



**City of Fairhope
Board of Adjustments Agenda
5:00 PM
Council Chambers
September 18, 2023**

Sherry Sullivan
Mayor

Council Members

Kevin G. Boone

Jack Burrell, ACOMO

Jimmy Conyers

Corey Martin

Jay Robinson

Lisa A. Hanks, MMC
City Clerk

Kimberly Creech
City Treasurer

1. Call to Order
2. Approval of Minutes
 - July 17, 2023
3. Consideration of Agenda Items

A. BOA 23.08 Public hearing to consider the request of the Owners, Kenneth and Kathleen Still, for a 9.2' variance to the rear setback requirement for property zoned in the Rock Creek PUD. The property is approximately 0.48 acres and is located at 139 North Drive.
PPIN#: 206127

4. Old/New Business
5. Adjourn

161 North Section Street

P.O. Drawer 429

Fairhope, Alabama 36533

251-928-2156

251-928-6776 Fax

www.fairhopeal.gov

Printed on recycled paper

The Board of Adjustments met Monday, July 17, 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; 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 5:01 PM.

Approval of Minutes

Ryan Baker made a motion to approve the minutes from the June 19, 2023, meeting.

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

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

Nay: None.

BOA 23.07 Public hearing to consider the request of the Applicant, Aloha Made LLC, on behalf of the owner, VFW Post 5660, for a Special Exception – Use on Appeal, to operate a restaurant in the M1, Light Industrial District. The property is approximately 1.23 acres and is located at 950 Nichols Avenue. **PPIN#: 92512**

Mike Jeffries, Development Services Manager, presented the request to allow a restaurant at the property located at 950 Nichols Avenue, owned by the VFW. Restaurant use is permitted on appeal and subject to special conditions. Mr. Jeffries shared the zoning map and the aerial of the property.

The VFW has agreed to allow the proposed restaurant to operate and use the commercial kitchen to cook in and serve out of the hall for seating. The restaurant will also utilize the VFW parking lot during the limited hours of operation. There is no expansion of the building being proposed. The restaurant will be occupying readily available space and entrance for patrons will be from the east side door. Mr. Jeffries shared the proposed site plan. Landscaping will be reviewed at time of review for business licensing and be required to come into compliance. The proposed restaurant will have up to 36 seats available for outdoor seating on a patio on the side of the building and 36-48 seats available inside. The restaurant will not be using the bar area. This number of total seats requires 19 parking spaces. The VFW currently has 67+ spaces for parking. Staff does not see parking as a concern within the limited hours of operation.

The hours of operations are limited to: Tuesday-Saturday from 10am-4pm during the summertime and Wednesday-Friday, 11am-2pm and Saturday, 11am-4pm during school time.

Recommendation:

Staff recommends approval of Case BOA 23.07, subject to the following condition:

1. Hours of operation are limited as shown above.

Anil Vira asked if the hours of operation could change based on need. Mr. Jeffries replied that no, the hours must stay within the conditional hours. Hunter Simmons, Planning and Zoning Director, added that the seating is limited as well as the hours. The Board of Adjustments is approving what is provided. Mr. Simmons added that since this is a shared space, the VFW will be using the space during its regular hours which are outside of the proposed hours for the restaurant.

Ryan Baker asked if a special exception is granted, does it stay with the property. If Aloha BBQ leaves and a different restaurant wants to open, would that restaurant already have the right to open. Mr. Simmons stated that the new restaurant would need to stay within the hours and seating that have been approved with this request. Mr. Simmons continued that the Board of Adjustments could add a condition that this approval is only for Aloha BBQ, if they want any new request to be brought back to the Board of Adjustments.

Mr. Baker asked for confirmation of whether the bar could operate in the M-1 district. Mr. Simmons stated that since uses are being added and under the non-conforming uses, the Board of Adjustments could make the VFW bring everything into compliance. If this was a restaurant buying the property, then staff might recommend that. Mr. Simmons spoke about the landscaping requirements and a condition could be added that landscaping screening will be installed on the westernmost parking area.

Mr. Vira asked if the food truck was moving into the building. Mr. Simmons stated that all food trucks need a commissary as a prep station. Mr. Jeffries explained that the commissary is an off-site location to keep dry goods stored, prepare, and restock so that the operation out of the truck is the food materials. There must be some area designated for their preparation and storage of food. Mr. Vira asked if they were prepping in the building and selling from the food truck. Mr. Simmons explained that the Health Department requires a safe place for food to be stored. Mr. Simmons stated that multiple food trucks could use this location as a commissary, but that does not mean those trucks can serve there. Aloha BBQ intends to serve at this location.

Raquel Faiupu, Owner, Aloha BBQ, requested that the hours be modified to Tuesday-Saturday, from 10am-4pm, year-round. Staff does not have a problem with the change in hours as long as, if the VFW needs the facility, Aloha BBQ will close.

Kerry Lambert, VFW Facility Manager, 104 Ann Street, Spanish Fort. Mr. Simmons asked if there was any discussion about landscaping out front. Ms. Lambert stated that there is landscaping in front. Ms. Lambert agreed that hedges would be installed on the front part of the parking area as a condition of approval.

Mr. Baker asked for confirmation of where the hedges would be installed. Mr. Simmons shared the aerial to show the exact area.

Chairman Vira opened the public hearing at 5:19pm. Mr. Vira shared an e-mail from Mr. Niemeyer who is in favor of the project. Having no one present to speak, the public hearing was closed at 5:19pm.

Chairman Vira asked for confirmation that they could add a condition that this approval is only for Aloha BBQ. Mr. Simmons stated yes, there is enough flexibility to allow for that. Mr. Simmons continued that a variance to the dimensions of the land, stay with the land, but a use like what is requested, would allow for that condition to be added. Mr. Vira stated that by adding the condition, it would allow the Board of Adjustments the flexibility to review a new project if Aloha BBQ closed. Mr. Simmons stated that he is not sure that adding that condition is necessary due to the seats provided and hours of operation guiding this request. If this request is approved, any new restaurant would need to abide by the stated conditions. Mr. Vira asked if a new restaurant wanted different hours, would that need to come back to the Board of Adjustments. Mr. Simmons stated that regardless of who it is, even without the stipulations, any physical changes in seats or hours, would need to come back to the Board of Adjustments. Frank Lamia confirmed that the latest that Aloha BBQ could be open would be 4pm. Mr. Baker asked for confirmation of whether the food truck would remain, or they would begin serving inside. Mr. Simmons explained that the food truck is there now, but after approval, they will begin using the common space of the VFW that is not being used during those hours.

Mr. Jeffries clarified that if Aloha BBQ did not have a food truck, they could make the same request today. If Aloha BBQ moved somewhere else, another restaurant could fill the space the same way as long as the seats and hours stayed the same. Mr. Simmons stated that any other restaurant wanted to move in, they would need to work with the VFW.

Ms. Lambert asked if Aloha BBQ left, and the VFW opened their own kitchen again, would the VFW restaurant hours need to match Aloha BBQ. Mr. Jeffries stated no because the VFW is acting as it always has. Ms. Lambert stated that they do not open until 3pm. Mr. Simmons stated that, by definition, the VFW is more of a private club, that is not open to the public for a restaurant service. If the VFW wanted to operate as a restaurant, staff would look at it differently.

Cathy Slagle asked if the VFW had a liquor license. Ms. Lambert stated yes but Aloha BBQ does not. Chairman Vira asked if someone could get BBQ at 3pm and then a beer at the VFW. Ms. Lambert stated yes if they have a member of the VFW with them.

Mr. Baker asked why staff wants Aloha BBQ to add the parking screen on a separate property. Mr. Jeffries stated that the parking area is a property with a shared parking agreement. Mr. Jeffries explained where all the parking spaces are that will be utilized.

Ms. Slagle asked if the earlier statement that the landscaping will be reviewed at time of review for business licensing and be required to come into compliance would cover the proposed condition of adding a parking screen. Mr. Jeffries agreed that it does, but with this request being a special use, by adding it to the conditions, it allows the applicant to be aware of what will be required at application for a business license.

Mr. Lamia agreed that trees along Nichols or landscaping that buffers the parking from the residents across the street is good, but he is not sure if putting trees in the middle of parking lots will help much. Mr. Simmons referenced the Tree Ordinance stating that Nichols has a 20' landscape requirement and what should be done within that area. If staff asks Aloha BBQ to meet that requirement, it may involve removing some asphalt. Staff does not feel that this use is enough to do that, but specifically, staff is requesting that Aloha BBQ meet the parking screening portion of the Landscape Ordinance. Mr. Lamia stated that he is not opposed to that.

Motion:

Frank Lamia made a motion to approve Case BOA 23.07, with two conditions:

1. Hours of operation are Tuesday-Saturday, from 10am-4pm, year-round.
2. Parking screen compliant with the City's Landscape Ordinance as approved by the City's Horticulture Supervisor.

Cathy Slagle seconded the motion and the motion carried unanimously with the following vote:

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

Nay: None.

Old/New Business

Chairman Vira asked if there were any items for the next meeting. Mr. Simmons stated that there are no cases for next month.

Adjournment

Cathy Slagle made a motion to adjourn.

The motion carried unanimously with the following vote:

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

Nay: None.

Adjourned at 5:33 p.m.

Anil Vira, Chairman

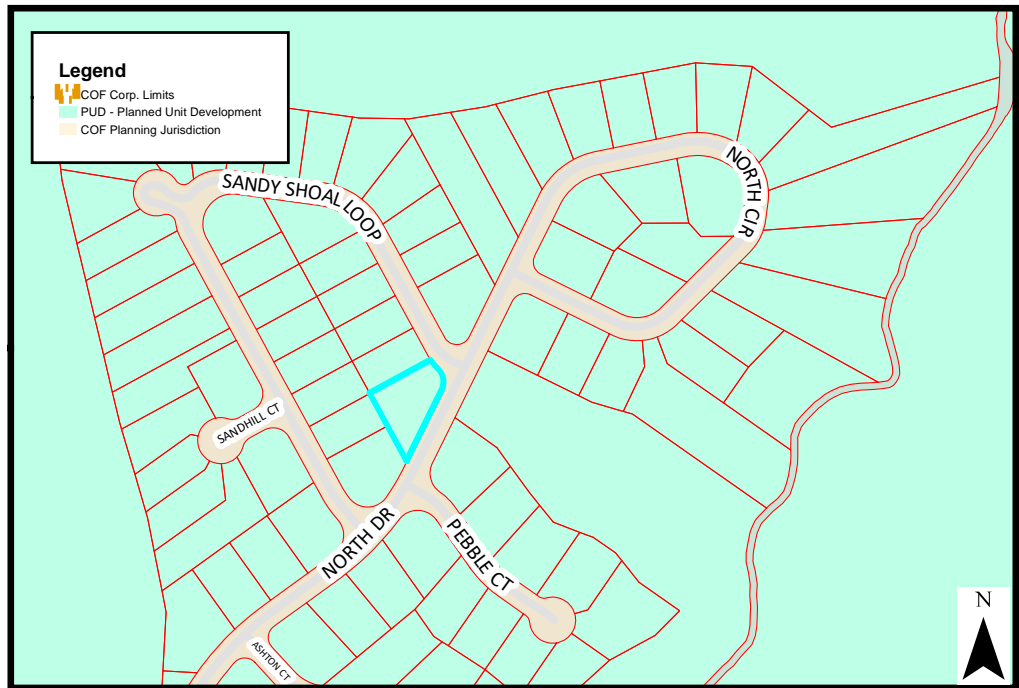
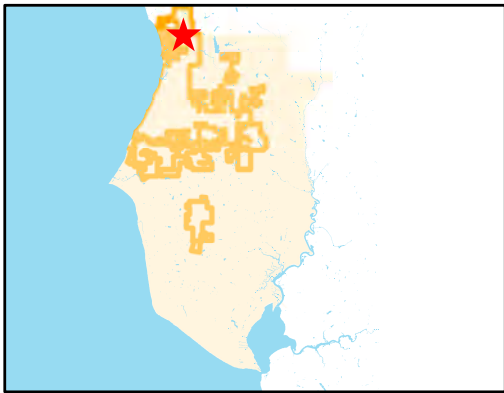
Cindy Beaudreau, Secretary

City of Fairhope Board of Adjustment

September 18, 2023



BOA 23.08 - 139 North Drive



Project Name:

139 North Drive

Site Data:

0.48 Acres

Project Type:

9.2ft Rear Setback Variance

Jurisdiction:

Fairhope

Zoning District:

PUD

PPIN Number:

206127

General Location:

Rock Creek PUD

Surveyor of Record:

Engineer of Record:

Owner / Developer:

Kenneth and Kathleen Still

School District:

Fairhope Elementary School
Fairhope Middle and High Schools

Recommendation:

Denial

Prepared by:

Mike Jeffries





APPLICATION FOR BOARD OF ADJUSTMENTS

Application Type: Administrative Appeal Special Exception Variance

Property Owner / Leaseholder Information

Name: Kenneth & Kathleen Still Phone Number: (813) 265-3596
 Street Address: 139 North Drive
 City: Fairhope State: AL Zip: 36532

PPIN: 206127

Applicant / Agent Information

If different from above.
Notarized letter from property owner is required if an agent is used for representation.

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: 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.

Kenneth Still Kathleen Still
Property Owner/Leaseholder Printed Name

[Signature]
Signature

8/10/2023
Date

Fairhope Single Tax Corp. (If Applicable)

EMMIE timarutahoe98@aol.com
kskill@bayshoretitle.com.



VARIANCE REQUEST INFORMATION

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

- | | | |
|--------------------------------------|------------------------------------|---|
| <input type="checkbox"/> Too Narrow | <input type="checkbox"/> Elevation | <input type="checkbox"/> Soil |
| <input type="checkbox"/> Too Small | <input type="checkbox"/> Slope | <input type="checkbox"/> Subsurface |
| <input type="checkbox"/> Too Shallow | <input type="checkbox"/> Shape | <input checked="" type="checkbox"/> Other (specify) |

Describe the indicated conditions: Set back line is 35' existing structure is shows 25.8'

How do the above indicated characteristics preclude reasonable use of your land?
Privacy and existing structure

What type of variance are you requesting (be as specific as possible)?
Set back from 35' to 25.8'

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:	\$120⁰⁰	

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.

Kenneth Still Kathleen Still
Property Owner/Leaseholder Printed Name

[Signature]
Signature

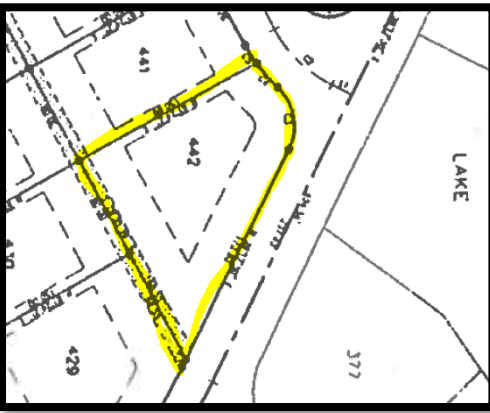
8/10/2023
Date

[Signature]
Fairhope Single Tax Corp. (If Applicable)

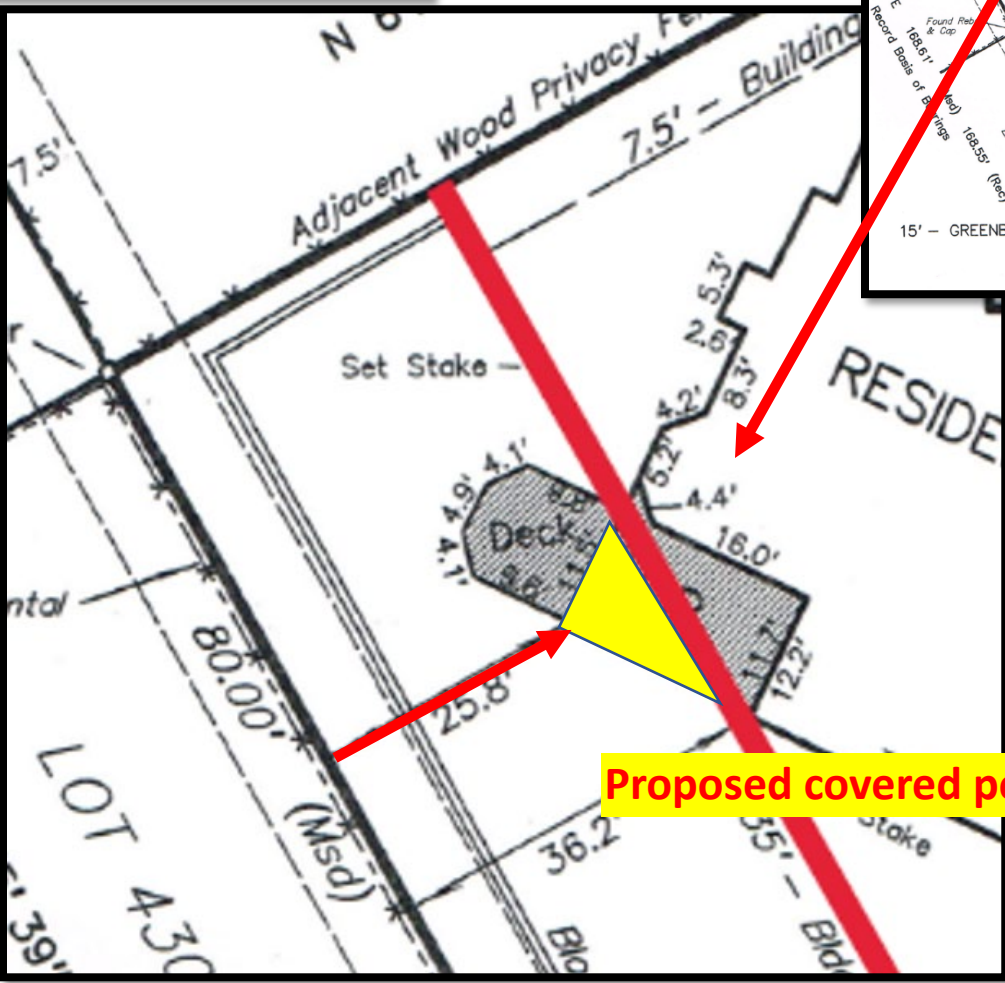
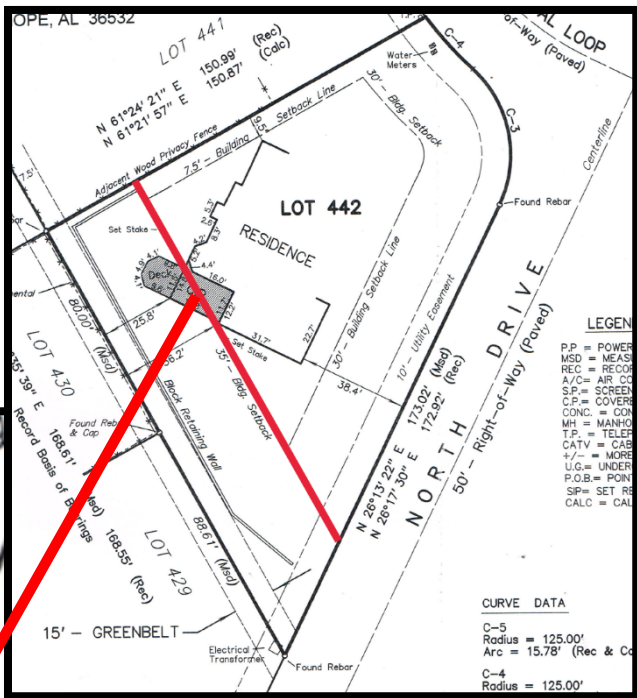
Summary of Request:

The Applicant, Kenneth and Kathleen Still, is requesting a 9.2' rear setback variance for the principal structure. The owners want to cover an existing deck. The subject property is zoned PUD (Planned Unit Development) and located in Phase IV of the Rock Creek Subdivision. The required setback is 35'.

Plat Exert Lot 442



Current Survey



Proposed covered portion

Comments:

The subject property is bordered on all sides by Rock Creek PUD zoned property. In 2010 the previous owner made a similar request. The Board of Adjustments denied the request at the December 20, 2010, meeting. Minutes from the meeting are included in the staff packet. Exceptional or extraordinary conditions pertaining to the particular piece of property due to its shape, size, or topography **do not** exist.

The applicant removed an existing cover built illegally by the previous owner. The current owner did not apply for a building permit to remove and construct the new roof. The Building Department issued a stop work order which triggered a review by Planning and Zoning. The current survey provided by the applicant showed the proposed new construction outside of the required building setbacks.

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: Exceptional or extraordinary conditions **do not** exist.

(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: The application of the Zoning Ordinance or the approved PUD **does not** create an unnecessary hardship.

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

Response: Conditions are not peculiar to the particular piece of property.

(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 will cause substantial detriment to the public good as the property does not meet the criteria in which a variance can be granted.

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:

- (1) 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
- (2) The variance is recorded with the Judge of Probate.

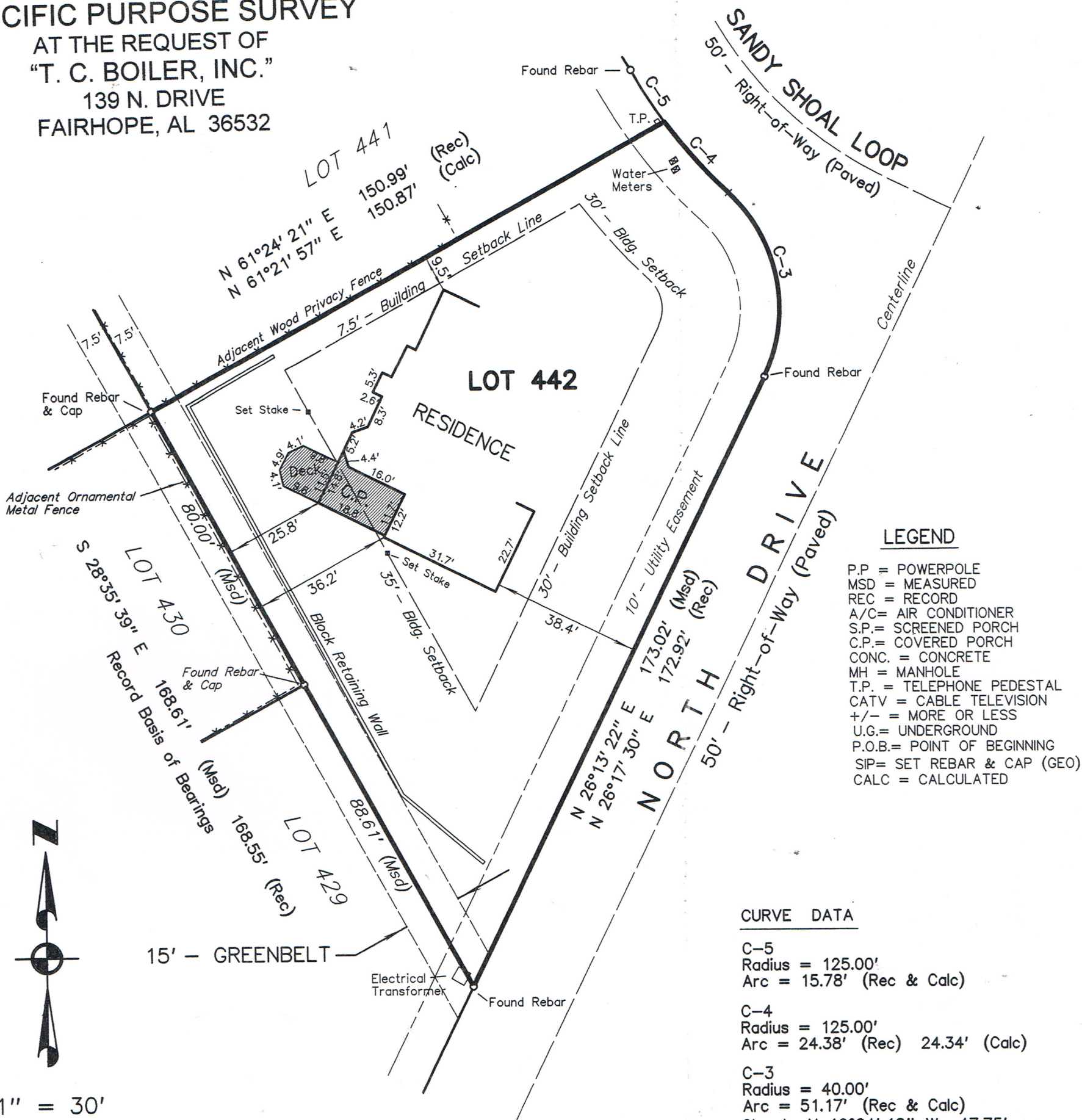
Recommendation:

Staff recommends *Denial* of a rear setback variance for case BOA 23.08.

SPECIFIC PURPOSE SURVEY

AT THE REQUEST OF
"T. C. BOILER, INC."

139 N. DRIVE
FAIRHOPE, AL 36532



LEGEND

- P.P. = POWERPOLE
- MSD = MEASURED
- REC = RECORD
- A/C = AIR CONDITIONER
- S.P. = SCREENED PORCH
- C.P. = COVERED PORCH
- CONC. = CONCRETE
- MH = MANHOLE
- T.P. = TELEPHONE PEDESTAL
- CATV = CABLE TELEVISION
- +/- = MORE OR LESS
- U.G. = UNDERGROUND
- P.O.B. = POINT OF BEGINNING
- SIP = SET REBAR & CAP (GEO)
- CALC = CALCULATED

CURVE DATA

- C-5
Radius = 125.00'
Arc = 15.78' (Rec & Calc)
- C-4
Radius = 125.00'
Arc = 24.38' (Rec) 24.34' (Calc)
- C-3
Radius = 40.00'
Arc = 51.17' (Rec & Calc)
Chord = N 10°21' 18" W 47.75'

SURVEYORS NOTES:

- THIS SURVEY DOES NOT TAKE INTO CONSIDERATION ANY ADDITIONAL FACTS THAT AN ACCURATE AND CORRECT TITLE SEARCH AND/OR EXAMINATION MIGHT DISCLOSE INCLUDING, BUT NOT LIMITED TO, DESCRIPTIONS CONTAINED IN DEEDS FOR ADJACENT PROPERTIES. IN ADDITION THERETO, THE ATTACHED DRAWING DOES NOT REFLECT ANY TITLE OR EASEMENT RESEARCH, OTHER THAN WHAT IS VISIBLE ON THE GROUND, PROVIDED BY OUR CLIENT, OR RECORDS WE HAPPEN TO HAVE ON FILE FURNISHED BY OTHERS.
- THE BEARINGS AND DISTANCES SHOWN HEREON WERE COMPUTED FROM RANDOM TRAVERSES WITHIN A CLOSED TRAVERSE.
- MEASUREMENTS SHOWN HEREON WERE MADE IN ACCORDANCE WITH U.S. STANDARDS.
- PROPERTY IS SUBJECT TO ANY AND ALL RESTRICTIONS AND CONDITIONS, IF ANY, WHICH WERE NOT SUPPLIED BY THE CLIENT PRIOR TO THE SURVEY.

BOUNDARY DESCRIPTION:

LOT 442, ROCK CREEK, PHASE FOUR, A PLANNED UNIT DEVELOPMENT, AS RECORDED ON SLIDES 1611-B, 1612-A, 1612-B, 1613-A, AND 1613-B, IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA.

(STATE OF ALABAMA)
(COUNTY OF BALDWIN)

I, MATTHEW S. KOUNTZ, A REGISTERED LAND SURVEYOR, HEREBY STATE THAT ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF ALABAMA TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I FURTHER STATE THAT THE IMPROVEMENTS PRESENTLY SITUATED ON SAID PROPERTY ARE LOCATED WITHIN THE BOUNDARIES THEREOF; THAT THERE ARE NO ENCROACHMENTS UPON SAID PROPERTY BY BUILDINGS OR FENCES SITUATED ON ADJOINING PROPERTY; AND THAT THERE ARE NO JOINT DRIVEWAYS, EASEMENTS, NOR RIGHTS-OF-WAYS, EXCEPT AS NOTED HEREON.

ALL ACCORDING TO MY SURVEY MADE THIS THE 20TH DAY OF JULY, 2023. I ALSO STATE THAT THIS DRAWING AND OR CERTIFICATION DOES NOT REFLECT ANY TITLE OR EASEMENT RESEARCH, OTHER THAN WHAT IS VISIBLE ON THE GROUND OR PROVIDED BY THE CLIENTS AT TIME OF SURVEY.

MATTHEW S. KOUNTZ, P.L.S.
ALABAMA REG. NO. 20359

NOT VALID
WITHOUT
EMBOSSSED
SEAL

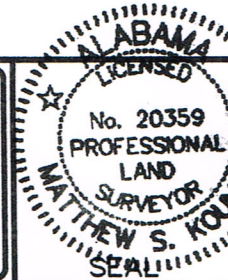
GEO-SURVEYING, INC.

PROFESSIONAL LAND SURVEYING

129 Club Drive

Fairhope, Alabama 36532

Phone: (251) 990-0815 Fax: (251) 990-0866



REVISIONS		
DESCRIPTION	DATE	BY

PROJECT NO: 2023103
DATE: 07/20/2023
SCALE: 1" = 30'
DRAWN BY: MK
FIELD WORK: 07/19
FIELD BOOK: RGR3
SHEET 1 OF 1 SHEETS

Still, Kenneth

Subject: Variance for set back 139 North Dr Fairhope Al 36532

Requesting a rear set back variance for portion of existing covered patio.

Said property is a corner lot purchased 2022 with an existing covered deck and only replacing roof which had several leaks. There is no other structural change to existing patio except adding an open deck to existing. The existing structure I believe has been there for over 10 years.

Without the covered roof I lose my privacy in the backyard area as the house(s) behind are uphill and look down in to the yard as we are on a downslope. Said new roof structure blends in with the existing house roof and would have drainage linking into the new French Drains installed as we had serious drainage issues in the back yard and soil movement.

The new roof doesn't exceed 8' nor block any of the rear neighbors views nor cause any damage to utilities as said entities have mark all lines to the house(gas,power etc). Also the Homeowner(s) Assoc. has approved the change.

Kenneth Still
139 North Dr
Fairhope, Al 36532
Phone 813-265-3596

- 1 DEMO OLD ROOF
- 2 BUILD NEW ROOF ON EXISTING STRUCTURE
- 3 PLYWOOD 1/2"
- 4 HURRICANE STRAP
- 5 ANCHOR BOLTS FOR ROOF STRUCTURE

