

The Board of Adjustments met Monday, October 21, 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; Donna Cook; Ryan Baker; Frank Lamia; Bryan Flowers; Hunter Simmons, Planning and Zoning Director; Michelle Melton, City Planner; and Cindy Beaudreau, Planning Clerk.

Absent: None

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

Approval of Minutes

Ryan Baker made a motion to approve the minutes from the September 16, 2024, meeting.

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

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

Nay: None.

BOA 24.10 Public hearing to consider the request of the Applicant, Mack McKinney, on behalf of the Owner, FST Sildi LLC, for a Special Exception – Use on Appeal – to allow for a hotel on property zoned B-2 General Business District. The property is located at 301 Fairhope Avenue and is approximately 0.20 acres. **PPIN#: 14359**

Chairman Vira stated that the Applicant would like to table this item until the December meeting.

Recommendation:

Staff recommends tabling of BOA 24.10 until December.

Motion:

At the applicant's request Frank Lamia made a motion to table BOA 24.10.

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

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

Nay: None.

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**

Michelle Melton, City Planner, presented 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. Ms. Melton shared the zoning and aerial maps. Ms. Melton shared the updated site plan with the second floor and where the tree limbs would be in connection with the

second floor. Ms. Melton reminded the Board of Adjustment members that the Tree Ordinance does not apply, and the owner could cut the tree down in order to build his house, but he would prefer to protect the tree. Staff supports the efforts to save the Heritage Tree but feel a variance should be granted conditioned on a special plan that is designed to work around the tree as much as possible. The updated plan provides more information about the house itself; however, a different house placement may provide better protection for the tree. Applicant desires to maintain an existing garden and erect a new accessory structure in the backyard, which is part of the reasoning for the variance request(s).

Recommendation:

Staff recommends denial of BOA 24.11.

Jason LaSource, 50 Fels Avenue, stated that there would be 5' on either side of the tree and 10' from left to right. Mr. LaSource shared a portion of an historical zoning ordinance which states that if you were outside of the setbacks, you could build up to where your neighbor's house was to keep the continuity.

Ryan Baker asked why the house was moving closer to the side yard. Mr. LaSource answered that the house would be too narrow if they stayed within the setbacks. Mr. Baker continued that when rebuilding a house, the new house would need to stay within the new setbacks. Mr. LaSource stated that those setbacks should not apply in the Fruit and Nut or Bluff areas in order to keep the continuity in the neighborhood. Mr. Baker reminded Mr. LaSource is creating his own hardship and there are other choices that could be made that would keep the new house within the current setbacks.

Mr. Simmons added that all lots in the Fruit and Nut neighborhood are the same size, and one lot is not being punished more than the rest. The City Council, nine Planning Commissioners and staff are the ones that changed the Zoning Ordinance.

Chris Francis, 1214 Captain O'Neal Drive, Daphne, stated that he would like for construction to be farther away from a tree, but this house would be on footers which would protect the tree roots. Mr. Francis stated that the tree can stay there with the house built around it based on the design of the house. Mr. Baker asked if there was any concern with the tree being surrounded on three sides. Mr. Francis replied generally yes, with standard construction, but the design with allow for footers that the house will sit on which will be between the roots. Mr. Francis stated that he will be there during construction so that the tree will be protected. Ms. Slagle asked if there was room to move the house behind the tree. Mr. Francis stated that the tree was in the middle of the lot and building behind it would leave a huge front yard and the house wouldn't line up with the other homes in the neighborhood. Ms. Slagle asked if the house moved 5' south, would the tree be more protected. Mr. Francis stated that cutting off the branches to put a house there would create decay in the trunk and that Mr. LaSource has designed the house so that the branches do not need to be cut. Mr. Baker continued that with 5' on each side of the tree with 18' from the front set back line, would it help the tree more if the master bedroom was pulled further away. Mr. Francis stated that the house could slide closer to the tree without hurting the tree and if the house was moved, the branches might be impacted.

Mr. Simmons stated that if the connecting the hallway was longer and the bottom half of the house moves down, the accessory structure could be attached to the house and a variance would not be needed behind the tree. Mr. Francis stated that there are other options, but this design is reasonable.

Mr., Vira asked if the garage should be behind the house. Mr. Simmons stated that the garage is typically behind the rear building line of the principal structure. Mr. Vira continued that the way the house is designed, another variance would be needed. Mr. Simmons stated yes, unless the accessory structure is connected. Mr. Simmons stated that staff would rather see a rear setback variance.

Ms. Slagle stated that Mr. LaSource should meet with the City to find another solution. Mr. Simmons stated that staff could meet with Mr. LaSource and the home designer to look for other options.

Mr. LaSource requested to table his case until revised plans are received by staff.

Motion:

At the applicant's request Donna Cook made a motion to table BOA 24.11.

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

Aye: Anil Vira, Cathy Slagle, Donna Cook, Ryan Baker, and Frank Lamia
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. Bryan Flowers replaced Mr. Baker.

Mr. Simmons reminded everyone that this case is strictly a case to decide on variances and not about pointing fingers and asked if everyone would concentrate only on the variances. Mr. Simmons stated that research had been done on Alabama law relating to hardships and that finances are not a consideration when granting a hardship.

Mike Jeffries, Development Services Manager, 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. Jeffries reminded the Board of Adjustments of the prior variance requests. Mr. Jeffries shared the aerial and zoning maps along with the site plan and elevations. Mr. Jeffries listed the summary of Mr. DeLapp's revised plans including a depiction of terraced retaining wall options, photos and illustrations of northern properties fence which has no bearing on if his property and proposed

variance requests meet the variance criteria, alternatives to the carport connected by a covered walkway and alternatives with no variance required by integrating the garage with the house.

Recommendation:

Staff recommends denial for the height variance for the retaining wall, denial for the location of the accessory structure and approval for the building height of the principal structure.

James DeLapp, 23335 Main Street, stated that he agrees with Mr. Simmons' comments and the staff recommendations. Mr. DeLapp shared a presentation which showed that he only needs a building height variance. Mr. DeLapp showed the make up of the Crawford Subdivision. Mr. DeLapp stated that this is a private subdivision and anyone using the boardwalk is trespassing. Mr. DeLapp showed what a terraced retaining wall would look like and the cost for a terraced retaining wall. The neighbor's fence was shown to show the height and length which could be considered unsightly and shared a slide showing the line of sight for his retaining wall which would not be seen from the road. Mr. DeLapp then addressed integrating the garage with the house and stated that he could add the garage to the front of the house but that would violate the HOA rules. A new image was shared that included an alternative design that integrated the garage with the house. A new proposed site plan was shown with the house falling within the setbacks.

Mr. Lamia asked Mr. Simmons what they were being asked to vote on. Mr. Simmons stated that the staff needs more information showing that this plan would work. The average elevation of the building footprint is needed to confirm whether a building height variance is required. Mr. DeLapp stated that he may not need the building height variance. Ms. Slagle asked if a home built on lots 4 and 5 would have a view of the bay. Mr. DeLapp answered that depending on what type of house would be built, lots 4 and 5 are at a higher elevation than his proposed home which would not block their view. Ms. Slagle asked how far back from the street was his proposed home. Mr. DeLapp stated that it is approximately 500'. Ms. Slagle asked if the HOA had approved all aspects of his proposed home. Mr. DeLapp stated yes. Mr. Simmons asked if there was a 3-car garage, Mr. DeLapp answered it is a 2.5 car garage.

Chairman Vira opened the public hearing at 6:09pm, having no one to speak, the public hearing was closed at 6:09pm.

Mr. Simmons stated that staff does not believe any variances are required and asked Mr. DeLapp if he wanted to withdraw his request. Mr. Jeffries suggested tabling the case until staff can review the height plans to confirm that a height variance is not required. Mr. DeLapp requested that his case be tabled until staff can vet the height variance.

Motion:

At the applicant's request Cathy Slagle made a motion to table BOA 24.13.

The motion carried with the following vote:

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Bryan Flowers

Nay: None.

BOA 24.14 Public hearing to consider the request of the Applicant, Rebecca Bryant, Watershed, on behalf of the Owner, Gerard Garcia, for a Special Exception – Use on Appeal – to allow for a restaurant, bar and community center on property zoned B-3a Tourist Resort Lodging District. The property is located at 700 S. Mobile Street and is approximately 3.21 acres. **PPIN#: 11940**

Mike Jeffries, Development Services Manager, presented the request of the Applicant, Rebecca Bryant, Watershed, on behalf of the Owner, Gerard Garcia, for a Special Exception – Use on Appeal – to allow for a restaurant, bar and community center on property zoned B-3a Tourist Resort Lodging District. The request by the Eastern Shore American Legion is an amendment to a May 16, 2022, approval. A new building will be constructed (Phase 1 Legion Club), and the existing building will be renovated and become the Legion Hall and restaurant. The restaurant will operate only on Tuesday – Saturday (drive-through is not a permitted use on site) and the Legion Events including the monthly membership meetings will be limited to only Sundays and/or Mondays (or when the restaurant is not in operation). Mr. Jeffries shared the parking information.

Recommendation:

Staff recommends approval of BOA 24.14 with the following recommendations:

1. A drive-through shall not be an allowed use on this site.
2. The restaurant shall only be open Tuesday-Saturday.
3. Legion events and monthly membership meetings shall be Sundays and/or Mondays or when the restaurant is not in operation.

Mr. Simmons added that this project was not an easy process due to wanting to preserve the building and commended the patience of the Legion members while working through the process.

Rebecca Bryant, Watershed, 103 Blakeney Avenue, stated that a goal of this project is to create an asset, rather than renting, for the Legion that would allow for fundraising. Ms. Bryant shared the plans for the design.

Mr. Vira asked Ms. Bryant to share the existing and proposed site plans. Ms. Bryant showed the phase 1 and phase 2 proposals. Ms. Bryant stated that originally there was an outdoor seating area for the restaurant which was removed and will now be used for the flag ceremony and cannons. Ms. Slagle asked Ms. Bryant to share the proposal for the two buildings. Ms. Bryant stated that in Phase 1, the rectangular building will house the Legion Club events with a small kitchen, bar and gathering space along with the Emergency Operations space and is projected to be finished in approximately 18 months. Phase 2 is dependent on fundraising. The ground floor is slated for restaurant use and the second floor is a proposed event space along with the Legion offices. Mr. Vira asked if there would be an elevator. Ms. Bryant stated yes. Mr. Lamia asked if the sitework would occur in Phase 1. Ms. Bryant stated yes. Ms. Slagle asked about the club building architecture. Ms. Bryant stated that it would be compatible with the original building and showed the rendering.

Chairman Vira opened the public hearing at 6:35pm.

Gary Gover, 300 Lincoln Street, shared his concerns about storm survival of the site.

Gerard Garcia, American Legion, stated that with a category 5 or greater, all bets would be off, but those types of storms are hundred-year storms. They will have the ability to sustain lesser storms and be able to help with Emergency Operations. Mr. Garcia stated that the building is tailored for immediate response. Fundraising for Phase 2 has been demanding but they have recently attained a 501C3 which changes their ability to apply for grants which will help with the fundraising.

Frank Thrasher, St. Alban Avenue, Loxley, Secretary of the American Legion Response Team, shared the importance of the Emergency Operations of the American Legion. This project will give them a home and actualizing missions statements received from the national level. National Security is one of the four pillars of the American Legion which helps the community. Mr. Thrasher listed many of his resources and thanked the Board of Adjustments for moving this project forward.

The public hearing was closed at 6:43pm.

Ms. Slagle asked for the history of Ivan and Sally, how much water came on site, how far away is the building from the bay, the insurance for the Legion, and the elevation of the building. Ms. Bryant stated they are well above the BFE, they have a flood elevation certification, and a geotechnical study was done on the stability of the bluff. The proposed new building is located beyond the bluff setback.

Motion:

Cathy Slagle made a motion to approve BOA 24.14 with staff recommendations.

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

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Bryan Flowers

Nay: None.

BOA 24.15 Public hearing to consider the request of the Applicant, Element 3 Engineering LLC, on behalf of the Owner, Fairhope Avenue Baptist Church, for a Special Exception – Use not Provided for – to allow for a church expansion on property zoned R-1 Low Density Single-Family Residential District. The property is located at 8717 Fairhope Avenue and is approximately 4.29 acres. **PPIN#: 13305**

Mike Jeffries, Development Services Manager, presented the request of the Applicant, Element 3 Engineering LLC, on behalf of the Owner, Fairhope Avenue Baptist Church, for a Special Exception – Use not Provided for – to allow for a church expansion on property zoned R-1 Low Density Single-Family Residential District. Mr. Jeffries shared the aerial and zoning maps along with the site plan. The applicant is requesting to expand the Sunday School classrooms, choir room and pastor's office of the existing church to accommodate the growing church congregation. The applicant provided a narrative stating the classrooms will be used during Sunday and/or Wednesday services. The choir room will be used on Sundays and one night per week for choir practice.

Recommendation:

Staff recommends approval of BOA 24.15.

Steve Fisher, Element 3 Engineering, 3938 Government Boulevard, Mobile, stated that this is a 5,060 sq ft building addition on the east side. The architectural improvements will match the existing building.

Chairman Vira opened the public hearing at 6:51pm.

Lewis Johnson, 219 Divit Loop, Pastor of Fairhope Avenue Baptist Church, added that when Hurricane Sally hit, two of the existing buildings were destroyed. They are seeking to replace the buildings that were destroyed by adding an east wing.

The public hearing was closed at 6:53pm.

Motion:

Frank Lamia made a motion to approve BOA 24.15.

Donna Cook seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Bryan Flowers

Nay: None.

Old/New Business

- Approval of 2025 Meeting Schedule

Motion:

Cathy Slagle made a motion to approve the 2025 Meeting Schedule.

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

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Bryan Flowers

Nay: None.

Mr. Jeffries noted that the January 2025 and January 2026, meeting dates have been moved due to the Martin Luther King holiday.

- Election of Officers

Motion:

Bryan Flowers made a motion to keep the same officers of Anil Vira as Chair, Cathy Slagle as Vice-Chair and Cindy Beaudreau as Secretary.

Donna Cook seconded the motion and the motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Bryan Flowers

Nay: None.

Adjournment

Cathy Slagle made a motion to adjourn.

The motion carried unanimously with the following vote:

Aye: Anil Vira, Cathy Slagle, Donna Cook, Frank Lamia, and Bryan Flowers

Nay: None.

Adjourned at 6:55p.m.


Anil Vira, Chairman


Cindy Beaudreau, Secretary