

ORDINANCE NO. 1788

**AN ORDINANCE AMENDING ORDINANCE NO. 1253
KNOWN AS THE ZONING ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE, ALABAMA as follows:

The ordinance known as the Zoning Ordinance (No. 1253), adopted 27 June 2005, together with the Zoning Map of the City of Fairhope, be and the same hereby is changed and altered in respect to that certain property described below:

After the appropriate public notice and hearing, the Planning Commission of the City of Fairhope, Alabama has forwarded a **favorable** recommendation,

The property of FST 404 Oak LLC (containing 0.18 acres, more or less, and zoned B-4) and located at 404 Oak Avenue, Fairhope, AL.

PPIN # 14546

Legal Description: (Case number ZC 23.06)

LOT 7-A "LOT 7-A" OF THE RE-PLAT OF PART OF LOTS 1, 2, 7, & 8 BLOCK 2, DIVISION 4 OF THE LANDS OF FAIRHOPE SINGLE TAX MISCELLANEOUS BK 1 PGS 320-321 SLIDE 2853-E LEASE IN#1999899

A map of the property to be rezoned is attached as Exhibit A.

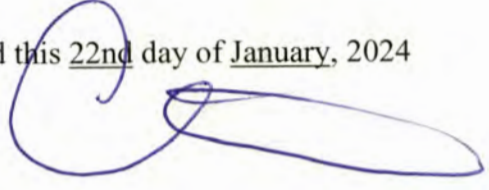
The property is hereby rezoned B-2, General Business District. This property shall hereafter be lawful to construct on such property any structures permitted by Ordinance No. 1253 and to use said premises for any use permitted or building sought to be erected on said property shall be in compliance with the building laws of the City of Fairhope and that any structure shall be approved by the Building Official of the City of Fairhope and that any structure be erected only in compliance with such laws, including the requirements of Ordinance No. 1253. *Notwithstanding the above statement of permitted uses, the following uses shall not be permitted on the subject property: automobile service station, convenience store, automotive repair facility, personal storage, boarding house or dormitory, recreational vehicle park, kennel or animal hospital, or a clinic.* Furthermore, to preserve the character of the existing structure, with an emphasis on the view from Oak St, the following restrictions apply to any new construction or additions: the existing roof shall not be altered except for tie-ins to new roofs; the existing front façade shall not be altered except for minor changes, such as new paint colors; and all additions/expansions shall be located, at minimum ten (10) feet from the front lot line and shall not extend higher than the roof of the existing structure.

Severability Clause - if any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Ordinance No. 1788
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Effective Date – This ordinance shall take effect immediately upon its due adoption and publication as required by law.

Adopted and approved this 22nd day of January, 2024




By: _____
Corey Martin, Council President

Attest:

By: 
Lisa A. Hanks, MMC
City Clerk

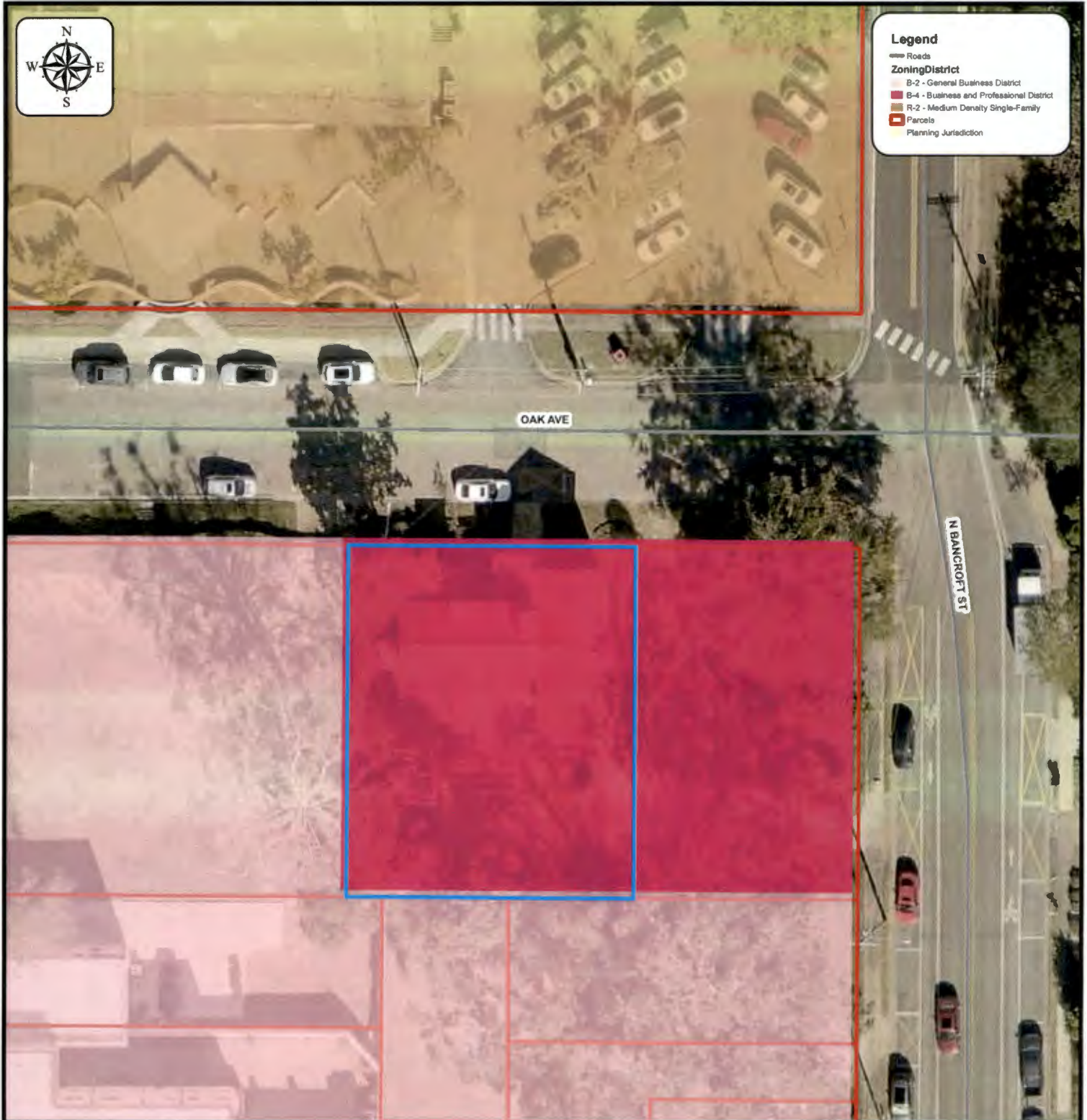
Adopted and approved this 22nd day of January, 2024

By: 
Sherry Sullivan, Mayor

Ord. No. 1788 Published in
FAIRHOPE COURIER
on Wednesday, January 31, 2024
L. Hanks City Clerk



**Exhibit A:
404 Oak Avenue, Rezone: B-4 to B-2
(ZC 23.06)**



Legend

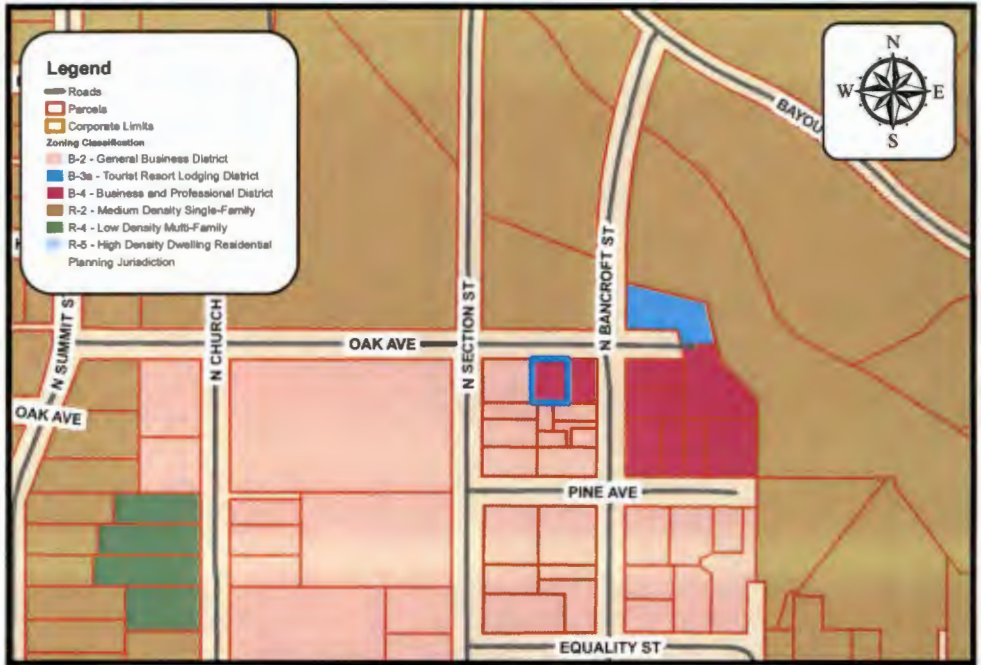
- Roads
- Zoning District**
 - B-2 - General Business District
 - B-4 - Business and Professional District
 - R-2 - Medium Density Single-Family
- Parcels
- Planning Jurisdiction

City of Fairhope Planning Commission January 22, 2024



Planning Commission unanimously (6 Ayes, 0 Nays) voted to recommend approval of ZC 23.06.

ZC 23.06 - 404 Oak LLC



Project Name:	404 Oak Avenue
Site Data:	0.18 acres
Project Type:	Rezoning
Jurisdiction:	Fairhope Planning Jurisdiction
Zoning District:	B-4
PPIN Number:	14546
General Location:	East side of N. Section Street., South side of Oak Avenue.
Surveyor of Record:	N/A
Engineer of Record:	N/A
Owner / Developer:	FST AL Coastal Holdings, LLC
School District:	Fairhope Elementary School Fairhope Middle and High Schools
Recommendation:	Approval w Conditions
Prepared by:	Michelle Melton



APPLICATION FOR ZONING DISTRICT CHANGE

Property Owner / Leaseholder Information
 Name: FST AL Coastal Holdings LLC Phone Number: (251) 454-5440
 Street Address: 404 Oak Ave
 City: Fairhope State: AL Zip: 36532

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: _____

Current Zoning of Property: B-4
 Proposed Zoning/Use of the Property: B-2 / Restaurant
 Property Address: 404 Oak Ave, Fairhope, AL 36532
 Parcel Number: 46-03-37-0-007-068.503
 Property Legal Description: See description on attached page
 Reason for Zoning Change: B-4 does not allow a restaurant. B-2 does.

- Property Map Attached YES NO
- Metes and Bounds Description Attached YES NO
- Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached. YES NO

Character of Improvements to the Property and Approximate Construction Date: If property is rezoned the intended use is a restaurant. B-2 allows this use while B-4 does not. A commercial kitchen will be added and rooms will be modified for more seating areas.

Zoning Fee Calculation:
 Reference: Ordinance 1269

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.

FST AL Coastal Holdings LLC
 Property Owner/Leaseholder Printed Name
8/29/23
 Date

Bul Pilot
 Signature
 Fairhope Single Tax Corp. (If Applicable)
Secretary,
Rauben E. Davidson, III

Summary of Request:

Applicant, AL Coastal Holdings LLC, requests the subject property be rezoned from B-4, Business and Professional District to B-2, General Business District. The property is located at 404 Oak Avenue and within the Central Business District (“CBD”). Applicant desires to utilize the subject property as a restaurant, which is allowed in B-2, but not in B-4.



Figure 1: Map of subject and adjacent properties.

Comments:

The subject property was approved with conditions for a MOP in case SD 22.21 in August 2022. SD 22.21 allowed for four mixed-use units. Mixed uses are allowed in all the “B” zoning districts. Restaurants are only permitted by right in B-2 and B-3(b), and are not allowed in B-4.

Pursuant to Article V, Section B(3), since the subject property is within the CBD, re-zoning approvals may be done conditionally so that some allowed uses within the rezoned district may not be allowed for a particular location. For example, an Automobile Repair Station is not a desired use for this location although an allowable use.

Any future rezoning in the CBD overlay may be conditioned so that the goals and intent of the Comprehensive Plan and Article V., Section B.1. of the Zoning Ordinance are achieved.

Table 3-1

Zoning District						
Uses Categories / Specific Uses	B-1	B-2	B-3a	B-3b	B-4	
Dwelling						
Single-family	●	●	●	●	●	
Two-family	●	●	●	●		
Townhouse	3	3				3
Patio Home						
Multiple-family / Apartment			○	○		
Manufactured Home						
Mixed-use	●	●	●	●	●	
Accessory Dwelling	3	3	3	3	3	
Estate						
Office						
General	●	●		●	●	
Professional	●	●		●	●	
Home Occupation	3	3	3	3	3	
Retail						
Grocery	●	●		●		
Convenience Store	3	3		3		
General Merchandise	●	●		●		
Shopping Center		●				
Automobile Service Station	○	○				
Outdoor Sales Limited		○				
Outdoor Sales Lot		○				
Garden Center		○	○			
Service						
Convalescent or Nursing Home	○	○	○		○	
Clinic	○	○	○			
Outdoor Recreation Facility	○	○	○	●	○	
Day Care	○	○	○		○	
General Personal Services	●	●				
Mortuary or Funeral Home		○			○	
Automobile Repair		●				
Indoor Recreation	●	●		○		
Dry Cleaner / Laundry	●	○				
Personal Storage		○		3	3	
Bed & Breakfast			●	○		
Hotel / Motel		○	○	○		
Boarding House or Dormitory		●	●		●	
Recreational Vehicle Park		3		3		
Restaurant	○	●	○	●		
Bar		●	○	●		
Entertainment Venue		●		○		
Marina			○	○		
Kennel or Animal Hospital		○	○			
Warehouse						
Junk Yard or Salvage Yard						



Figure 2: Google Street View last visited on September 11, 2023.

The Zoning Ordinance defines B-4 Business and Professional District as follows:

“B-4 Business and Professional District: This district is intended to provide opportunity for business establishments of a professional nature and is restricted to offices and businesses, which provide specific corporate functions or professional services to the general public.”
See Art. III, Section A(14).

The Zoning Ordinance defines B-2 General Business District as follows:

“B-2 General Business District: This district is intended to provide opportunity for activities causing noise and heavy traffic, not considered compatible in the more restrictive business district. These uses also serve a regional as well as a local market and require location proximity to major transportation routes. Recreational vehicle parks, very light production and processing activities are included. See Art. III, Section A(11).

There is an Easement Agreement recorded as Instrument#: 1962444 and included in the packet. The easement is to the benefit of the subject property as it is a 20' easement across the southern 20' of 406 Oak Avenue. Applicants are aware of the easement. Applicants are also aware that to use the subject property as a restaurant there may be additional parking and utility requirements. As the restaurant concept develops a Site Plan Review may be generated that will come before the Planning Commission and City Council only if the

triggers of Article 2, Section 2 within the Zoning Ordinance are initiated. Otherwise, permits may be Staff Review only.

A Re-Zoning Request is considered a Zoning Map Amendment and the application is reviewed pursuant to the Criteria in Art. II, Section B(1)(e).

(1) Compliance with the Comprehensive Plan;

Response: The 2015 Comprehensive Plan states that downtown Fairhope is the ultimate Village Center. The subject property is within downtown and meets the form, function, and design standards because it is a source for both tourists and locals. It accomplishes this as B-4 and as B-2.

(2) Compliance with the standards, goals, and intent of this ordinance;

Response: Meets. Some allowable uses are not ideal for this location and use changes will be vetted accordingly.

(3) The character of the surrounding property, including any pending development activity;

Response: Meets. Use as a restaurant will complement the current situation and future development activity, such as a hotel, which has been approved for the property immediately adjacent.

(4) Adequacy of public infrastructure to support the proposed development;

Response: Meets. Already an existing structure with utilities. Applicant plans to add a larger commercial kitchen, which may require additional demands on infrastructure. Parking may also be an issue as the restaurant concept develops.

(5) Impacts on natural resources, including existing conditions and ongoing post-development conditions;

Response: Meets. This zoning change will not negatively impact natural resources or current/future conditions.

(5) Compliance with other laws and regulations of the City;

Response: Meets. Any future development is subject to all applicable laws of the City.

(6) Compliance with other applicable laws and regulations of other jurisdictions;

Response: Meets. Any future development is subject to all applicable laws.

(7) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values; and

Response: Staff does not anticipate any significant issues relating to this criterion currently. Staff has not supported some request to rezone property to B-2 in the general vicinity. However, those properties directly abutted the edge of the CBD or gully. The subject property abuts neither.

(8) Impacts on the surrounding neighborhood including noise, traffic, visible intrusions, potential physical impacts, and property values.

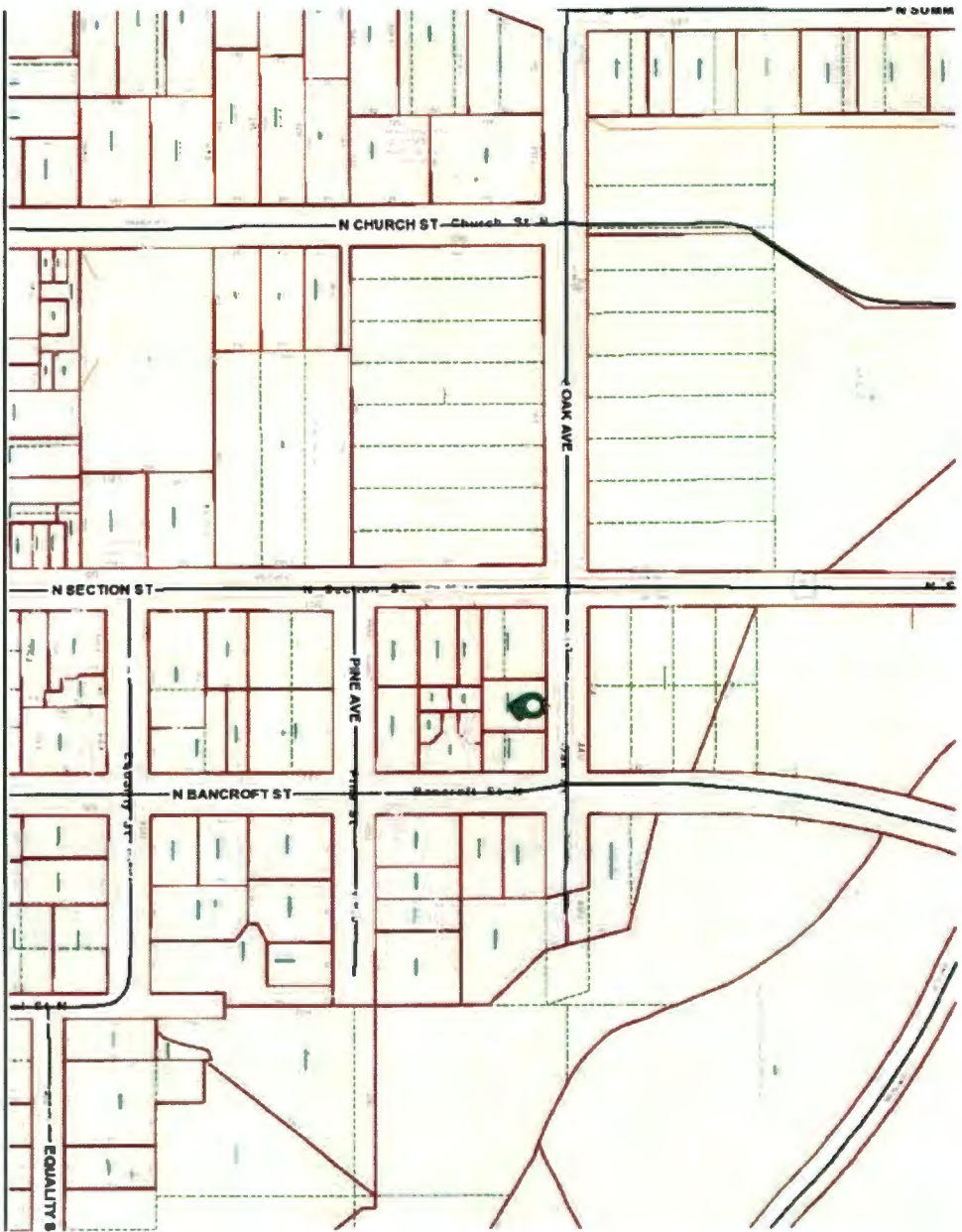
Response: Staff does not anticipate any significant issues relating to this criterion currently.

Recommendation:

Staff recommends **approval** of ZC 23.06: rezoning 404 Oak Avenue from B-4 to B-2 with the following conditions:

- 1.) Regardless of the allowed uses in Table 3-1 of the Fairhope Zoning Ordinance, the following uses shall be prohibited on the subject property:
 - a. Automobile Service Station
 - b. Automobile Repair
 - c. Personal Storage
 - d. Boarding House or Dormitory
 - e. Recreational Vehicle Park
 - f. Kennel or Animal Hospital
 - g. Convenience Store
 - h. Clinic

Property Map



Metes and Bounds Description

BOUNDARY DESCRIPTION:

THE EAST 10 FEET OF LOT ONE (1), THE EAST 100 FEET OF THE NORTH HALF OF LOT TWO (2) THE WEST 710 FEET OF THE NORTH HALF OF LOT SEVEN (7) AND THE WEST 710 FEET OF LOT EIGHT (8) BLOCK TWO (2) DIVISION FOUR (4) LANDS OF THE FAIRHOPE SINGLE TAX CORPORATION IN THE CITY OF FAIRHOPE ALABAMA BEING APPROXIMATELY 81 FEET BY 99 FEET AS RECORDED IN MISC BOOK 1 PAGES 320-21 PROBATE RECORDS BALDWIN COUNTY ALABAMA FRAC L SECTION 17 TOWNSHIP 6 SOUTH RANGE 2 EAST AND INCLUDING AN EASEMENT FOR INGRESS AND EGRESS ACROSS THE SOUTH 20 FEET OF 408 OAK AVENUE

Legal Description

LOT 7-A "LOT 7-A" OF THE RE-PLAT OF PART OF LOTS 1, 2, 7, & 8 BLOCK 2, DIVISION 4
OF THE LANDS OF FAIRHOPE SINGLE TAX MISCELLANEOUS BK 1 PGS 320-321 SLIDE
2853-E LEASE IN#1999899

EASEMENT AGREEMENT

STATE OF ALABAMA
COUNTY OF BALDWIN

This Easement Agreement is entered into on the 6 day of Dec, 2021, by and between PETER F. SIKOROWSKI & LAURIE S. SIKOROWSKI, HOUSTON HOLDINGS OF FL, LLC, and the FAIRHOPE SINGLE TAX CORPORATION (hereinafter "the FSTC").

WHEREAS, PETER F. SIKOROWSKI & LAURIE S. SIKOROWSKI are the leasehold owners of certain property, commonly known as 404 Oak Avenue, Fairhope, Alabama, 36532, and more particularly described as follows:

The East 10 feet of Lot One (1), the East 10.0 feet of the North Half of Lot Two (2), the West 71.0 feet of the North Half of Lot Seven (7), and the West 71.0 feet of Lot Eight (8), Block Two (2), Division Four (4), lands of the Fairhope Single Tax Corporation in the City of Fairhope, Alabama, being approximately 81 feet by 99 feet, as recorded in Misc. Book 1, Pages 320-21, Probate Records, Baldwin County, Alabama, Frac'l Section 17, Township 6 South, Range 2 East.

46-03-37-0-007-068.503

WHEREAS, HOUSTON HOLDINGS OF FL, LLC is the leasehold owner of certain property, commonly known as 406 Oak Avenue, Fairhope, Alabama, 36532, and more particularly described as follows:

The East 61 feet of Lot Eight (8) and the East 61 feet of the North Half of Lot Seven (7), Block Two (2), Division Four (4), lands of the Fairhope Single Tax Corporation in the City of Fairhope, Alabama, being approximately 61 feet by 99 feet, as recorded in Misc. Book 1, Pages 320-21, Probate Records, Baldwin County, Alabama, Frac'l Section 17, Township 6 South, Range 2 East.

46-03-37-0-007-068.513

NOW, THEREFORE, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and the covenants

and agreements contained herein, PETER F. SIKOROWSKI & LAURIE S. SIKOROWSKI and HOUSTON HOLDINGS OF FL, LLC, being the leasehold owners of 404 Oak Avenue and 406 Oak Avenue, as described above, do hereby agree and bind themselves and their heirs or assigns as follows:

1. There currently exists a 20-foot Easement for ingress and egress, for the benefit of 404 Oak Avenue, across the South 20 feet of 406 Oak Avenue, the Easement more particularly described as follows:

The South 20 feet of the East 61 feet of the North Half of Lot Seven (7), Block Two (2), Division Four (4), lands of the Fairhope Single Tax Corporation in the City of Fairhope, Alabama, as recorded in Misc. Book 1, Pages 320-21, Probate Records, Baldwin County, Alabama, Frac'1 Section 17, Township 6 South, Range 2 East.

2. The terms and conditions of this easement agreement may be amended, from time to time, upon the joint agreement of the owners of 404 Oak Avenue and 406 Oak Avenue. Any amendment shall be in writing and recorded in the Office of the Judge of Probate of Baldwin County, Alabama.

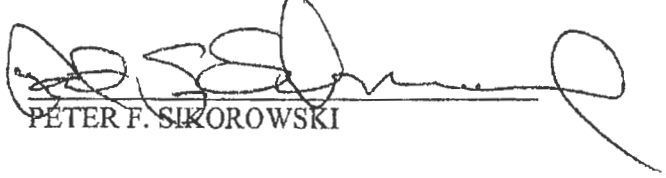
3. This easement agreement shall be deemed to be a covenant running with the land and any future leasehold owners of 404 Oak Avenue and 406 Oak Avenue shall be bound by the terms and conditions of this agreement.

4. This easement agreement is subject to the terms and conditions of the 99-year ground lease issued to each leasehold owner by the FSTC and by the laws of the State of Alabama.

5. The FSTC does hereby join in this agreement for the purpose of acknowledging the terms and conditions of this agreement and no more.

IN WITNESS WHEREOF, we have hereto set our hands and seals on this the 22 day of NOV, 2021.

LEASEHOLD OWNERS OF 404 OAK AVENUE


PETER F. SIKOROWSKI

STATE OF ALABAMA)
BALDWIN COUNTY)

I, Nicole Verdugo, A Notary Public, in and for said County in said State, hereby certify that PETER F. SIKOROWSKI, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 22 day of NOV, 2021.

Nicole Verdugo
Notary Public

My Commission Expires: 5-18-25



LEASEHOLD OWNERS OF 404 OAK AVENUE

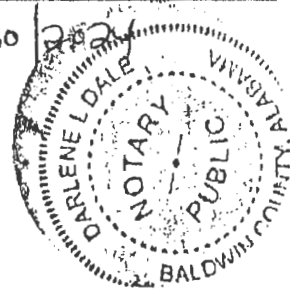
Laurie S. Sikorowski
LAURIE S. SIKOROWSKI

STATE OF ALABAMA
BALDWIN COUNTY


I, Darlene L. Dale, A Notary Public, in and for said County in said State, hereby certify that LAURIE S. SIKOROWSKI, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this 22nd day of November, 2021.

Darlene L. Dale
Notary Public



LEASEHOLD OWNER OF 406 OAK AVENUE


HOUSTON HOLDINGS OF FL, LLC
BY: HENRY A. WISE, IV
AS ITS: *Manager*

STATE OF ALABAMA)
BALDWIN COUNTY)

I, LeAnn M. Ammond, A Notary Public, in and for said County in said State, hereby certify that HENRY A. WISE, IV, as Manager for HOUSTON HOLDINGS OF FL, LLC, and with full authority to act, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 2nd day of December, 2021.

LeAnn M. Ammond
Notary Public



FAIRHOPE SINGLE TAX CORPORATION

Lee Turner

By: Lee Turner
Its: President

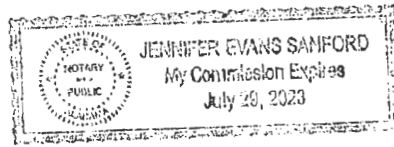
STATE OF ALABAMA)
BALDWIN COUNTY)

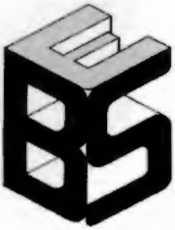
I, Jennifer Evans Sanford, A Notary Public, in and for said County in said State, hereby certify that FAIRHOPE SINGLE TAX CORPORATION by and through LEE TURNER as its PRESIDENT, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 30th day of November, 2021.

Jennifer Evans Sanford
Notary Public

THIS INSTRUMENT PREPARED BY:
Benton & Lipscomb
200 Fairhope Ave
Fairhope, AL 36532
251-928-0282





June 6, 2022

Mr. Richard Johnson, PE
City of Fairhope
555 S. Section Street
Fairhope, Alabama 36532

RE: **404 Oak Avenue MOP – Drainage Narrative**

Dear Mr. Johnson:

A Multiple Occupancy Project is proposed at the existing residence at 404 Oak Avenue which is located in the southwest quadrant of the intersection of Oak Avenue and North Bancroft Street. The site slopes toward the northeast with existing inlets on the north side of Oak Avenue and the east side of Bancroft Street. Bancroft Street has a significant northward slope beyond Oak Avenue where any runoff will enter a natural drainage feature that drains to Mobile Bay.

The existing residence is located on multiple parcels and has an existing driveway with aggregate parking. The project consists of renovating the existing residence to provide for residential and commercial uses. No changes to the foot print of the structure or grading of the site are proposed as part of this project that would alter the existing runoff flow pattern.

Sincerely,

David M. Shumer, P.E.
AL P.E. #24109