

The Board of Adjustments met Monday, May 15, 2023, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Anil Vira, Chairman; Cathy Slagle, Vice-Chair; Frank Lamia; Donna Cook; Ryan Baker; Hunter Simmons, Planning and Zoning Director; Michelle Melton, City Planner; and Cindy Beaudreau, Planning Clerk.

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

Approval of Minutes

Cathy Slagle made a motion to approve the minutes from the April 17, 2023, meeting.

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

Aye: Chairman Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.

Nay: None.

BOA 23.04 Public hearing to consider the request of the Owner, James Boothe, for a 10' variance to the front setback requirement for property zoned R-2, Medium Density Single-Family Residential District. The property is approximately 8,000 SF and is located between Orange Avenue and Cricket Lane on Satsuma Street. PPIN#: 285254

Michelle Melton, City Planner, presented the case summary and explained that when the lot was platted in 1960, the front and rear setbacks were 45'. There was an administrative appeal in 2004 for Lots 1 & 2 to be recognized as legal lots of record on behalf of the landowner of Lot 1 (462 Satsuma). The two lots were recognized as legal lots of record per the request. This request for a 10' front setback variance would result in a 25' front setback as opposed to the required 35' front setback for R-2. Ms. Melton showed an aerial of the property, the Huggins Division recorded plat from 1960 which shows the lot at 80' x 100', and a partial survey that was supplied by the applicant. The applicant is requesting the variance to be able to construct a house that is 40' deep. The Zoning Ordinance, Article VII, Section D.3 contemplates front setback relief of non-conforming lots. Staff can grant an administrative variance of 5' for the front setback pursuant to Article VII, resulting in a front setback for the property of 30'. The applicant is requesting an additional 5' front street setback variance to have a 25' front setback as opposed to the required 35' and platted 45'.

Hunter Simmons, Planning and Zoning Director, stated that the Planning Commission recently amended Article VI, Section D.3 to set the 5' administrative variance due to there not being a limit set previously. Ms. Melton shared a slide showing the dimensions of houses based on the buildable areas with the different setbacks. According to the variance criteria in the Zoning Ordinance, the subject property does not present an "exceptional condition...because of its size, shape, or topography". The shape of the lot is rectangular, is relatively flat and there have been no BOA requests of record pertaining to a variance due to the topography of any of the surrounding lots in the city records. There will be no "substantial detriment to the public good" nor impairment of the intent of the ordinance if this variance is denied.

Recommendation:

Staff recommends denial of Case BOA 23.04. Staff has reviewed, and is willing to grant, an administrative 5' front setback variance.

Ryan Baker asked for an explanation on the platted 45' setback and if that stays with the land. Mr. Simmons explained that the original plat did go to the Planning Commission and minutes are available. This lot was platted in compliance with the Zoning Ordinance in place at that time. The 45' setback was not listed on the plat, so that when the Zoning Ordinance changed, the setback on that lot changed. The Zoning Ordinance evolved to include lot sizes and district codes also.

The applicant, Sunny Boothe, explained that they are long time Fairhope residents. She stated that they are requesting the variance due to the house next door having a 24.7' front setback so that their home will line up with that setback. Ms. Boothe also noted that she and her husband have some health issues and would like to have the master bedroom on the first floor of their home to avoid having to climb stairs. Ms. Boothe addressed the emails that oppose the variance stating that the survey showed the property next door having a 24.7' front setback and that they hoped to match that setback so that the properties look better aesthetically.

Chairman Vira opened the public hearing at 5:15pm.

Carolyn Boothe, who lives at 106 Orange Street, spoke against granting the variance. She stated that the neighborhood is becoming flooded with big homes on small lots which does not add to the beauty of the neighborhood. She believes that the rules should be followed for everyone. She added that the resident that used to own the subject property had bad water problems on that lot. Cathy Slagle asked Ms. Boothe where her house was exactly. Ms. Boothe explained that she is two doors down from the southeast corner.

Andy Parvin, who lives at 104 Pecan, spoke against granting the variance. He explained that he and his wife moved to Fairhope a few years ago. They were surprised at the cost of real estate in Fairhope, but they did some research and found that Fairhope has enacted some very specific codes as to building a home and how a home, whether new or existing, must be situated on a lot with regards to setbacks and set asides. They went ahead and decided to build their home and were comforted by the codes that Fairhope had enacted. Mr. Parvin explained that if the codes were relaxed, then everyone in that neighborhood could potentially be negatively impacted on the largest purchase a person may make. Mr. Parvin relayed that the code is public record and they, as newcomers, found it. He believes that the applicants should not be rewarded with the variance because they did not do their research and asked the Board to please deny the request.

Ron Mitchell, who lives at the corner of Orange and Satsuma, spoke in favor of granting the variance. Mr. Mitchell asked Mr. Simmons to agree that the house next to the subject property has a 24.7' setback. Mr. Simmons could not confirm that due to an incomplete survey, but does not doubt that the property has a 24.7' setback. Mr. Mitchell believes that granting the variance would allow the homes to look more uniform. Mr. Mitchell addressed the e-mail from Dennis Jacobson stating that Mr. Jacobson thought that a precedent would be set that all properties would have a 25' setback. Mr. Mitchell explained that the Board addresses each property individually. Mr.

Jacobson then told Mr. Mitchell that he did not have a problem with the variance request being approved if the homes would line up.
The public hearing was closed at 5:26pm.

Ryan Baker asked if there were drainage issues on this lot. Ms. Melton explained that in 2004 when the lots were recognized as legal lots, there was mention of drainage problems. The Huggins were at that meeting, and they also stated there were drainage problems. Mr. Baker asked if the drainage problems could create a problem when building on the lot. Mr. Simmons explained that any drainage issues would be addressed during the permit process. The fruit and nut neighborhood does not include a lot of drainage infrastructure. Drainage was taken into consideration when the administrative variance limit was put in place.

Mr. Simmons then explained that with the administrative variance applied, the applicants could build a 2,100 square foot home along with a 700 square foot accessory building. Mr. Baker asked if the topography of the lot should be a consideration. Mr. Simmons and Ms. Melton both stated that the lot is a flat lot. Donna Cook asked if there were any drainage easements on the back of the property. Mr. Simmons and Ms. Melton both stated that there are not.

Chairman Vira asked about the house to the right having a 24.7' setback and how that is not continuous across the house. Ms. Melton agreed that the house does not lie in a straight line across the lot. Chairman Vira asked about the buildable area on the subject property. Mr. Simmons stated that the buildable area, with the 5' administratively granted variance, is 2,100 square feet. Chairman Vira stated that if the Board approved the requested variance, there would be a 300 square foot difference. Mr. Simmons stated that the City does not look at house plans and that the setback will go with the land. Mr. Simmons explained that the setback on the house to the right was 15' due to having a driveway to an accessory structure. Mr. Simmons reiterated that the City must abide by the ordinance setbacks when evaluating each property. Mr. Simmons shared a story where the State of Alabama granted a setback variance for an ADA ramp, was sued, and lost under the criteria that the ramp was not a hardship. The ruling was that nothing precluded the house from being built and including the ramp within the setback requirements. Ms. Melton explained that for a variance, first and foremost, the size, shape and topography of the lot must be considered.

Chairman Vira asked the applicants whether they were able to design a 2,100 square foot home with a master bedroom on the first floor. Ms. Boothe believed that they could, but wanted to confirm what the footprint would be for the house before designing the home. Mr. Simmons stated that once the administrative 5' variance is applied, the home could be a two-story 4,200 square foot home. Mr. Baker asked if the Board needed to do anything administratively to grant the administrative variance. Mr. Simmons replied that his office could grant that variance.

Motion:

Frank Lamia made a motion to deny Case BOA 23.04.

Cathy Slagle seconded the motion and the motion carried unanimously with the following vote:
Aye: Anil Vira, Cathy Slagle, Frank Lamia, Ryan Baker, and Donna Cook.
Nay: None.

Old/New Business

Chairman Vira asked if there were any items for the next meeting. Mr. Simmons answered that there are three items.

Adjournment

Ryan Baker made a motion to adjourn.

The motion carried unanimously with the following vote:

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

Nay: None.

Adjourned at 5:35 p.m.

Anil K Vira
Anil Vira, Chairman

Cindy Beaudreau
Cindy Beaudreau, Secretary