

The Board of Adjustments met Monday, September 16, 2024, at 5:00 PM at the City Municipal Complex, 161 N. Section Street in the Council Chambers.

Present: Anil Vira, Chair; Cathy Slagle, Vice-Chair; Ryan Baker; Frank Lamia; Bryan Flowers; Hunter Simmons, Planning and Zoning Director; Michelle Melton, City Planner; and Cindy Beaudreau, Planning Clerk.

Absent: Donna Cook

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

Approval of Minutes

Ryan Baker made a motion to approve the minutes from the August 19, 2024, meeting.

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

Aye: Anil Vira, Cathy Slagle, Ryan Baker, Frank Lamia, and Bryan Flowers

Nay: None.

BOA 24.12 Public hearing to consider the request of the Applicant, Montaser Shahrouz, acting on behalf of the Owner, Sky Cloud #21 Inc., for a Special Exception - Use Not Accounted For – to allow for a tobacco and vape shop on property zoned B-2 – General Business District. The property is located at 19674 Greeno Road and is approximately 1.78 acres. **PPIN#: 21517**

Michelle Melton, City Planner, presented the request of the Applicant, Montaser Shahrouz, acting on behalf of the Owner, Sky Cloud #21 Inc., for a Special Exception - Use Not Accounted For – to allow for a tobacco and vape shop on property zoned B-2 – General Business District. Ms. Melton shared the zoning and aerial maps along with the existing and proposed site plans. Mr. Simmons stated that if a use is unclear, Staff will ask for BOA input. This type of business in other municipalities is considered a dispensary. The use for this case is only for tobacco and vape use, not a dispensary. The City of Fairhope does not allow dispensaries in the city limits.

Recommendation:

Staff recommends approval of BOA 24.12.

Ryan Baker suggested a methodology that takes into consideration nearness to schools for these types of businesses. Mr. Simmons stated that it could be something that is added to the Zoning Ordinance.

Saed Amleh spoke on behalf of the applicant and stated that this business will only be selling cigars, loose tobacco and vape products.

Chairman Vira opened the public hearing at 5:11pm.

Don DeGutz, 110 Blakeney Avenue, stated that he opposes the request. Mr. DeGutz shared several portions of the Comprehensive Plan where he feels that this case is in conflict with the Comprehensive Plan.

Rachel Ball, 210 S. Mobile Street, Apt. 28, shared her experience in high school where students were able to leave campus to purchase vapes. Ms. Ball believes that this type of business should not be located near a high school.

The public hearing was closed at 5:18pm.

Cathy Slagle asked about the age limits to enter the store. Mr. Amleh stated that IDs will be scanned at the store and are not permitted in the store if under 21.

Mr. Flowers asked if a precedent would be set if the board denied this even though gas stations and convenience stores sell these types of products. Mr. Simmons stated that staff looked at what was being sold for this case and noted that many other types of stores sell these types of products. The precedent would be why would the cigar shop downtown be allowed, but this case not be approved. Mr. Flowers asked about the current businesses in the plaza and if they were concerned whether this case, if approved, would affect their business. Mr. Simmons stated that the staff has not received any complaints from nearby property owners.

Motion:

Ryan Baker made a motion to approve BOA 24.12.

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

Aye: Anil Vira, Cathy Slagle, Ryan Baker, Frank Lamia, and Bryan Flowers

Nay: None

BOA 24.13 Public hearing to consider the request of the Owners, James and Heather DeLapp, for a building height variance, an accessory structure to be built forward of the principal structure and a variance to retaining wall height of 4' or 8' based on placement of primary home on property zoned R-1 – Low Density Single-Family Residential District. The property is located at 23335 Main Street and is approximately 0.82 acres. **PPIN#: 265003**

Mr. Baker stated that he needs to recuse himself due to him being the architect for the next-door neighbor.

Hunter Simmons, Planning and Zoning Director, presented the request of the Owners, James and Heather DeLapp, for a building height variance, an accessory structure to be built forward of the principal structure and a variance to retaining wall height of 4' or 8' based on placement of primary home on property zoned R-1 – Low Density Single-Family Residential District. Mr. Simmons shared the zoning and aerial maps along with the existing and proposed site plans. Mr. Simmons shared the elevations for the lot and explained how building height is determined. Staff supports the request to measure FROM the natural elevation of the building footprint variance. Mr. Simmons stated that staff does not support the height for the retaining wall, due to much of the walls being above the 4' height limit allowed in front of a building. This request includes close to a 20' retaining wall. Mr. Simmons shared the diagram for the accessory structure request and shared that if the accessory structure was attached to the house, there would be no need to request a variance.

Recommendation:

1. Staff recommends approval for the building height.
2. Staff recommends denial for the height variance for the retaining wall.
3. Staff recommends approval for the location of the accessory structure.

Ms. Slagle asked about the property with the very high fence. Mr. Simmons stated that is the neighbor's fence. Ms. Slagle noted that this case's property has a very big dip. Mr. Simmons acknowledged that fact. Discussion continued about access to the properties in this subdivision. Mr. Lamia asked if there were wetlands on the property. Mr. Simmons stated that there were no wetlands that he knew of. Ms. Slagle asked about a letter received from a citizen about stairs that were built by Mr. DeLapp and whether there was a permit for that construction. Mr. Simmons stated that he would look into that. Mr. Simmons shared a view of the property from the Baldwin County Parcel Viewer for the board to see the stairs and boardwalk.

Jim DeLapp, 492 Boulder Creek, stated that he would answer any questions. Mr. Lamia asked what the square footage of the house would be. Mr. DeLapp stated approximately 4,500 square feet. Mr. DeLapp shared that the site is a challenging site, and the cost of construction is very high right now. Mr. DeLapp continued that the retaining wall is also a construction wall for the house and a landscaping wall. Discussion continued on access to the property and rather than putting the house on stilts, Mr. DeLapp is choosing to nestle his house into the terrain of the property using the various heights of 12', 15' and 17' for the retaining wall. Mr. Lamia asked if this project could be done without any variance requests. Mr. DeLapp stated yes but the elevation on the property would require a height variance. Mr. Lamia asked if, aside from the height variance, if any attempts had been made for the garage and retaining wall to be built without requesting variances. Mr. DeLapp stated that due to half of the house being under grade, a garage could not be built under the house. He tried to get it as close to the house as possible and that portions of the retaining wall is a foundation wall. Mr. DeLapp continued that it would be a great expense to change the location of the garage. Mr. Simmons stated that a 17' retaining wall that is visible from the street and not part of the house is against regulations. Mr. DeLapp stated that the only other house built in the subdivision right now also has an approximately 20' high block retaining wall that holds his house up. Mr. Lamia asked if the garage was incorporated into the house, would a variance be needed. Mr. Simmons stated no and shared some discussions that were had with Mr. DeLapp on variations that could be made to the house where variances would not be required. Mr. Vira asked what else could be done about the height of the retaining wall. Mr. Simmons stated that the wall can only be 4' in front of the house and anything over 30" must have protection so you don't fall off. Mr. Simmons suggested terracing the wall. Mr. DeLapp stated that following the natural terrain is a challenge without a retaining wall. Mr. Lamia asked how long he has owned the property. Mr. DeLapp stated 2 ½ to 3 years. Mr. Vira asked if the retaining wall was terraced, would he still need a variance. Mr. Simmons stated that part of the wall could be terraced but staff never received revised plans. Mr. Flowers asked if this case could be tabled until revised plans are received. Mr. DeLapp stated that terracing the foundation wall is not feasible because it would not fit. Mr. Lamia stated that the board should look at hardships. The garage or carport is a choice and asked Mr. DeLapp where the hardship is. The design of the carport and retaining wall is a choice. Mr. DeLapp replied that on page 38 of 40 shows the front elevation of the house and fitting a carport on the left or right doesn't fit due to the narrowness and tapering of the lot. Mr. Simmons stated that he acknowledges the lot is very steep, but it is a choice to have a 4,500 square foot house. Mr. Simmons added that he would like to see some variations in the house design and if Mr. DeLapp

is not in a hurry, tabling it would allow staff to review revised plans. Mr. DeLapp stated that he would like to begin construction as soon as possible. Mr. Vira asked Mr. DeLapp if he would be open to tabling his case and providing staff with revisions based on the discussions. Mr. DeLapp asked again what type of revisions they are requesting. Mr. Vira stated the terracing and design on the house. Mr. DeLapp stated that he could provide a revision that includes terracing the wall. Mr. Vira asked if the people who wrote the letters are part of the HOA. Mr. DeLapp was not aware of the letters. Ms. Beaudreau provided the letters to Mr. DeLapp, and he stated that none of the individuals who wrote the letters are part of the HOA. Mr. Lamia reiterated that Mr. DeLapp must show a hardship in order for his variances to be granted. Mr. DeLapp stated that integrating a garage into the house would create a larger house. Mr. Simmons asked how that would create a larger house. Mr. DeLapp stated that when looking at the front elevation if he attached a two-car garage, it would take up the entire front elevation and he would have to enter the house through the garage. Mr. Flowers stated that he believes the case should be tabled so staff can review a new design. Mr. DeLapp stated that he would agree to table it to provide a new design. Ms. Slagle stated that Mr. DeLapp is creating his own hardship with the size of the house because he bought the property knowing the topography. Mr. DeLapp stated that the subdivision requires that the house must be 2,500 – 2,800 square feet. The main level is 2,500 and tucked into the hillside with a very expensive concrete wall and 2,000 square feet is below grade. Mr. Lamia asked for some sketches with the garage attached to the house and the terraced retaining wall that shows why it would not work. Mr. Vira suggested adding plantings or vines to the retaining wall to soften it.

Chairman Vira opened the public hearing at 6:41pm.

Amy Thompson, 108 Alsway Court, was interested in this property in the past. Ms. Thompson stated that she and her husband realized that the property would be a construction nightmare. She is concerned with filling in the natural gulley and ravine. She asked the board to be mindful to follow the codes and to deny the variances.

Don DeGutz, 110 Blakeney Avenue, drove to the property and noticed the new fence and asked the Planning Department to investigate if there were any code violations for this fence. Mr. DeGutz asked if the steps along the boardwalk will be investigated for code violations also. Mr. Simmons agreed to investigate these issues. Mr. DeGutz asked if the letters would be read into the record. Mr. DeGutz added that the size of the house should not be questioned. Mr. Simmons stated that it is an appropriate question to ask because if the house fit, there would be no need for a variance. Mr. Simmons stated that the letters would be added to the agenda packet and reposted.

Mr. DeLapp stated that this subdivision was created in 2006, six lots were created. Mr. DeLapp added that he was the first person to purchase his lot.

The public hearing was closed at 6:52pm.

Ms. Slagle asked if they could approve the building height at this meeting then hear the other requests at the October meeting. Mr. DeLapp stated that he would like that so that if he can find solutions to the garage and retaining wall that would not require variances, he would not need to come back to the October meeting. Mr. Simmons stated that he would prefer that the board review all of the variances again in case Mr. DeLapp's new design changes the building height.

Motion:

Cathy Slagle made a motion to table BOA 24.13 until the October meeting.

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

Aye: Anil Vira, Cathy Slagle, Ryan Baker, Frank Lamia, and Bryan Flowers

Nay: None.

Old/New Business

BOA 24.11 Public hearing to consider the request of the Owner, Jason LaSource, for a 15' front setback variance and a 5' side setback variance on property zoned R-2 Medium Density Single-Family Residential District. The property is located at 50 Fels Avenue. The property is approximately 0.22 acres. **PPIN#: 14503**

Hunter Simmons, Planning and Zoning Director, stated that staff received a request from Mr. LaSource to table his request to the October meeting.

Recommendation:

Staff recommends tabling of BOA 24.11.

Motion:

Cathy Slagle made a motion to accept the applicant's request to table BOA 24.11 until the October meeting.

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

Aye: Anil Vira, Cathy Slagle, Ryan Baker, Frank Lamia, and Donna Cook

Nay: None.

Mr. Vira confirmed that the next meeting will be October 21, 2024.

Adjournment

Cathy Slagle made a motion to adjourn.

The motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Ryan Baker, Frank Lamia, and Bryan Flowers

Nay: None.

Adjourned at 6:58p.m.



Anil Vira, Chairman



Cindy Beaudreau, Secretary