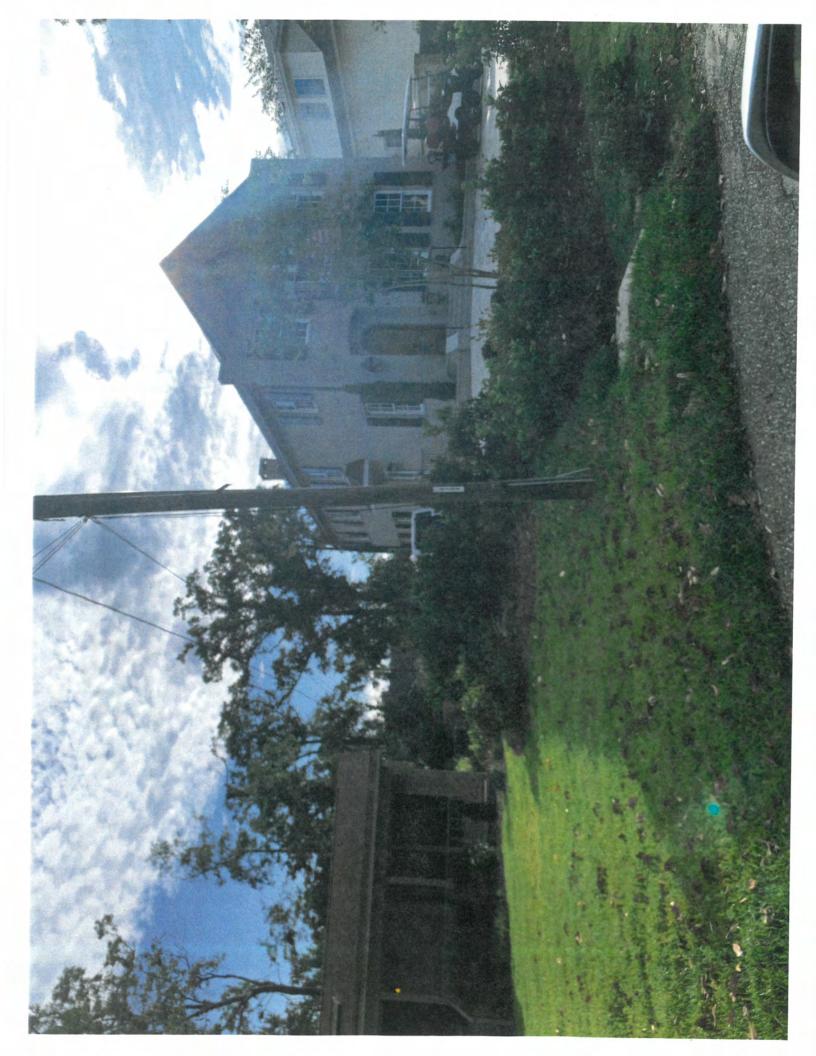


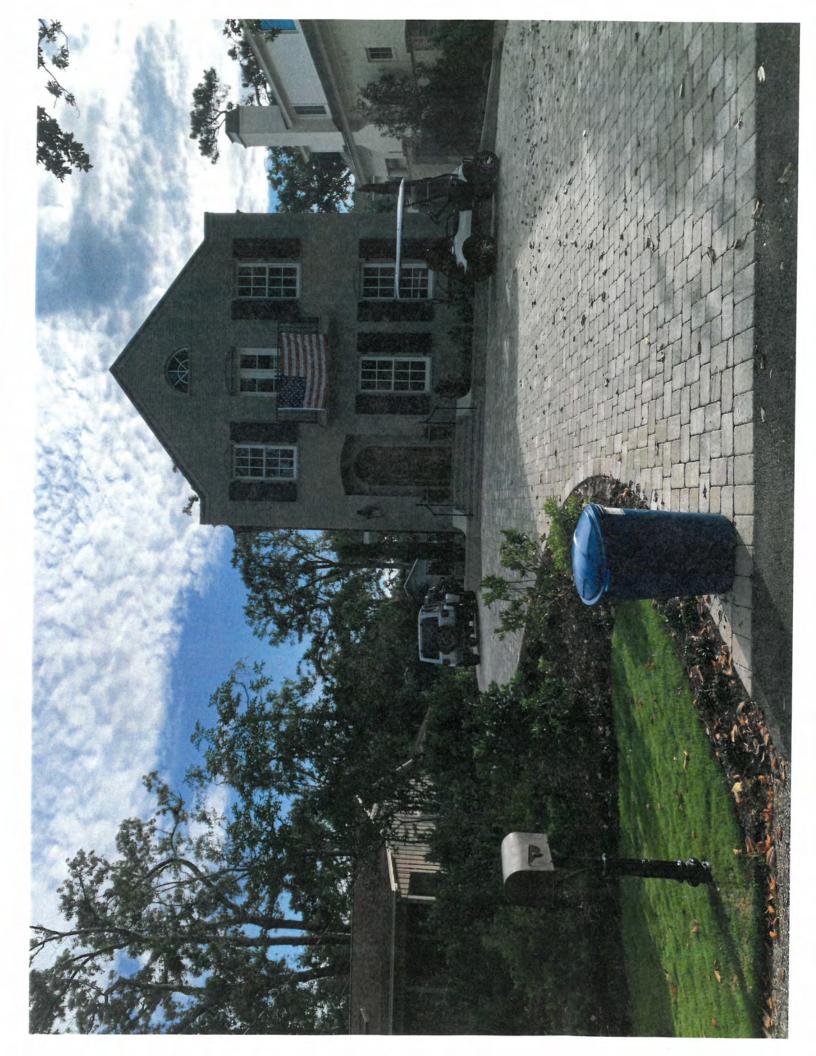


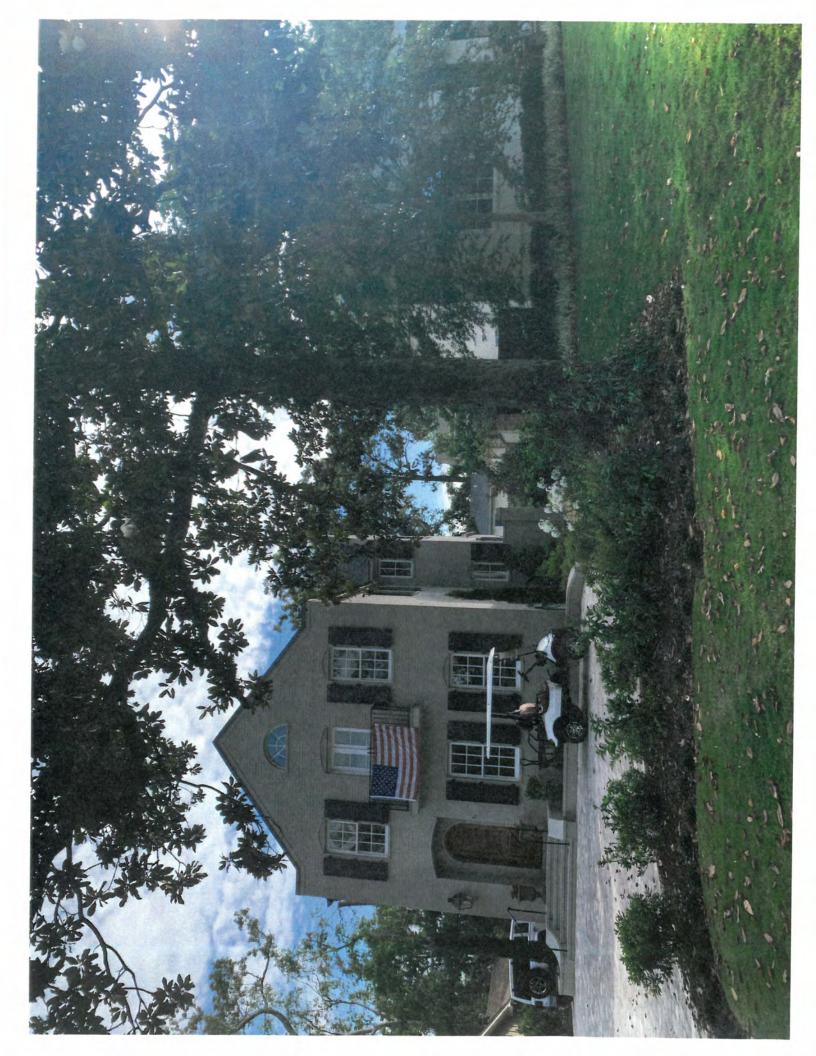


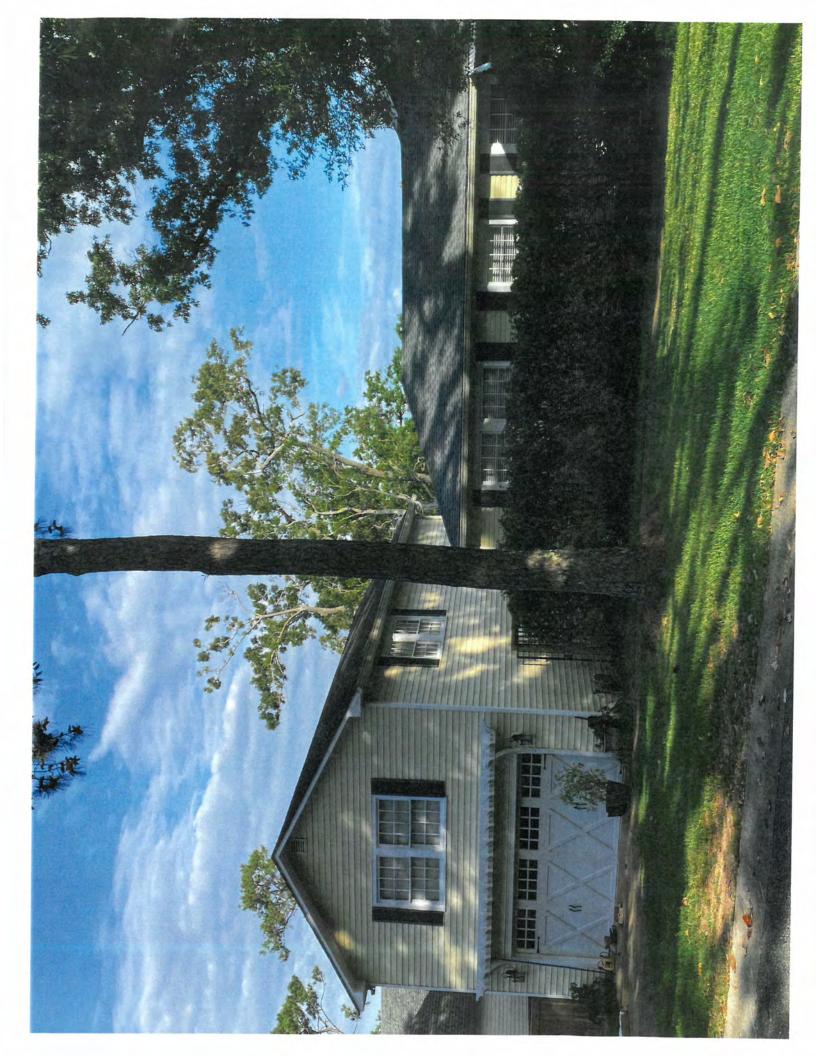


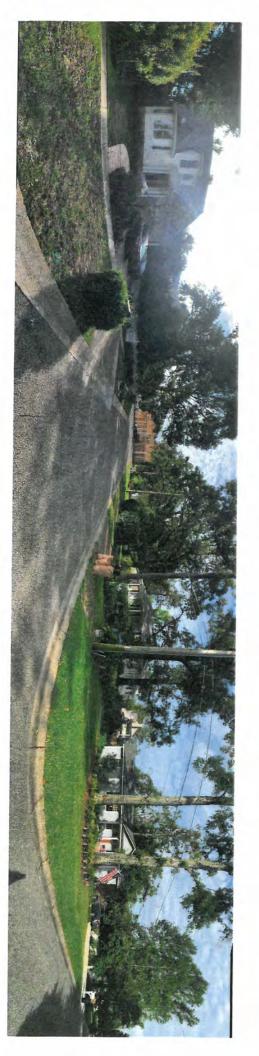


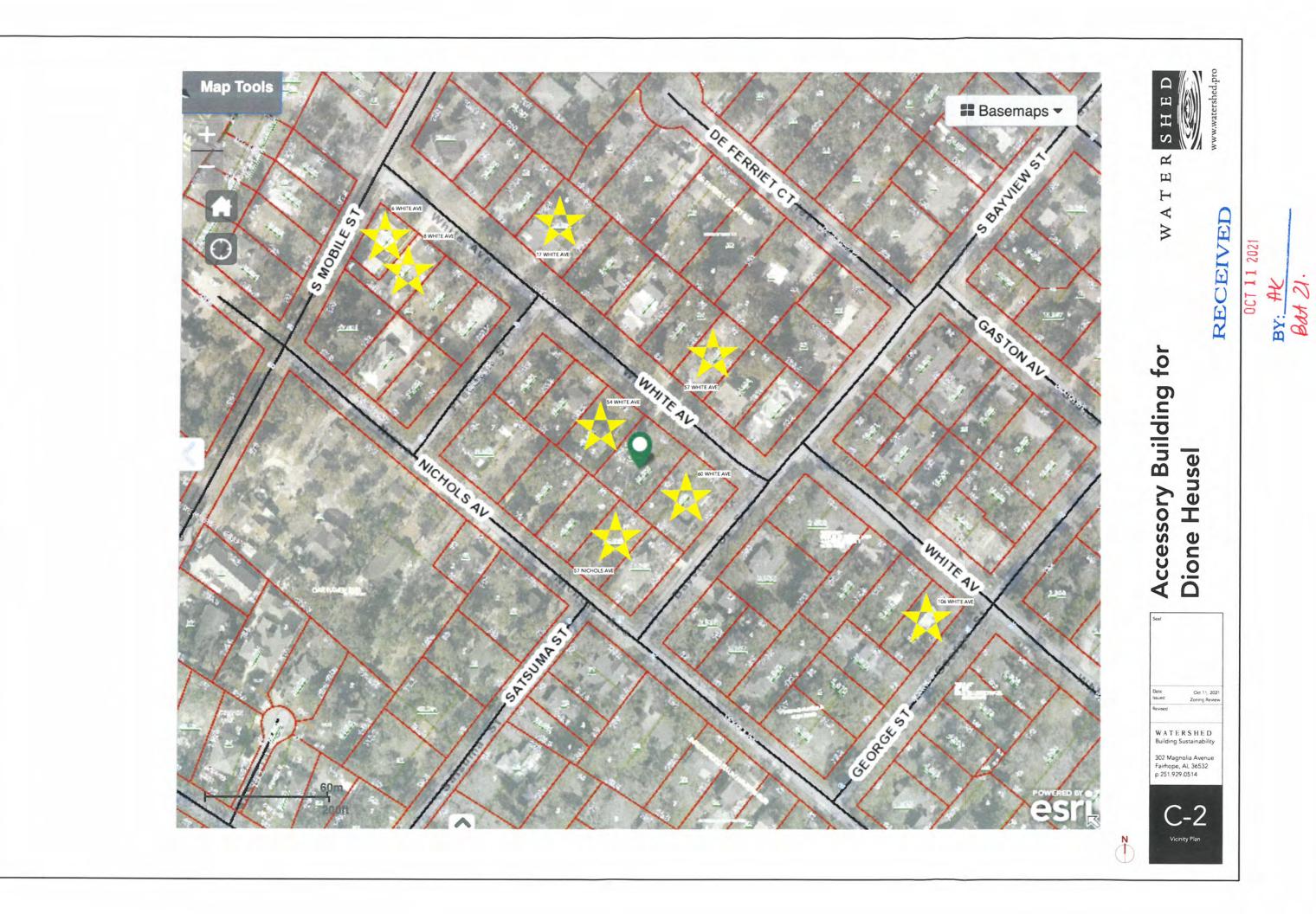












-----Original Message-----From: Mary Chamblin <hopchamblin@aol.com> Sent: Friday, November 5, 2021 7:58 AM To: planning <planning@fairhopeal.gov> Subject: Case BOA 21.13

SENT FROM AN EXTERNAL ADDRESS

We are in favor of allowing Dione Heusel to build the accessory building as designed. We are unable to attend this meeting, but there are 3 story houses being allowed to be built on this same street/block/neighborhood.

Thank you, MaryHopkins and Gabriel Chamblin 57 White Avenue

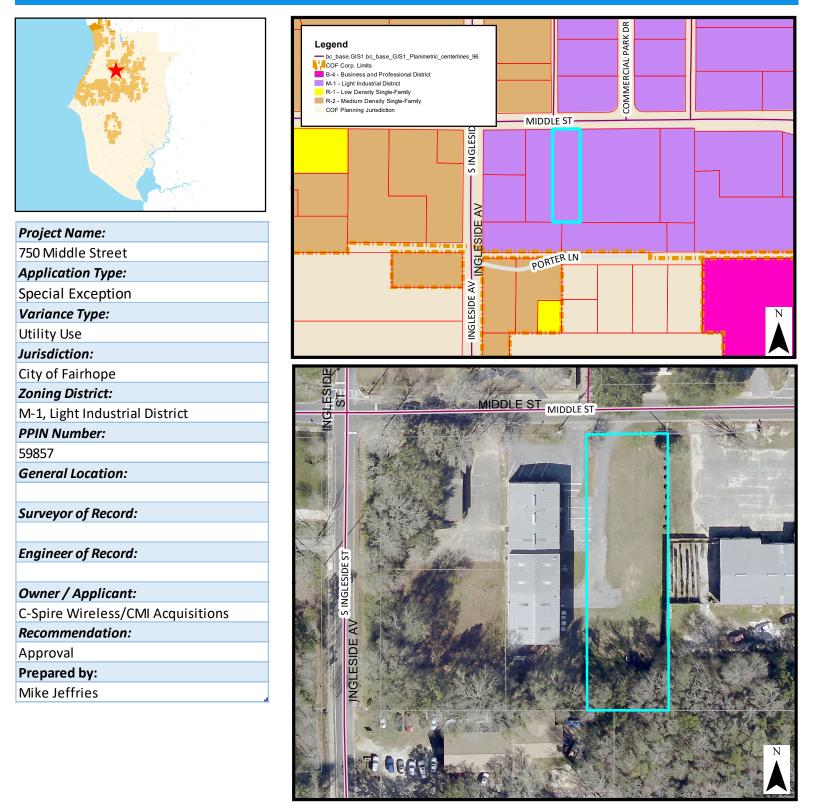
Sent from my iPhone

### City of Fairhope Board of Adjustment

November 15, 2021



### BOA 21.14 Utility Use at 750 Middle St





#### APPLICATION FOR BOARD OF ADJUSTMENTS

<b>Application Type:</b>	Administrative Appeal	Special Exc	eption 🛛 Variance	
Name: <u>Spire u</u> Street Address:	operty Owner / Lease liveless Phone 21 Village Blud	e Number:	;01-953-1368	
City: Madison	State: _/	<u> //5</u> Zip:	39/10.	
Name: <u>[MJ Acqu</u> Street Address: City: <u>Madison</u>	Applicant / Agent If different from ter from property owner is required isitions Phone 21 Village Blud. State:	above. 1 if an agent is used fo 2 Number:	01-605-9214	
Site Plan with Existing O Site Plan with Proposed		YES NO YES NO		

Variance Request Information Complete:

Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached:

#### Applications for Administrative Appeal or Special Exception:

Please attach as a separate sheet(s) information regarding the administrative decision made or information regarding the use seeking approval. Please feel free to be as specific or as general as you wish in your description. This information will be provided to the Board before the actual meeting date. It is to your benefit to explain as much as possible your position or proposal.

YES

YES (

N

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Property Owner/Leaseholder Printed Name

Date

Signature

Fairhope Single Tax Corp. (If Applicable)

RECENCE OCT 11 BY: AL

Page 5 of 6	5 of 6	
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OCT 11 2021 BY: AK

#### VARIANCE REQUEST INFORMATION

What characteristics of the property prevent / preclude its development?:

Describe the indicated conditions:	Flat and O;	pen Green Space
Too Shallow	Shape	Other (specify) $N4$
Too Small	Slope	Subsurface
Too Narrow	Elevation	Soil

How do the above indicated characteristics preclude reasonable use of your land? This area is an Industrial Park and the charateristics Of this directopment blend in Nithe the existing Conditions.

What type of variance are you requesting (be as specific as possible)? Spire Wireless is installing a 15'x15' area for Fiber abinets

Hardship (taken from Code of Alabama 1975 Section 11-52-80):

"To authorize upon appeal in specific cases such variance from the terms of the (zoning) ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the (zoning) ordinance will result in unnecessary hardship and so that the spirit of the (zoning) ordinance shall be observed and substantial justice done."

BOA Fee Calculation:			
	Residential	Commercial	
Filing Fee:	\$100	\$500	
Publication:	\$20	\$20	
TOTAL:	\$ 520.00		

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. \*If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

Matc 11ste Property Owner/Leaseholder Printed Name

Signature

Fairhope Single Tax Corp. (If Applicable)

Date

### Summary of Request:

CSpire, is requesting a public utility use which is not allowed by right but by special exception in Fairhope's Zoning Ordinance for the property located on the south side of Middle Street approximately 300' east of S. Ingelside Street. The subject property is zoned M-1 Light Industrial District. The applicant desires to install new fiber cabinets inside a 15'x15' fenced enclosure that will allow for Cspire to provide new service to the Citizens of Fairhope.

### <u>Comments</u>

CSpire is requesting a use on appeal to allow a public utility—an area for fiber cabinets—on Middle Street. An 11.52.11 review was done and Cspire has received approval from Fairhope Planning Commission for the installation underground fiber for several areas throughout the City. That review was work being done in the ROW'S. The proposed fiber cabinets are needed to facilitate these other projects.

A proposed site plan is provided. Prior to application staff had several preliminary discussions about the aesthetics and view from the street. The plan provided now has the gates facing towards the interior of the lot allowing the landscaping to completely be between the fiber cabinets and the adjacent property owners as well as the ROW'S.

The review criteria for a use appeal is as follows: Article II. Section C.e(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: Response: Complies

(b) Compliance with any other approved planning document; Response: None noted.

(c) Compliance with the standards, goals, and intent of this ordinance; Response: Complies

(d) The character of the surrounding property, including any pending development activity; Response: The subject site located an area surrounded by M-1 zoned property and is inside an industrial park environment.

(e) Adequacy of public infrastructure to support the proposed development; **Response:** No issues noted.

(f) Impacts on natural resources, including existing conditions and ongoing post-development conditions;

Response: No issues noted. The site is grassed.

(g) Compliance with other laws and regulations of the City; Response: No issues noted.

(h) Compliance with other applicable laws and regulations of other jurisdictions;

Response: No issues noted.

### (i) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values;

**Response:** The gates/entrance faces the interior and buffer landscaping will be provided.

### (j) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values. Response: No issues noted.

**Response:** No issues noted.

(k) Overall benefit to the community; Response: The use proposed will provide additional fiber options for the community.

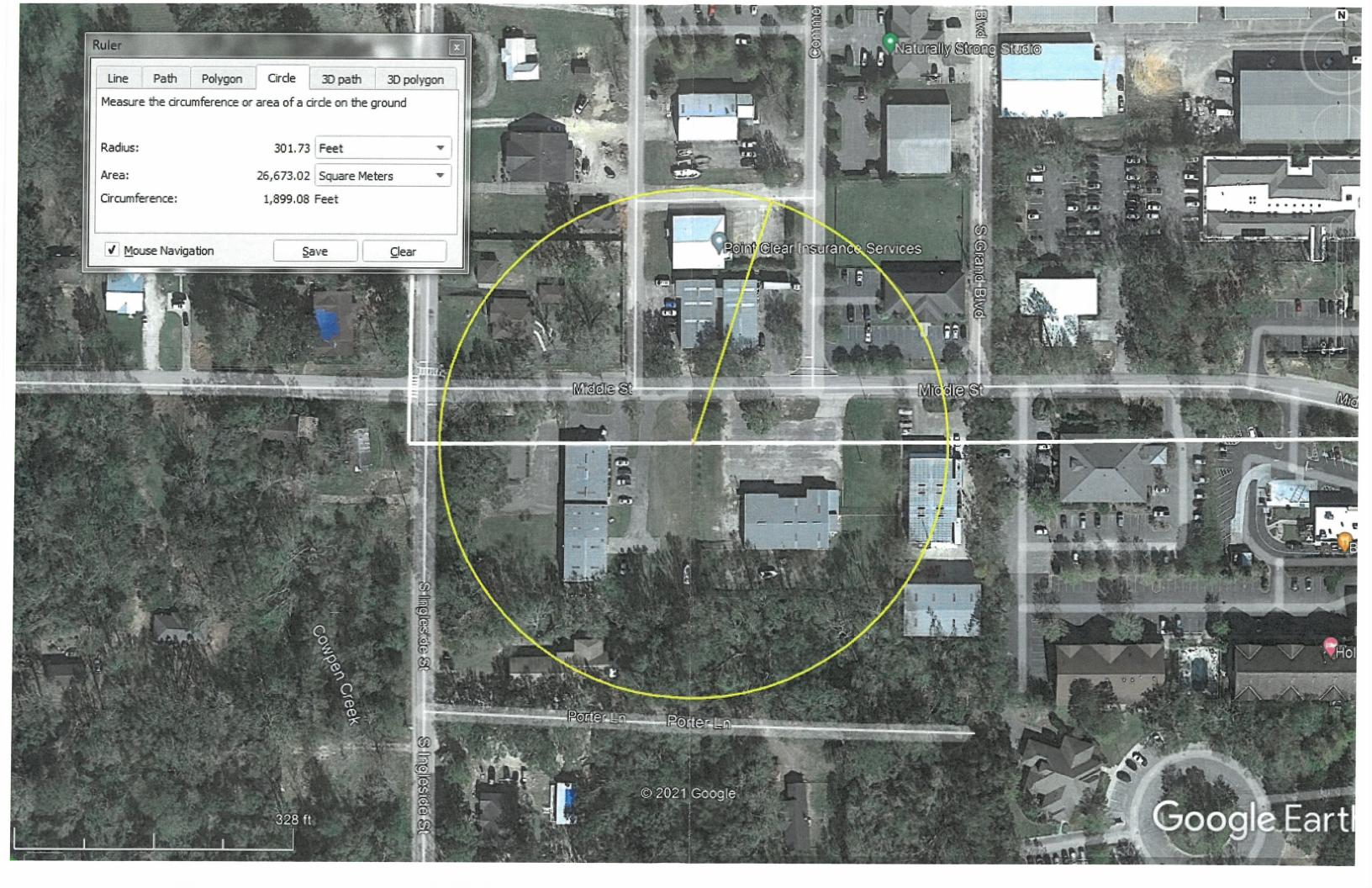
### (I) Compliance with sound planning principles; Response: Staff believes this use is in keeping with sound planning principles.

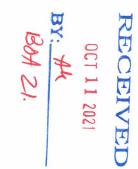
(m) Compliance with the terms and conditions of any zoning approval; and **Response:** No issues noted.

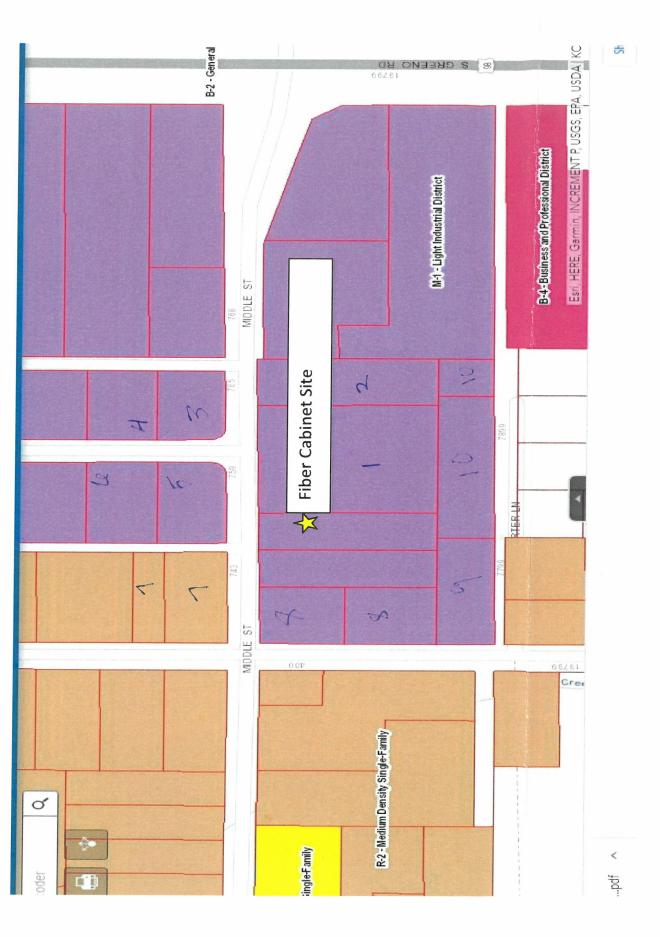
(n) Any other matter relating to the health, safety, and welfare of the community. **Response:** No issues noted.

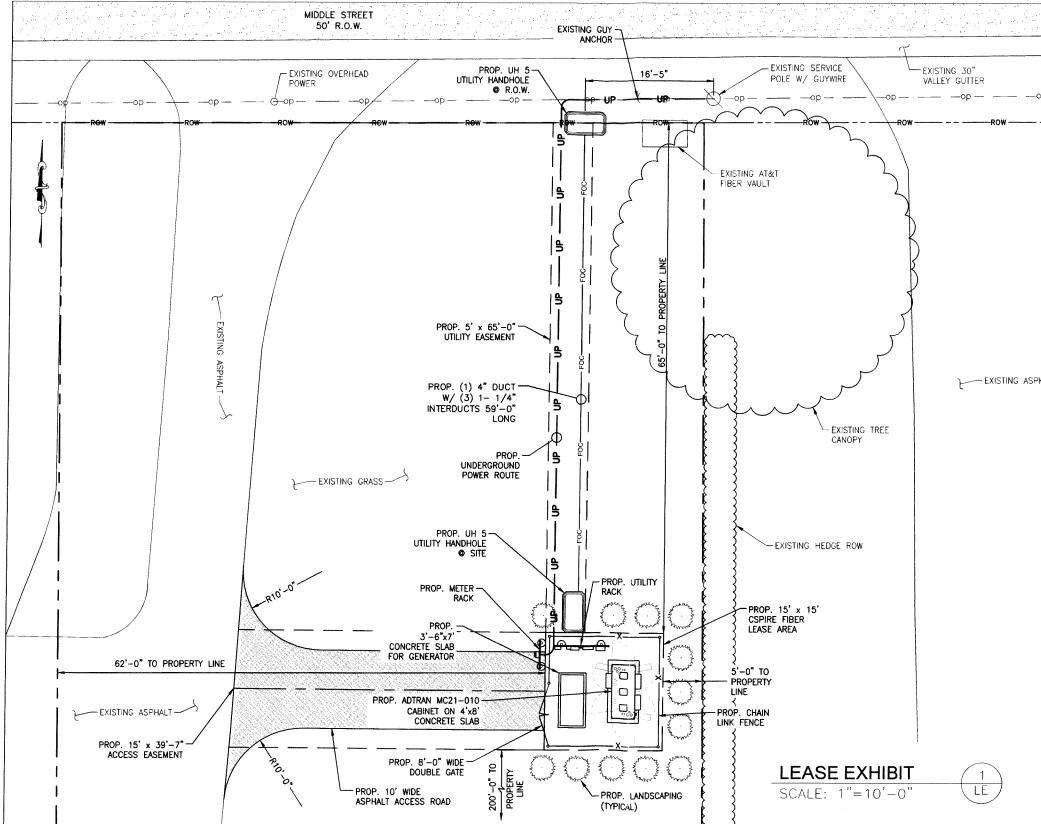
*<u>Staff Recommendation</u>*: Staff recommends **APPROVAL** of the appeal for public utility facility uses at 750 Middle Street with the following conditions:

- 1.) Replace the chain link fence with a minimum 6' wood privacy fence.
- 2.) A landscape plan be provided showing spacing and species of plantings to be approved by the Planning Director.









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RECEIVED OCT 1 1 2021 BOA 21. 我 BY:-

From:	Hunter Simmons
То:	Allie Knutson; Mike Jeffries
Subject:	FW: special exception
Date:	Sunday, November 7, 2021 7:12:54 AM

From: Derrick Mcquitery <mcquitery@gmail.com>
Sent: Friday, November 5, 2021 11:21 AM
To: planning <planning@fairhopeal.gov>
Subject: special exception

### SENT FROM AN EXTERNAL ADDRESS

My name is Derrick McQuitery and I'm writing because I received a letter in the mail discussing utility use. I wanted to know what that means for the people living around this area. Are there any safety concern associated with this process? Are they just doing digging or trying to put in a tower? They are asking for special exception. I have constantly asked the city of Fairhope to put ditches in area in which water runs into our residence and destroy property. Nobody has addressed this issue to this day. So you're asking for special permission but we can't get the needs met they we are asking? What gives one the right to do something special, and we can't even get our basic needs met through the city of Fairhope. The last time someone dug or replaced a pole in the area my property was significantly effective by the actions of whoever put that pole there. Mayor Sherry discussed in one of her interviews with the news about contractors cutting infrastructure. City officials including Eric Cortines placed himself along with others on that property. What's going to be in place to see that this type of situation doesn't happen again to anyone else? It's frustrating to ask council members to come and look at the things that concerns this community and nothing is done. I heard a Mr. Burrell discussed going and riding his golf cart to see the infrastructure fail close to Holly road. Did he come and look at my concern or does my issues not matter. City of Fairhope destroyed my property with run-off water, from the pipe that someone purposely cut, and water flooded my property for over three years. Nothing was done about that. Can someone deal with these issues or I'll be glad to do a presentation at the meeting on 11-15-2021. I have left a message also this morning. My number is 205-919-0870.