

**The City of Fairhope Board of Adjustments and Appeals met on Monday, June 17, 2013 at 5:00 PM in the City Council Chambers at the City Administration Building, located at 161 N. Section Street.**

**Members Present: Chairperson Cathy Slagle; Anil Vira, Vice-Chair; Troy Strunk; John Avent; Dick Schneider; Jonathan Smith, Director of Planning; Emily Boyett, Secretary.**

**Absent: Ray Clark**

The meeting was called to order at 5:01 PM by Chairperson Slagle.

The minutes of the November 19<sup>th</sup>, 2012 meeting were considered. Troy Strunk moved to accept the minutes as written and was 2<sup>nd</sup> by Anil Vira. Motion carried with two abstentions by John Avent and Dick Schneider.

**BOA 13.01 Request of Bo Williams for a 30' rear setback variance for property located at 105 Fels Avenue.**

Jonathan Smith, Director of Planning came forward and gave the staff report.

**STAFF INTERPRETATION:** The property is zoned R-2 Medium Density Single Family Residential District and the applicant is seeking a variance to the provisions of Table 3-2: Dimension Table – Lots and Principle Structure in the Fairhope Zoning Ordinance.

Table 3-2 requires that all principle structures in the R-2 zoning district adhere to a minimum rear-yard setback of 35'. The applicant would like to reduce the rear-yard setback to 5' in order to preserve an approximate 60" Heritage Live Oak.

In order to preserve the tree properly, the applicant has essentially cut out an approximate 10'x40' section of buildable area on the west side of the lot, which per the applicant, requires the garage to be attached to the house to get the living space they require.

The Zoning Ordinance allows a detached garage in the R-2 zoning district to be built 5' from the rear and side property lines. The subject property also has a private access alley along the rear (north) property line.

The Zoning Ordinance also allows staff to approve an administrative setback variance up to 7' in order to preserve a Heritage Tree (a tree over 20" DBH). As shown on the site plan, staff has already administratively approved an approximate 5' side yard setback variance for the preservation of the existing Heritage Live Oak on the property.

The property is bordered on all sides by City of Fairhope R-2 zoned property.

Facts to be considered in this case:

1. There is an existing 60” Heritage Live Oak on the west side of the subject property.
2. This variance application meets the established Zoning Ordinance criteria for the issuance of a variance due to the existing 60” heritage Live Oak on the subject lot (unusual topographic feature).
3. The applicant is requesting a 30’ rear setback variance.
4. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography due to the existence of the 60” Heritage Live Oak on the west side of the property, in the center of the lot.

**STAFF RECOMMENDATION:** The application meets the mandatory criteria established in the Zoning Ordinance for the issuance of a variance. Due to the existing 60” Heritage Live Oak, staff recommends the Board of Adjustment approve the 30’ rear setback variance request.

Bo Williams, the applicant, addressed the Board saying he has been working with Mr. Smith on this site to find something that will work. He said this property was the old Bayview Funeral Home and the lot is only 45’ wide. He stated the tree is beautiful and he wants to do everything to save it, which is why the design has the area cut out in the center to stay away from the roots. He stated the design will keep their garage in line with the others along the alley.

Mrs. Slagle opened the public hearing.

Tony Thomas – 103 Fels Avenue – He stated he is fine with the plan and the design.

Michelle Thomas – 103 Fels Avenue – She stated she lives directly west of the subject property and shares the 60” Heritage Live Oak. She asked if the approval could have a stipulation that no structure could be built within a certain distance of the tree to protect the tree from potential future property owners that may try to build closer to the tree.

Mr. Smith responded that the applicant has not requested a variance to the west side of the lot; however, the Board can approve the variance contingent upon the proposed site plan.

Mrs. Slagle asked the applicant if the site plan has been finalized and Mr. Williams responded yes.

Having no one else present to speak, Mrs. Slagle closed the public hearing. Mr. Strunk asked if the request is only for a rear setback variance because the east side variance was approved administratively and Mr. Smith responded yes. Mr. Schneider asked if after the variance is approved, what would stop someone from building too close to the tree. Mr.

Smith stated the variance will run with the land, be noted in the deed, and recorded but without the condition of the site plan design then something can be built up to the 10' side setback. Troy Strunk made a motion to accept the staff recommendation to approve the 30' rear setback variance request due to the existing 60" Heritage Live Oak on the property. John Avent 2<sup>nd</sup> the motion and the motion carried unanimously.

Having no further business, Troy Strunk made a motion to adjourn. Anil Vira 2<sup>nd</sup> the motion and the motion carried unanimously. The meeting was adjourned at 5:15 P.M.