

The Planning Commission met Monday, May 1, 2023, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Lee Turner, Chairman; Harry Kohler; John Worsham; Hollie MacKellar; Clarice Hall-Black; Erik Cortinas, Building Official; Councilman Kevin Boone; Hunter Simmons, Planning and Zoning Manager; Michelle Melton, City Planner; Chris Williams, City Attorney; and Cindy Beaudreau, Planning Clerk

Absent: Rebecca Bryant, Jack Burrell

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

**Approval of the Minutes April 3, 2023:**

Erik Cortinas requested a change to the Minutes at the bottom of page 4 to reflect that the City of Fairhope would not be providing the pavers for SD 23.12, Washington Square.

John Worsham made a motion to approve the minutes as modified from the April 3, 2023, meeting.

Erik Cortinas seconded the motion and the motion carried unanimously with the following vote:

AYE: Lee Turner, John Worsham, Harry Kohler, Hollie MacKellar, Clarice Hall-Black and Erik Cortinas.

NAY: None.

**Consideration of Agenda Items:**

**IR 23.01 Request of the Applicant, Trae Corte, on behalf of the Owner, Sena, Inc., for an Informal Review of Belle Vie. The property is approximately 0.40 acres and is located on the northeast corner of Bayview Street and Fairhope Avenue. PPIN #: 15283**

**Summary:**

Hunter Simmons, Planning and Zoning Director, presented the Informal Review for Belle Vie. This presentation was prompted by a 4-unit MOP request that was received by the Planning and Zoning Department. This informal review is to discuss an administrative replat of the property and how that affects the property. This project is on the northeast corner of N Bayview Street and Fairhope Avenue and was a platted lot from the '20s and it contains two historic lots of record. While there are two historic lots, the property has been used as a single piece of property since the lots were created. This property is zoned 3b-3, which has no side setbacks. The setbacks for this property would be 20' for the front and rear. The applicant would like to develop four condo lots to be used as single-family residences. There are two lots fronting N Bayview with 20' setbacks; however, along Fairhope Avenue, there is a 20' landscape buffer. Chairman Turner asked who owned the landscape buffer. Mr. Simmons replied that the homeowner owns it.

The applicant has requested an administrative replat to combine the two lots. The resulting lot would be 132' x 132'. The Zoning Ordinance refers to frontages based on dimensions. The shortest dimensional frontage is the front, and all other setbacks and definitions follow. The applicant would like the frontage on Fairhope Avenue and the rear setbacks on the north side of the property. The Zoning Ordinance also states that if there are two frontages, then there should be two rear yards as well, which would essentially

place a 20' setback to all parallel lot lines. Staff feels that may be too prohibitive. Staff believes it is logical to have two front setbacks and one rear setback. Chairman Turner asked if the applicant combined the two lots into one, would that meet the setbacks? Mr. Simmons stated that it would with the proposed setbacks. Chairman Turner stated that a precedent has been set of allowing people to combine lots and he does not see an issue with allowing the applicant to go from two lots to one. Chairman Turner and Mr. Simmons listed a few projects where this has occurred. Mr. Simmons stated that the replat gives the City some negotiating ability to work with the setbacks and asked for the Planning Commission's thoughts.

Hollie MacKellar was concerned with drainage and the footprint of the project. Mr. Simmons stated that the drainage would be reviewed during the MOP. This presentation is more about the administrative replat and how it affects the setbacks.

Erik Cortinas confirmed that the proposed buildings are rear loaded, and the access would come off Bayview, then asked if the City would lose any parallel spots on Fairhope Avenue. Mr. Simmons stated that the City would not lose any parallel spots on Fairhope Avenue. Mr. Cortinas asked whether this request and/or approval is binding to just this project or does it go with the land. Mr. Simmons replied that once the replat is signed, it stays with the land, but he does not intend to sign the replat until the review is complete.

John Worsham asked about the 3' setback on the east side and how the Zoning Ordinance states there should be a 10' setback for the residence next to it. Mr. Simmons stated that there is park land next to it. Ms. MacKellar stated that there are residences to the north of the property. Mr. Simmons stated that there is a historic precedent for this. This is about the zoning when looking at a setback versus how the property is being used.

Chairman Turner stated he feels very comfortable allowing this property to go from two lots to one, but not comfortable enough to set the front and rear setbacks. He would prefer to wait for the staff recommendations and any ramifications. Chairman Turner suggested that Mr. Simmons share the pros and cons with the developer of the project. Mr. Simmons also noted that there are historic trees on the property that are protected. Staff has told the applicant to keep the trees, but the applicant will appeal to the Tree Committee.

**SR 23.04 Request of the Applicant, Jade Consulting, LLC, acting on behalf of the Owner, Encounter Development, LLC., for Site Plan Approval of WAWA. The property is approximately 2.73 acres and is located on Northeast corner of State Highway 181 and State Highway 104. PPIN #: 108453**

Summary:

Michelle Melton, City Planner, presented the Site Plan Review for WAWA. The property is zoned B-2 and is approximately 2.73 acres at the northeast corner of State Highways 104 and 181 with direct ingress/egress to Highways 104 and 181. Ms. Melton shared the site plan and the aerials of Lot 1. The highway construction setbacks are 125' along Highway 181 and 100' along Highway 104. The setbacks will accomplish the 20' greenspace buffers along the highways. There are 20' setbacks facing Encounter Drive and Bushel Drive. Mr. Simmons stated that the landscape plan includes trees to hide the signs from the road. The Site Plan includes interior sidewalks in addition to the required 8' sidewalk directly

outside of the store. A 12' wide multi-use trail is proposed throughout the larger development and the applicant has provided ADA approved crosswalks across the ingress/egress points. The parking plan meets the requirements of the Zoning Ordinance. The original plans contained more than 50 parking spaces which allowed for 20' light poles. The revised plans include 49 spaces which limit the light poles to a 10' overall height. Chairman Turner asked for confirmation on the height of the light poles. Mr. Simmons stated that was something that may need to be discussed because with the lower light poles, more poles will be needed to allow for the same amount of light. Chairman Turner and Ms. MacKellar both agreed that they would prefer the 10' light poles. Ms. Melton continued with her presentation stating that the sign plan exceeded the allotted amount, and that WAWA is working on revisions.

Staff recommends conditional approval of SR 23.04 with the following conditions:

1. The landscape plans shall be revised pursuant to this report and the Tree Ordinance prior to submission to the City Council.
2. A photometric plan shall be submitted and approved prior to applying for a building permit.
3. Revised signing plan shall conform to the Sign Ordinance.

Chairman Turner confirmed that the 20' of required landscaping is on the right-of-way on their own property. Mr. Simmons confirmed but stated that there have been some conflicts where greenspace has not been allowed in the construction setback. ALDOT has been involved, has no intention to acquire any more area and is okay with the buffer and trees being located on the 20' of right-of-way. Chairman Turner asked if, in the future, what if someone is concerned with the height of the trees and comes in and bulldozes it all down. Mr. Simmons has spoken to Riviera Utilities who confirmed that the power should never conflict with the trees. Riviera is hoping to begin installing power underground in this area and getting rid of the overhead lines.

Chairman Turner asked Paul Marcinko, Jade Consulting, what one of the structures was on the plans. Mr. Marcinko stated that was the gas canopy. Mr. Simmons asked if a fourth condition should be added to memorialize the height of the lights. Chairman Turner and Mr. Worsham asked if the height of the light poles would fall within any of the other conditions. Mr. Simmons stated no.

Chairman Turner allowed for public comment.

Motion:

John Worsham made a motion to recommend approval of SR 23.04 subject to staff recommendations and the addition of a fourth condition that the light poles be at a 10' height.

Hollie Mackellar seconded the motion and the motion carried unanimously with the following vote:

AYE: Lee Turner, John Worsham, Harry Kohler, Hollie MacKellar, Clarice Hall-Black and Erik Cortinas.

NAY: None.

**SD 23.15 Public hearing to consider the request of the Applicant, Jade Consulting, LLC, acting on behalf of the Owner, RW Battles, LLC, for Final Multiple Occupancy Project approval for Publix at Point Clear. The property is approximately 25.50 acres and is located at the Northwest corner of Greeno Road and Old Battles Road. PPIN #: 17515**

Summary:

Hunter Simmons, Planning and Zoning Director, presented the final MOP approval for Publix at Point Clear. The store has been open for a period of time while waiting on the substantial completion letters from the Engineer and the utility inspections. Once this project is approved, the remaining tenants will be able to move in. Chairman Turner asked that, in the future, attention is given to the need for redundant connectivity and the proximity to the road.

Mr. Simmons listed the follow up requirements of the applicant:

1. An MOP Site Plan shall be recorded with Probate like a Final Plat. Staff shall approve the MOP Site Plan prior to recording. The MOP Site Plan shall be for Lot 5 with units as shown in the report. The General Layout Plan shall be relabeled MOP Site Plan and the following items added:
  - a. Signature blocks shall be added on the cover page.
  - b. Remove replat Site Data Table. The 16 units approved within this MOP are contained within Lot 5.
2. Provide Maintenance Bond and Maintenance and Guarantee Agreement for utilities being accepted by the City of Fairhope.

Chairman Turner asked for confirmation that the electrical is provided by Riviera. Mr. Simmons confirmed.

Staff recommends approval of SD 23.15 with the following conditions:

1. Complete the aforementioned "follow up requirements of the applicant"
2. The park area, formally lot 7, shall be restricted to greenspace/park use only

Chairman Turner opened the public hearing at 5:40pm. Having no one present to speak, the public hearing was closed at 5:40pm.

Motion:

Hollie MacKellar made a motion to approve Case SD 23.15 with staff recommendations.

Erik Cortinas seconded the motion and the motion carried unanimously with the following vote:

AYE: Lee Turner, John Worsham, Harry Kohler, Hollie MacKellar, Clarice Hall-Black and Erik Cortinas.

NAY: None.

**SD 23.16 Public hearing to consider the request of the Applicant, Jade Consulting, LLC, acting on behalf of the Owner, Two Hands Design & Development, LLC, for Final Plat approval for Hill Top Phase II. The property is approximately 4.70 acres and is located on the west side of Section Street on Petiole Drive and north of Petiole Drive. PPIN #: 40591**

Summary:

Hunter Simmons, Planning and Zoning Director, presented final plat approval for Hill Top Phase II. Mr. Simmons clarified why some of the trees were not installed. He explained that during the process, the plan on the left (figure 1) contained the drainage areas that were originally submitted during preliminary plat. The request was to use the plan on the right (figure 2), it was agreed that was a better landscape plan and it was approved administratively. The perimeter trees had not been intended to be removed, so the trees are being installed during the week of May 1-5, 2023.

Mr. Simmons listed the follow up requirements of staff and the applicant:

1. Copy of the recorded plat
2. Copy of the recorded O&M Agreement
3. Maintenance and Guaranty Agreement executed by the developer – this document is not considered fully executed until City Council approves the Acceptance Resolution and the Mayor signs said agreement.
  - a. Remember to include the instrument # from the recorded plat
  - b. Please include 30 days in paragraph 3
4. Final plat must be recorded within 120 days after the date of final approval

Staff recommends approval of SD 23.16 Hill Top, Phase Two final plat with the following conditions:

1. Installation of remaining punch list items
2. Complete required follow up activities

Chairman Turner opened the public hearing at 5:43pm. Having no one present to speak, the public hearing was closed at 5:43pm.

Motion:

John Worsham made a motion to approve Case SD 23.16 subject to staff recommendations.

Clarice Hall-Black seconded the motion and the motion carried unanimously with the following vote:

AYE: Lee Turner, John Worsham, Harry Kohler, Hollie MacKellar, Clarice Hall-Black and Erik Cortinas.

NAY: None.

**Old/New Business:**

- **ZC 23.03** Amendment to Article III, Section C; and Article V, Section B, in the City of Fairhope's Zoning Ordinance

**Summary:**

Hunter Simmons, Planning and Zoning Director, presented this item stating that Zoning Ordinance contains one statement that the height limits for the CBD is 40' and three stories. Staff believes that the instructions need to be clarified in this area of the Zoning Ordinance. Some requirements within the current regulations utilize form-based codes in the Overlay District that are less concerned with traditional zoning and more about the forms of buildings, which is distinctly different from Architectural Reviews. Staff is proposing better standards to clarify the existing goals of the City rather than creating new regulations and is requesting feedback. Mr. Simmons has received input from multiple people who stated that the reason for the 40' building height was so the architects could add features like pitched roofs and detail which would require additional room.

Mr. Simmons shared a slide that showed where if a pitch roof was utilized, the building could be three stories, but if a flat roof was used, then the building was limited to two stories. Ms. MacKellar stated that the top floor on the flat roof could be utilized for something by the public. Mr. Simmons showed how the flat roof was limited to 32' which leaves room for a parapet wall and 8' for an elevator shaft and the things that would be needed to access that roof top. The Zoning Ordinance, as written, appears to incentivize the flat roof rather than allowing for additional detail. Staff believes that a three-story building with the first floor being 12', the second floor being 10' and the third floor being 9' allows for architectural detail and the ability to stay within the 40' height restriction. If Fairhope wants to cater to the higher ceilings for the first two floors, then the height of the building would exceed the 40' limit. Chairman Turner reminded the Planning Commission that, in the past, architects had stated that they would include creative features, but have not done that, and in fact, more flat roof buildings have been built. Chairman Turner also stated that he does not believe that anyone would be hurt by stating a flat roof has two stories and an incentive to having a third story would require some architectural features. Ms. MacKellar believes that a great opportunity was missed by demanding what we should have rather than what we allowed. She believes that a 15' ceiling gives a classic grandness, and we should expect more from builders. Mr. Simmons stated that the builders will have flexibility on the height of the ceilings. Ms. MacKellar stated that we should implement the ideas of other smaller, but growing, communities who are using their space well.

Erik Cortinas stated that he is not comfortable with Fairhope dictating to a designer, that the rule is 40' to a flat roof if they want to put three stories in and meet the 40'. Chris Williams stated that this could potentially change the height requirement depending on what type of structure you are looking at in the CBD. Mr. Cortinas stated that a 4' parapet is, to a large degree, a code requirement because when you have roof mounted equipment, you must have a protection system like a railing or a parapet all around the roof so that if there are service techs up there, they are protected from the edge of the roof. Some structures, like townhomes, must have a required parapet wall that has to come up for fire separation, which can be interpreted as an architectural feature or a code requirement. Mr. Cortinas used as an example, a roof top house with the exit coming off the top. If you have a roof top area, you must have a fully enclosed stair leading to the ground from that floor which will then, by default, give you an 8' tall building with an exit stair that goes all the way down so now you are building 40' with a roof top terrace with an 8' exit room extension on top of it.

Mr. Simmons agreed with Mr. Cortinas that building codes must include safety features but believes that these amendments will give the designers the instructions they need on the front end. Chairman Turner stated that there was a lot of discussion about this in the past and the 40' height requirement was agreed on. He just believes that the architects are working to maximize every space possible along with giving them the opportunity to give their clients, who want a third story, some options. Mr. Simmons explained that within his measurements on the two-story building, there is room for an elevator shaft which would be allowed with a roof top terrace. Mr. Worsham asked what the height was on the second drawing that shows the roof exceeding the 40' and if that were decided, would it become part of the ordinance. Mr. Simmons stated that it is close to 46' and he would prefer to keep everything under 40'. Mr. Cortinas explained the building code defines building height as the mid-point between the eave and the ridge. The City of Fairhope began defining building height to be measured to uppermost ridge in the early 2000s but amended the definition to match the building code around 2018. Mr. Simmons stated that where the base is defined, average lot elevation before you move any dirt, is a hard thing to do on many properties. Mr. Simmons suggested, within the CBD, that some very clear heights could start at the sidewalk and measure to the peak for consistency. Mr. Cortinas asked, if we do this in the CBD, does it, by default, change the overall measurement of roof heights throughout the Zoning Ordinance. Mr. Simmons replied that it would not. Mr. Worsham stated that he agrees with graphic #1 and #3. Ms. MacKellar would like a group of architects to meet and get their opinion on what they are working on and what they see, and that Rebecca Bryant is a great resource. Mr. Simmons agreed to include some architects and developers in the discussions. Chairman Turner is leaning towards #1 and #3 but agrees with Ms. MacKellar that others need to be involved. Mr. Simmons stated that limiting flat roofs to two stories is almost pulling a reverse on some people and they should not be penalized if they already have plans in the works. Mr. Simmons also suggested, if any amendments are made, that a few months are given to people, who have bought property and have a plan, an opportunity to bring it to the City without being penalized. Mr. Cortinas and Ms. MacKellar are not initially comfortable telling someone who wants a flat roof that they are limited to two stories and that the City needs to be careful entering the realm of architecturally dictating or architecture review. Chairman Turner stated that maybe the City could not dictate how many stories and just limits the height. Mr. Simmons explained that there is logic to limiting it to two stories. Some of the codes in other municipalities require a 12' first floor to accommodate awnings, that may be added, to be out of the head space of people walking by. Ms. MacKellar stated that the use of the roof top roofs during events, like Mardi Gras and the parades, in the CBD would be a great resource for those types of events. She does not understand why we would approve the flat roofs if that space were not going to be utilized. Mr. Simmons stated that the ordinance dictates the forms of the buildings, but not the architectural reviews where they are told what materials to use.

**Adjournment**


John Worsham made a motion to adjourn. Motion passed unanimously with the following vote:

AYE: Lee Turner, John Worsham, Harry Kohler, Hollie MacKellar, Clarice Hall-Black and Erik Cortinas.

NAY: None.

Adjourned at 6:12pm.

  
Lee Turner, Chairman

  
Cindy Beaudreau, Secretary