

The Planning & Zoning Commission of the City of Fairhope met Monday, March 2, 2009, in the City Council Chambers at the Administrative Building, 161 N. Section Street.

Present: Jean Wilson, Chairman; Tim Kant, Jennifer Fidler, Bob Clark, Gary Moore, Dick Charles, Fran Slade, Dan Stankoski. Jonathan Smith, Planner, Nancy Milford, Planning Staff, Chris Gill, Attorney, Betty Rivenbark, Secretary. Absent: Lee Turner

The minutes of the February 2, 2009 meeting were considered and Jennifer Fidler asked that they be amended to add a paragraph regarding comments on Audubon International. Dick Charles moved to approve with addition of paragraph as proposed. Dan Stankoski 2nd the motion and it carried with one abstention by Fran Slade.

Building Height Discussion – Jonathan Smith had prepared a memo and addressed the members saying that 35' is the allowed building height in the CBD. The other business districts only allow 30' if the building does not include mixed use. If a developer chooses mixed use all business districts allow 35' building height. He also said this maximum building height does not take into account roof pitches or building architectural design. In R-1 and R-2 districts 30' is the maximum building height. He said building height is currently measured as follows: the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof. He said further that staff contacted several architects and designers within the Mobile and Fairhope area asking for input and received one letter back which was included in the packet. It is staff's opinion that the Zoning Ordinance allows adequate building heights for structures in the City of Fairhope. The City's variance process is available if there is a true hardship due to property constraints (topography). Discussion followed. Mayor Kant questioned AC units that go above the 35' point. Jonathan said Section 504.3 roof structures addresses this and a copy of this was also included in the packet. It was talked about possibly looking into an ordinance provision not allowing it. Dick Charles asked if it would be worth doing a survey. Jonathan Smith said he could talk to some builders/firms in town and would do that and report back.

Gary Moore and Fran Slade had a conflict with the next item and left the room.

ZC09.01 Rezone application from R2 Medium Density Single Family Residential to PUD. Dogwood Subdivision located on the northeast corner of Valley Street and Middle Street. Thomas Toombs/Black Angus Development, LLC. Jonathan Smith gave the staff report saying this is currently zoned R2 with an 8 lot subdivision and all lots are currently vacant. The subject property is 3.9 acres and a PUD requires a

minimum of 3 acres. The PUD request consists of Single Family homes and Accessory Dwelling Units up to 750 sq ft. gross floor area and home occupations as permitted by the zoning ordinance. The applicant is requesting the following setbacks: Front 25' rear 30' interior side 6' street side 20' . A maximum building height of 35' and 40% maximum lot coverage. R-2 setback requirements are: front-35' rear -35' side 10'and street side 20' with the maximum building height being 30'. He said further per this request the subdivision will remain as platted with the exception of allowing accessory dwelling units, decreased setbacks and an increase maximum building height. He said the adjacent properties within the surrounding area are zoned R-2 and there are some irregularities. Staff's opinion was that the PUD provision in the zoning ordinance is not intended to allow for variations in typical setbacks of the city's single family zoning districts. He said where a true hardship exists the Board of Adjustments is available to review and to approve variances to zoning ordinance setback and height requirements. Due to the existing improvements on the property, the character and scale of the surrounding area and staff's perception of the intention of the PUD zoning district, staff recommendation was denial of the request. Christopher Baker of HMR gave a presentation on behalf of Mr. Toombes citing all the good points of the proposed project supporting this request. The public hearing was opened and Jeff Mason 359 School Street spoke saying that his only concern was that they keep it single family – they will. Fred Marchman 357 S. School Street spoke also saying he wanted it to stay single family. Robert Rugets, 530 Nichols Street said he abuts property, just hopes this would not grant blanket variance, keep single family residences. The public hearing was closed and commission members spoke. Bob Clark said his concern was with a PUD you could keep coming back and tweak different things, can always come back with further amendments at any time. Dick Charles asked why staff made their recommendation – staff said all surrounding area is R2. He asked if this would be spot zoning, answer is no. Dan Stankoski asked what accessory dwelling unit was. It was explained that it is something like a mother-in-law suite. Bob Clark asked if this space could actually be rented and they said yes, for a year. They said ADU would be addressed in the deed restrictions. Dick Charles asked what not achieved if they left it R-2. The answer was front setback and height. Thomas said these would be very compact houses, they have saved trees and are trying to match the fabric of the neighborhood. Jonathan was asked why not recommend PUD and he responded could not see granting PUD for

one development, for 8 lots. Nancy commented that they have met the stormwater requirements in this development. They said even with the ADU they would not be over the 40% coverage on the lot. Chris Gill commented that restrictive covenants are a private contract between private parties, he wanted to point this out. Dan Stankoski asked who would enforce restrictive covenants and Chris Gill answered the property owners. After all discussion a motion was made by Bob Clark to accept staff recommendation and recommend denial to the City Council of this rezone application. Tim Kant 2nd the motion and it carried unanimously.

SD09-02 Minor Subdivision application of Wayne Loudermilch

Boise Lane Subdivision. Property located on the northeast corner of the intersection of Boise Lane and Magnolia Avenue. Jonathan gave the staff report saying that the total land area is approximately 15,332.17 square feet and two lots are proposed. The property is zoned R-2. Lot 1 in the proposed subdivision is 11,628 sq feet and Lot 2 is 3,570 sq feet. He said the subject property is surrounded by R-2 and both lots front a public road and thus have access and frontage on a public right of way. He mentioned that a fire had destroyed the principle structure in September 2008 and the only structure currently remaining is 1500 sq foot home located at the rear of the property. He said Lot 1 will conform to all requirements of an R-2 lot but a waiver has been requested in respect to Lot 2 as it will not conform to R-2 zoning district area and dimensional requirements. He mentioned that within the same block and surrounding area there are existing platted lots that do not meet the minimum area and dimensional requirements of the R-2 zoning district. Lot 2 is already non-conforming in nature and was formerly the primary structure on this property. In 1998 it was moved from the front of the property to its current location and the City permitted the activity on this property. He said granting the waiver will not nullify the purpose or intent of the subdivision regulations, the zoning ordinance or the comprehensive plan. Furthermore, granting the applicant's requested waiver is the minimum deviation from the requirements of the R2 zoning district necessary to relieve the hardship of maintaining the existing non-conforming structure. Granting a waiver in this case will not have an adverse effect on adjacent landowners or the public as the non- conforming structure has been in existence at its current location since 1998 and is architecturally consistent with the homes in the surrounding neighborhood. It has its own utilities and its own dedicated driveway for access. Staff recommendation if the waiver is granted is 1. There shall be a note placed on the plat that the existing structure located Planning & Zoning Commission on Lot 2 is and will continue to be non-conforming. 2. The south lot line for Lot 2 on the plat shall be moved south approximately 1.5 feet to

accommodate a minimum 5' fire separation requirement established by the 2006 Residential Building Code, thus resulting in a minimum 5' south side-yard setback for the existing non-conforming home. Mr. Loudermilch spoke saying Jonathan had said it all. He said when he purchased the property the non-conforming proposed Lot 2 cottage was located where it is. He has made a few improvements and added aesthetics. He built a permanent residence on Lot 1 and lived there until the fire destroyed his home. He is desirous to maintain the integrity, ambiance of the neighborhood. It was noted that Mr. Loudermilch could within a year of the fire build in the same footprint where the previous house was located. Leslie Stejskal spoke saying as Secretary of the FSTC he thought we would be setting a precedence by allowing this, going on a slippery slope. Dan Stankoski asked if the cottage was occupied and was told yes. He asked how the city issued a permit to move the house and have two residences on one lot. No one knew the answer as this was done in 1998. Mr. Loudermilch said that he was totally unaware of previous arrangements as he is out of town six months out of the year. When he purchased the property the house was moved. Mr. Charles asked Mr. Loudermilch if he would be willing to follow staff recommendations and he responded he had no problem with recommendations. Further discussion led to a motion by Dick Charles in view of all presented he moved to approve subdivision with two staff recommendations as shown above. Tim Kant 2nd the motion.

The motion did not pass as vote was for subdivision: Tim Kant, Bob Clark, Dick Charles. Against: Jean Wilson, Jennifer Fidler, Gary Moore, Fran Slade, Dan Stankoski. A motion to deny was made by Dan Stankoski, 2nd by Gary Moore and vote to deny carried with vote by: Jean Wilson, Jennifer Fidler, Gary Moore, Fran Slade, Dan Stankoski. For subdivision: Tim Kant, Dick Charles, Bob Clark.

SD09-03 – Gary Moore had a conflict with this item and left the room.

Preliminary Plat approval of Watershed Subdivision, a 9 lot division, property of RSA and Daniel Corp. located on the southeast corner of the intersection of Twin Beech Road and Old Battles Road. Christopher Baker of HMR was representing this development. Nancy Milford gave the staff report saying the property is located in Baldwin County and is unzoned. The total tract is 8.42 acres. The largest lot is 32,008 sf and the smallest is 19,928 sf. She said cul-de-sacs are proposed due to the natural topographic features of wetlands present on the property. She said this will be developed in two phases for construction and future final plat. A 10 foot side yard natural buffer adjacent to the roadway has been added to the plat

to preserve existing vegetation. It was pointed out the applicant has placed the wetland/stream buffer on the Preliminary Plat and in accordance to the subdivision standards Section F the applicant shall clearly mark the outside limit of the buffer with permanent signs placed every 100 feet prior to any land disturbing activities. Stream and buffer limits must also be specified on all surveys and recorded plats and noted on individual deeds. Buffer requirements must be referenced in property owner's association documents. Any of the allowable uses shall be designed and constructed to minimize clearing, grading erosion and water quality degradation. No mechanized equipment shall be used inside the wetlands buffer. The streets are being routed to save trees and the applicant is working with the county for some geometric design relief to accommodate trees. The applicant stated that emergency and solid waste vehicles will be accommodated in the design. A pedestrian plan has been provided and the applicant is working with Baldwin County to provide connection to the county sidewalk planned for Twin Beech Road. Staff recommendation was to approve as requested conditional upon the following 1. The submittal of an Operations and Maintenance Plan meeting the approval of the City of Fairhope Planning & Building Department 2. The applicant shall place a note on the plat regarding the lighting responsibilities, as outlined in this report. 3. The flow model has been approved by the Water and Sewer Superintendent on the condition that the engineer's conclusion be satisfied by the applicant. Chris Baker spoke saying they are meeting all city requirements. Corky Ellard of 6210 Battles Road spoke and said she did not like the driveway running so closed to her land. She is adjacent property owner. She pointed out an area in the map and said it was part of her family's property where the creek runs and wanted to know how they included it in their property. Mr. Baker said they did a title search and have title insurance. She asked if they will do clear cutting, and said they are not allowing enough for wetlands. She said she has 3 acres with 2 houses and 9 houses do not need to go in that area. Jean Wilson said she was not impressed by the road going by Ms. Ellard's property. It was pointed out it was County approved. Jennifer Fidler said she had marked up the plan regarding some large trees and returned it to them and never heard back regarding her suggestions. They talked about the large pine trees on the edge of Lot 2 and asked if they could move road to the south. The applicant replied they have gotten a variance from the County to design the roads. It was pointed out this is outside the city limits and they have met the city regulations. The existing natural vegetation and the large azaleas were asked about and saving the pine trees. Jason Tickle spoke saying this is a late addition to their project down there and their intention was a preservation type community, He was amenable to a meeting on site with Jennifer, Jonathan to discuss the proposed road shift

and see what the County would accept. Further discussion led to a motion by Dick Charles to approve with three staff recommendations and meeting with Jennifer to see what can be worked out regarding moving the road to save the trees. Jennifer Fidler 2nd the motion and it carried with Gary Moore not participating in the discussion or action.

Tim Kant left at 6:35 PM

SD09-04 Minor Subdivision approval of J. Daniel Dyas of the resubdivision of Lot 1 of the Fields Subdivision a two lot division. The property is generally located on the south side of Fairhope Avenue between Bishop Road and Burlington Drive. Nancy gave the staff report saying the property is located in the City and is zoned R-2. A two lot subdivision is proposed on approximately 5.488 acres. The largest lot is approximately 3.41 acres and the smallest lot is approximately 2.078 acres. no new streets are proposed and the building setbacks meet R-2 zoning. Staff recommendation was to approve as requested conditional upon a note being placed on the plat that a minimum building separation of 100 feet shall be met at the time of building permit (per the engineer's flow model conclusion). Mr. Dyas said he would be glad to answer any questions. Further discussion led to a motion by Fran Slade for approval, Bob Clark 2nd the motion and it carried unanimously.

IR09-04 Informal Review of Larry Smith of S.E.Civil, LLC of Park Place, a 5 lot division. The property is generally located on the west side of Section Street just north of Morphy Avenue. Nancy Milford gave the staff report and said the property contains .56 + acres and is zoned B2 in the CBD. The applicant is considering a 5 lot division. There are currently 3 parcels 2 which do not have public access to Section Street and mixed use with residential dwellings on 4 lots and a commercial unit located on the lot fronting Section Street. There are no minimum lot size requirements for B2 properties in the CBD. The four new parcels will be accessed by extending the existing gravel drive and the gravel drive will be in a private access easement and maintained by the Property Owner's Association. The gravel drive will meander between trees. Staff recommends the applicant work with Jennifer Fidler on the preserving and protecting existing trees. Staff recommends that the new access drive be used as a common access for all lots within the subdivision and the existing drive be removed. If residential structures are to be built on the back lots then there must be a minimum 20 foot easement due to fire requirements. The applicant will have to work with the building official and the fire chief to satisfy special requirements for the CBD. Staff recommended providing insight and comment. Mr. Smith spoke and said he would like to request doing preliminary and final at one time.

Dick Charles asked if he would expand the utility easement from 16 to 20 ft and he said he had no problem with doing that. Gary Moore asked if there was an outline for the dwellings, Mac Walcott answered that they are trying to figure this out, save the camellias. They were also told impervious is also a good idea. Jennifer asked what kind of hardship it would be to move the driveway to the north and a fence on Community Park would be nice. They have ordered a tree survey. Bob Clark asked about the old house and was told it is going to stay. No action was needed or taken.

Jean Wilson mentioned under old business, public comment items not on the agenda and asked the members to think about holding a couple of meetings a year at night to communicate with the public.

Fran Faust mentioned possibly reviewing the Comprehensive Plan and see if we are accomplishing what we want to. Jonathan said that we are working towards certain things in this regard.

Meeting was duly adjourned at 7:00 PM.

Jean Wilson, Chairman

Betty Rivenbark, Secretary