

**The Board of Adjustments met Monday, November 15, 2021, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.**

Present: Anil Vira, Chairman; Michael Baugh; Donna Cook; Frank Lamia; David Martin, Alternate I; Hunter Simmons, Planning and Zoning Manager; Mike Jeffries, Development Services Manager; and Allie Knutson, Secretary.

Absent: Cathy Slagle.

Chairman Vira called the meeting to order at 5:01 PM.

**Minutes**

- **September 20, 2021**

**Motion:**

David Martin made a motion to approve the minutes with no changes.

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

Aye: Anil Vira, Mike Baugh, Donna Cook, Frank Lamia, and David Martin.

Nay: None.

Chairman Vira announced that Case BOA 21.13 would be moved to the end of the agenda and that he will be recusing himself.

**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. PPIN # 12191**

Hunter Simmons, Planning and Zoning Manager, presented the case summary.

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. 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.

The rectangular property is 80' wide, containing 20,695 SF which is larger than the R-2 minimum size requirements of 75' wide and 10,500 SF. The property does have a gully in the rear, but staff believes there to be sufficient space to build a home and accessory building. 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. Without knowing the intentions of the ROW, it is difficult to assess what impact the requested variance may have on the adjacent ROW.

**Recommendation:**

**Staff recommends denial of BOA 21.11.**

Applicant, Clay Adams with Walcott Adams Verneuille Architects, stated that the five-foot setback variance was not picked arbitrarily. They had spoken with a civil engineer regarding the drainage and the gully as well as an arborist and staff from the Planning Department. Mr. Adams proceeded to pass out an additional packet to the Board of Adjustment Members and to staff containing eight exhibits pertaining to the property.

Frank Lamia asked Mr. Adams what the hardship is.

Mr. Adams stated that the property is being squeezed by the trees on the east and west side, but they want to preserve the vegetation. The quality of the Fruits and Nuts is the vegetation, not the architecture.

Mr. Lamia asked why the house could not be designed to fit in the setbacks.

Mr. Adams said they don't want a staggered plan and they are taking practical steps to protect the trees. 30% of the lot is affected by the gully. Mr. Adams also works for an adjacent property owner who received a front setback variance for a new construction.

Chairman Vira stated that the property was a new construction, and the variance was granted due to the drainage in the middle of the property.

Mr. Adams mentioned the 6' deep gully in the rear of the property that is concerning. He was told that he would have to meet with Erik Cortinas, Building Official, to ensure that drainage would not be affected.

Mr. Simmons stated that the ROW and the backyard to the west is where the drainage collects in the neighborhood.

Mike Baugh asked what the city's position was for the unopened ROW.

Mr. Simmons stated that the requests in the past to vacate the ROW had been denied. The Public Works Department is looking at a drainage project for it right now but was not sure what that would look like.

Erik Cortinas stated that they are working on engineering for a drainage improvement project that encompasses the unopened alley behind Pecan. Possible bioretention in the unopened ROW has been discussed. There is a lot of water that goes through that area.

Chairman Vira opened the Public Hearing.

Andy Parvin, 104 Pecan Avenue, stated that he is an adjacent property owner whose letter is included in the staff report. When he moved here, he built his house on an 8,000 SF lot while this property is 20,000 SF. One of the reasons he moved to Fairhope was because of the rules, regulations, and inspections. Variances should be rare for extenuating circumstances and not the “norm”.

Chairman Vira closed the Public Hearing.

**Motion:**

Frank Lamia made a motion to deny the variance request for BOA 21.11.

David Martin seconded the motion and the motion carried with the following vote:

Aye: Anil Vira, Michael Baugh, Donna Cook, and Frank Lamia, and David Martin.

Nay: None.

**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**

Hunter Simmons, Planning and Zoning Manager, presented the case summary.

The applicant, John Hadley, is requesting a 9’ variance to the side setback for the principle structure located at the northwest 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. 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.

The applicant states the landing is intended as a “walk-out landing deck” that would also serve as an “emergency exit from the second floor”. Neither plans, nor elevations, illustrate a stairway from the deck to the ground.

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.

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. 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. 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.

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. Options were discussed such as a five-foot stoop and stairs, a Juliette balcony, or a combination of both, but staff cannot support a variance that allows structures 1' from the parcel line.

**Recommendation:**

**Staff recommends denial of BOA 21.12**

Mike Baugh clarified that the house could be built within the setback, but that the deck causes a problem.

Frank Lamia asked if staff would support the deck on the Young Street side with a 35' setback.

Mr. Simmons stated that he would not support it on the front, but that the rear might be more appropriate. Flipping the house would require multiple variances.

David Martin asked if the Board were to deny the variance, could the applicant resubmit revised plans.

Mr. Simmons stated that if the Board were to deny the variance request, the applicant would not be able to submit another variance request for this piece of property for 365 days. The Board can decide to table the case to give the applicant a chance to resubmit new drawings one time.

The Applicant, John Hadley, stated that the lot is unique, and the house fits perfectly on it. The deck would be about 200 SF and he is open to moving the deck if needed. He was not aware of the fire escape option and adding stairs.

Chairman Vira asked if Mr. Hadley would be opposed to tabling the case.

Leslie Dunlap, Mr. Hadley's partner, was also present. Mr. Hadley stated that he would like to table the case to discuss the possibility of shifting the deck to the west side.

**Motion:**

David Martin made a motion to table BOA 21.12.

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

Aye: Anil Vira, Mike Baugh, Donna Cook, Frank Lamia, and David Martin.

Nay: None.

**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**

Hunter Simmons, Planning and Zoning Manager, presented the case summary.

C-Spire, 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. Ingleside 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 C-spire to provide new service to the Citizens of Fairhope.

C-Spire 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 C-spire 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.

**Recommendation:**

**Staff recommends approval of BOA 21.14, subject to staff recommendations:**

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.

Chairman Vira asked if the landscape plan needed to be approved by the Planning Director or the City Horticulturalist.

Mr. Simmons said that both he and the City Horticulturalist understand the Tree Ordinance.

Mike Baugh asked if the owner of the shared driveway were to change, how would it affect access to the utility.

Mr. Simmons stated that it could be made a condition that anything other than this plan, must come back to the Board for approval for a second review before it is allowed.

The Applicant, Brant Ratcliffe with C-Spire Wireless shared photos with the Board to show what they were wanting to do with the 15'x15' space. If the property were to sell, the agreement with C-Spire would go with the property. Both pieces of property are owned by Seecoast Manufacturing.

Chairman Vira opened the Public Hearing.

Sandra Woodrow, 399 S. Ingleside Street, stated that this project would be directly across from her property and would be an eyesore with the chain link fence and heavy equipment. A company did this down the street from her as well and there is equipment left out all over the property. She was also concerned with traffic and asked about the Medical Overlay District.

Mr. Simmons clarified that this is an allowable use in any zoning district, including M-1 and the Medical Overlay District.

Adam Shadix, Project Manager for C-Spire, stated that the cabinets are 4-5-feet tall so nothing would be above the wooden privacy fence. There also will not be very much traffic at the cabinets once the site is built. Everything is underground aside from the cabinets. There will not be any equipment on the ground aside from handholds.

Chairman Vira closed the Public Hearing.

**Motion:**

Mike Baugh made a motion to approved BOA 21.14 subject to staff recommendations:

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.

David Martin seconded the motion and the motion carried with the following vote:

Aye: Anil Vira, Mike Baugh, Donna Cook, Frank Lamia, and David Martin.

Nay: None.

**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.**

Chairman Vira proposed a Chairman Pro-Tem as he would be recusing himself.

**Motion:**

Mike Baugh made a motion to appoint Donna Cook as Chairman Pro-Tem for the remaining agenda items.

David Martin seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Mike Baugh, Donna Cook, Frank Lamia, and David Martin.  
Nay: None.

Chairman Vira recused himself.

Hunter Simmons, Planning and Zoning Manager, presented the case summary.

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. 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.

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. Staff does not believe the application of the ordinance creates an unnecessary hardship and there are no peculiar conditions. 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.**

Mr. Simmons stated that a Zoning Ordinance amendment could be a possibility, but it would have to go to Planning Commission and then to City Council so, tabling the case could be an option.

The Applicant, Rebecca Bryant with Watershed, stated that they have already renovated the house extensively. The character of the lot is that it slopes to the southwest. A neighbor to the east has a single-story house with a two-story accessory dwelling, behind her there is also a home that was built to code, but the garage is higher than the principle

structure. They struggled to find something that would meet the owner's needs, the regulations, and would be respectful to the neighbors, the other option would be a flat roof. There are adjacent property owners present that are in support of the variance and some that wrote letters in support.

David Martin asked if an architectural detail could be added to the roof of the primary structure to match the height of the accessory building.

Mike Jeffries, Development Services Manager, stated that they would not be able to do that as it would just be a detail on top of the roof.

Ms. Bryant stated that they are arguing that the historic preservation be considered a hardship.

Mr. Jeffries stated that historic preservation is not a hardship as defined by the case law.

David Martin asked if Ms. Bryant was opened to tabling the case.

The Owner, Dione Heusel, passed out photos that were included in the staff report and asked the Board to look at them again. She is open to tabling the case, but also mentioned that she has been trying to do this for a while and at some point, she will have to tear down her garage.

Mike Baugh stated that he understands her situation, but he wants to do things according to the codes and ordinances moving forward. He thought that tabling would be a good idea.

Dione Heusel stated that she would like to table the case.

### **Old/New Business**

Hunter Simmons, Planning and Zoning Manager, reminded everyone of the upcoming Comp Plan Meetings and the website, PlanFairhope.com for more information.

Next month, there will most likely be a meeting given the tabled cases.

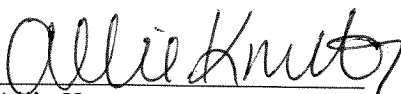
### **Adjournment**

Donna Cook made a motion to adjourn.

Mike Baugh seconded the motion and the motion carried unanimously.

Adjourned at 6:28 PM.

  
Anil Vira, Chairman

  
Allie Knutson, Secretary