

The Board of Adjustments met Monday, June 19, 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; Mike Jeffries, Development Services Manager; and Cindy Beaudreau, Planning Clerk.

Chairman Vira called the meeting to order at 5:02 PM.

Approval of Minutes

Ryan Baker made a motion to approve the minutes from the May 15, 2023, meeting.

Donna Cook 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 23.03 Public hearing to consider the request of the Owner, William Wiggins, for a front setback variance for principal structures for property zoned R-2, Medium Density Single-Family Residential District. The property is approximately 12,600 SF and is located at 358 Kumquat Street. PPIN#: 44288

Hunter Simmons, Planning and Zoning Director, explained that this is a case of existing non-conforming structures and a legal one. A pergola is different from a front porch. Today, you can build a pergola if it is open air, at the ground and not elevated. That is a legal structure. Some of the interpretation in the case is that the pergola is a porch which needs to be replaced. Staff does not have a survey of the property to determine where the dimensions are. Mr. Simmons presented the case summary. The lot is 70' wide instead of the required 75'. The square footage is larger than that required in R-2. This lot is in the Fruit and Nut area where many of the lots are 66' wide. The site plan shows the legal non-conforming home which is approximately 29' front the front property line. The required front setback is 35'. There is a pergola which extends further into the front setback which is not shown on the site plan. The site plan shows a proposed covered front porch which places it approximately 14' from the front property line. Mr. Simmons showed pictures of the existing structure, which includes the porch which can be repaired but not replaced. The pergola is separate from that. Mr. Simmons stated that there is no hardship based on the definitions listed in the Zoning Ordinance. Mr. Simmons explained the option available to the Applicant that the front porch can be repaired which does not require a front setback variance; however, the existing front porch does not extend 15' beyond the primary structure, whereas the proposed new porch does. The pergola can be torn down and replaced with a permit or remove it and add pavers.

Ryan Baker asked if the pergola had a roof. Mr. Simmons stated no. Mr. Baker then asked about the house to the south being closer to the street than the project house. Mr. Simmons answered that the house on the south has a side setback, and the project house has the front setback.

Recommendation:

Staff recommends denial of Case BOA 23.03; however, the Applicant may replace the existing pergola and/or repair the existing covered porch.

William Wiggins discussed just replacing the pergola, but the slope of the front yard creates a standing water issue under the pergola which rots the wood on the deck. He is concerned that just replacing the pergola and the decking would only last about five to ten years if that. Mr. Wiggins requested the ability to install a concrete porch to prevent the standing water and rot and divert the water around the home.

Frank Lamia asked if Mr. Wiggins was suggesting replacing the pergola and instead of a wood deck place a concrete slab. Mr. Wiggins answered yes. Mr. Simmons suggested using a pervious material, but that concrete would be allowed and that a building permit would be required.

Chairman Vira opened the public hearing at 5:11pm. Having no one present to speak, the public hearing was closed at 5:11pm.

Motion:

Ryan Baker made a motion to deny Case BOA 23.03.

Frank Lamia 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.

BOA 23.05 Public hearing to consider the request of the Applicant, Paul Marcinko, on behalf of the Owners, Emily and Klyce Hansen et al, for a 15' side setback variance for principal structures for property zoned R-2, Medium Density Single-Family Residential District. The property is approximately 12,400 SF and is located at 686 Greenwood Avenue. PPIN#: 61116

Mike Jeffries, Development Services Manager, presented the case summary stating that the property is on the southeast corner of Patlynn Drive and Greenwood Avenue. Mr. Jeffries continued that the recorded plat reflects a 35' setback along Patlynn Drive and Greenwood Avenue. Corner lots are allowed a 20' side street setback on the lot line with the greatest dimension per the Zoning Ordinance. The subject property is square having two lot lines with equal distance abutting a street. The variance request is to establish the front line and the side street lot line. The request matches the current orientation of the existing home. Mr. Jeffries shared an image showing six properties in the neighborhood that comply with the 20' Zoning Ordinance requirement. The variance request of the applicant for a 15' street side setback is compliant with the requirements of the Zoning Ordinance. The proposed setback relief also establishes the front lot line as being adjacent to Greenwood Avenue.

Recommendation:

Staff recommends approval of Case BOA 23.05, with a 15' setback variance on the western property line abutting Patlynn Drive.

location and neighboring residential zoned property. There are 18 homes and 5 apartment buildings within the buffer. Mr. Simmons stated that he spoke with the police department who field complaint calls for The Haven.

Recommendation:

Staff recommends denial of Case BOA 23.06 due to the incompatibility with adjacent properties.

Larry Smith, S.E. Civil, spoke on behalf of the Applicant. Mr. Smith stated that he and the Applicant were looking for a property for the kennels and asked where it could be placed in the City. He believes that the M-1 district is the proper place. Mr. Smith stated that his neighbor's dog barks all the time which should put them in violation of the ordinance. Mr. Smith continued that the Applicant is cognizant of the surrounding homes and will have indoor kennels with an outside play area for the dogs to use the bathroom. The kennel will have overnight boarding, but all the dogs will be back inside by 7:00pm. Mr. Smith shared a proposal, that was prepared by the Applicant, with the Board. Mr. Smith asked the Board if they are going to deny this proposal, to please put some thought into where a kennel may be located within the City because there is a need for one.

Frank Lamia stated that there is a big difference between one dog in a yard and a whole kennel. Mr. Lamia stated that an appropriate place for a kennel is not in a neighborhood.

Mr. Simmons stated that Staff met with the Applicant to discuss some more appropriate locations.

Mr. Smith stated that the City of Fairhope has a very limited light industrial sector. He had a very hard time finding a property that did not fall within the 300' proximity to residential.

Ryan Baker asked whether the City had received any complaints about Bay Animal Hospital since there is residential in that area also. He asked about how many decibels would get through the walls of an indoor kennel. Mr. Simmons stated that there was a possible site that was discussed with the Applicants within the same M-1 district which was a larger site that had some woods nearby. There is also a property down by the airport. Mr. Simmons stated that a B-2 zoned area would also work. Mr. Smith acknowledged the other properties, but with the kennel also being a daycare, it may not be as good of a business model for it to be so far away. The Applicant is working towards being more centralized.

Mr. Baker asked if the Board had to approve or deny today. Mr. Simmons stated yes. Staff has also looked at ways to soundproof a building, but the outside portion of this application, causes the noise level to be addressed. Mr. Lamia stated that since the property butts right up to residential, he does not believe that there is a way to acoustically solve the problem.

Chairman Vira opened the public hearing at 5:35pm.

Eugene Levert, 116 Spring Park Drive, Vice-President of the HOA, stated that his neighborhood backs up to the proposed project. He has a petition signed by 26 of the residents. He read a paragraph from his petition. They are very concerned that the facility is being considered for this space. They are opposed to the project and ask the Board to deny.

Anthony Wonsick, 219 Hawthorne Circle, is on the Board of Hawthorne Glen. He stated that everyone in his development is opposed to the project.

Randy Niemeyer, 216 Hawthorne Circle, represents the other portion of Hawthorne Glen. He stated that there are 11 properties within 100' of the project. He and the residents do not believe this is the right spot and that there are other spots that could be used.

Frank Leatherberry, 12744 River Creek Drive, Belle Shain Kennels, stated that he has been in Fairhope all his life. This Board did not approve his request several years ago. He was forced to go out into the ETJ. His kennel does boarding, training and daycare, but his application was denied for the same reasons that have been listed.

Ken Graves, 120 Reilly Circle, lives within 75' of the property. This project is not suited for the area. The brewery is the next street over and Hope Farms is across the street. These businesses crank the music up very loud, and it is not suitable for dogs who can hear a pin drop. Some of the properties are 15' from an 8' fence. He requests denial.

Bob Tarabella, 212 Grants Way, is the owner of the 2-story building immediately to the west of the subject property. His office is approximately 10' from this property. He loves the location that his building is on and the zoning. His business does assembly and light manufacturing and had to find an area that would be suitable. He took special consideration when building his business to be good neighbors. The restaurants have invested money to make them look nice. He makes sure that his work is complete by 3:30pm. He stated that just because you can put something in a certain zone does not mean you should. He thinks that the City should be respectful of the residents that are nearby, and he encourages the Board to deny the application.

The public hearing was closed at 5:43pm.

Chairman Vira stated that there were additional comments in the packages.

Motion:

Cathy Slagle made a motion to deny Case BOA 23.06.

Donna Cook 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 is one case.

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 5:44 p.m.

Anil K Vira
Anil Vira, Chairman

Cindy Beaudreau
Cindy Beaudreau, Secretary