

The Board of Adjustments met Monday, August 19, 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; Donna Cook; Hunter Simmons, Planning and Zoning Director; Mike Jeffries, Development Services Manager; Michelle Melton, City Planner; Chris Williams, City Attorney; and Cindy Beaudreau, Planning Clerk.

Absent:

Chair Vira called the meeting to order at 5:00 PM.

Approval of Minutes

Ryan Baker made a motion to approve the minutes from the July 15, 2024, meeting.

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

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

Nay: None.

Abstain: Anil Vira

BOA 24.07 Public hearing to consider the request of the Owner, William Bolton, for a Special Exception – Use on Appeal – to display automobiles for outside sales on property zoned M-1 – Light Industrial District. The property is located at 7841 Porter Lane and is approximately 0.17 acres. **PPIN: 38692**

Mike Jeffries, Development Services Manager, presented the request of the Owner, William Bolton, for a Special Exception – Use on Appeal – to display automobiles for outside sales on property zoned M-1 – Light Industrial District. Mr. Jeffries shared the zoning and aerial maps along with the existing and proposed site plans. Mr. Bolton provided a revised site plan showing only two parking spaces. The property does not have access from Porter Lane, which is a private road. Mr. Bolton supplied three opinions from his attorney. Mr. Jeffries shared tax parcel information for the property.

Recommendation:

Staff recommends denial of BOA 24.07, due to a lack of access and excessive traffic that would be generated along Porter Lane (if legal access was cleared) through the surrounding residential area.

Frank Lamia asked what access is to the property that is being argued about. Mr. Jeffries stated that there is a portion of property with a blue street sign which is typically a county street sign. Not knowing who owns this property would make access to Mr. Bolton's property require access through someone's private property. Mr. Simmons added that there are deeds stating there is access through an easement, but there are pieces of property with an easement across it. The question is do those belong to private individuals. The clarification is a civil issue that needs to be worked out among private individuals.

Mr. Bolton stated that he owns the property, and it will be used for two antique vehicles. Porter Lane has been a right of way for at least 40-50 years. Mr. Alan Lipscomb, Attorney, sent a letter stating this. The issue with going to Greeno is there are storm drainage improvements that have been done by the hotel which is in the 20' easement. It would be more difficult to access the road due to changes that would be needed by the hotel. Mr. Bolton and a neighbor cleared the property which allows access to the property. This issue of ownership should not be an issue since Porter Lane has been used. There will be very limited use. This request is primarily for his state wholesale dealer license which only requires two parking spaces.

Cathy Slagle stated she is confused about the use. Mr. Bolton stated that the space will be used to park refurbished antique cars.

Ryan Baker shared Ms. Slagle's confusion. Mr. Simmons states that outdoor sales within the Zoning Ordinance require approval by the BOA and Mr. Bolton needs a letter for the state from the city stating that he has an outdoor sales lot. Mr. Jeffries reiterated that although Mr. Bolton only needs two parking spaces, the property will be zoned as an outdoor sales lot.

Mr. Baker asked how the other five parcels are accessing their property. Mr. Simmons stated that there is no argument that there is access to the property. There needs to be an access easement from the other property owners. Clarification that Mr. Bolton has access to the property is all that is needed. Mr. Bolton stated that he has contacted the Holiday Inn but has received no response. Mr. Simmons stated that Mr. Lipscomb's letter does not state that this is a right of way, it states it is an access point. Confirmation needs to be received from other property owners that the easement may be used for a more intense use on Porter Lane.

Frank Lamia stated that his dilemma is that Mr. Bolton is asking for an outdoor sales lot. Mr. Bolton stated that no other property owners are able to see the lot unless they go all the way down Porter Lane.

Ms. Slagle asked if the antique vehicles would be worked on at the site. Mr. Bolton stated that the vehicles would only be parked on the site.

Mr. Baker asked if the BOA is able to add contingencies and what would happen if they were broken. Mr. Simmons stated that the BOA could add special restrictions, but enforcement is tricky. The simplest solution would be to remove the business license if there were any violations.

Mr. Lamia asked if access from Porter Lane was necessary if only two vehicles were parked there. Mr. Bolton replied that he needs access from Porter Lane due to there not being enough room on his other property even if he granted himself an easement. Mr. Jeffries stated that a business license can be revoked if conditions are violated. The first hurdle is getting across the property to Mr. Bolton's property and knowing that it is legal. Mr. Lamia asked if it could be a liability to the city if the BOA approves the use of property for two parking spaces and then someone comes up stating that the city gave access that they did not have. Mr. Bolton stated that there may never be a car parked on that site. He just needs approval for his license. The property will not be used heavily. Donna Cook asked if anyone had legal access to Porter Lane. Mr. Simmons stated that staff reached out to the Baldwin County Highway Department who researched the parcel and stated that no one has ever turned that over, so it has been reserved for future right of way. Mr. Bolton stated that no

one has paid taxes on the property for over 40 years. Mr. Simmons reiterated that this is an access easement and when looking at the deeds, it states reserved for future right of way. All the staff is asking for is confirmation from other property owners.

Mr. Baker asked what the timeline is. Mr. Bolton stated the renewal needed to be done earlier this year.

Chris Williams stated that this is not a publicly dedicated right of way accepted by Baldwin County or the City of Fairhope. There is concern about access to private property. Staff concerns are legitimate. Property access is important. One solution for a landlocked property owner is a lawsuit for all property owners involved where a court would set forth the access. Another solution is getting all property owners together on a joint document that is recorded and runs with the land that entitles certain property owners to access. Mr. Williams continued that the decision can be conditioned based on their decision and since this case has been tabled in the past, the applicant will need to agree to table it again or the BOA will need to decide now. Mr. Bolton asked that the case be approved with conditions. Mr. Simmons stated that the Holiday Inn has a clear title to the property, but there are multiple property owners coming from Ingleside where title needs to be clarified.

Mr. Lamia asked if there was a problem if Mr. Bolton provided permission from the property owners. Ms. Slagle would rather Mr. Bolton did the leg work and table the case and then come back with proof of ownership. Mr. Bolton would like a vote now from the BOA. Mr. Simmons asked about an e-mail on July 17, 2024, asking for title information. Mr. Bolton believed that he supplied the information. Mr. Simmons stated that staff did not receive proof that it was a public right of way.

The public hearing was opened at the last meeting, so not required at this meeting.

Motion:

Ryan Baker made a motion to approve BOA 24.07, with the following conditions:

1. Two parking spaces only
2. Requirement of legal access to the property by affected property owners

Donna Cook seconded the motion and discussion continued.

Chris Williams asked for clarification of if the conditions are not met, then the City would not issue a permit, letter, or business license.

Mr. Baker amended his motion to include the two conditions and if the conditions are not met then no permit will be granted.

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

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

Nay: Cathy Slagle

BOA 24.09 Public hearing to consider the request of the Owner, FST and Thomas F. Munsey, for a Special Exception – to allow for an accessory structure to be built forward of the principal structure on property zoned R-1 – Low Density Single-Family Residential District. The property is located at 52 N. Ingleside Street and is approximately 0.83 acres. **PPIN#: 14954**

Michelle Melton, City Planner, presented the request of the Owner, FST and Thomas F. Munsey, for a Special Exception – to allow for an accessory structure to be built forward of the principal structure on property zoned R-1 – Low Density Single-Family Residential District. Ms. Melton shared the zoning and aerial maps along with the existing and proposed site plans.

Recommendation:

Staff recommends approval of BOA 24.09.

Thomas Munsey, Owner, stated that he will be replacing a wooden tool shed in the middle of the property on the Fairhope Avenue side and will be applying for a permit for a new structure at the back of his property. He will also remove two additional structures that could be considered eye sores.

Ms. Slagle asked if the new structure will be behind the house and fence. Mr. Munsey replied yes it would.

Chairman Vira opened the public hearing at 5:51pm.

Richard Caudill, 57 N. Ingleside, asked if the building will be used for personal or commercial use. Mr. Munsey replied that will be exclusively used for storage of tools, clothes, a golf cart and a lawnmower. There will be no commercial use of this structure. Mr. Caudill has no objection to personal use.

The public hearing was closed at 5:53pm.

Motion:

Donna Cook made a motion to approve BOA 24.09.

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.

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**

Hunter Simmons, Planning and Zoning Director, presented 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. Mr.

Simmons stated that staff received a request to table this item, so slides were not prepared. The Applicant did not receive confirmation so prepared over the weekend to carry-on with the application. Mr. Simmons shared the proposed site plans. Parking is a concern for this project. The zoning ordinance states that on-street parking may be credited. Impact on adjacent properties must be considered. 27 parking spaces for the hotel would require 54 on-street parking spaces. Off-site parking on Magnolia was considered but would likely require a rezoning. Another option was to use some existing parking deck spaces. Mr. Simmons added that the Parking Authority was meeting on August 26, 2024, to discuss parking issues in the city. Mr. Simmons added that this project will also have a site plan review and a multiple occupancy review. This request is more about the use, which includes a restaurant, a small office, a medical spa and 27 hotel rooms. There is one handicap and two regular parking spots on site. Mr. Simmons shared the elevations and the floor plans.

Mr. Lamia asked if they would be voting on this tonight. Mr. Simmons stated that they could vote on this tonight. Mr. Baker asked if they were voting on the conditional use of a hotel. Mr. Simmons replied yes, the parking use is an issue that should be decided. Mr. Simmons stated that if this were tabled, then it should be tabled with specifics.

Tamara Prickett, 16321 Scenic Highway 98 and Mary Wells, MD, 857 Sea Cliff Drive stated that they had asked to table the project. They are still looking for a parking solution. Ms. Prickett stated that she, her husband, Ms. Wells and Dusty Smith, are responsible for the project. They joined together on the project based on their excitement to do something with the proposed site. The restaurant downstairs would service the rooftop terrace along with Fairhope residents. There will be two uses for this project, a restaurant and a med spa. Ms. Prickett believes that the best solution for parking is the off-site property on Magnolia and asked the BOA if that would be a solution to parking.

Mr. Baker believes that with a solution to the parking, it is a great project. Mr. Lamia asked if they had been working with the parking authority. Ms. Prickett stated that if they own the property that is contiguous with the hotel, then the property may not need to be rezoned. Mr. Lamia asked if this worked with the grand parking plan. Ms. Prickett stated that this is not a parking authority issue and suggested that the owner of the Magnolia property join the meeting through zoom. Ms. Prickett asked if they can build a parking lot on Magnolia, would the BOA have any problems with the hotel. Mr. Lamia asked if 27 places would fit. Ms. Prickett stated yes, it would be designated for the hotel and would be valet parked. Ms. Wells stated that it would also be manicured and landscaped to beautify the parcel. Mr. Vira asked, within the 24 parking spaces, where would be staff park. Ms. Wells stated that staff would park like other staff downtown.

Mr. Vira asked if they were using a parcel for parking if they were subject to landscaping. Mr. Simmons stated that this would be subject to the Tree Ordinance. Mr. Lamia asked what the Parking Authority's role is in this project. Mr. Simmons stated that the shared parking solutions are owned by the Parking District. There is a small lot by Julwin's that is owned by the city.

Mr. Baker stated that he is not opposed to off-site parking. Mr. Lamia stated that he would like them to come back with a solution that the City agrees with. Ms. Wells stated that this would be a locally owned hotel not a chain hotel. Ms. Prickett stated they are fine with tabling the project.

Chairman Vira opened the public hearing at 6:25pm.

Richard Hice stated that he loves the project and believes that parking on the Magnolia property would be an easy solution to the parking issue.

Wendy Butler is located in downtown Fairhope and is excited about the project. She believes that it will draw in tourists.

John Bethea owns property around the building and believes it is a good project.

Nick Klarman, 116 Fairhope Avenue, supports the project.

Peter Whitehead, Chicken Salad Chick owner, is excited about and approve of the project.

Brad Hicks, Attorney for project, requests that the project be tabled until the October 21, 2024, meeting.

Jeremiah Mathews, owner of Southwood Kitchen and Ben's BBQ, in support of the project.

The public hearing was closed at 6:30pm.

Motion:

Ryan Baker made a motion to table BOA 24.10 until the October 21, 2024, meeting.

Cathy Slagle 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.

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 along with the existing and proposed site plans.

Recommendation:

Staff recommends denial of BOA 24.11.

Ms. Slagle asked what the height was of the current home and noted that the bottom limb is 14' from the ground and it does not appear there is room for a second story. Ms. Slagle continued that the BOA would need additional information on the second story. Mr. Simmons agreed that additional information would be needed. Ms. Slagle then asked if the magnolias on the front side of the house would be taken down. Mr. Simmons stated that every heritage tree is not required to be shown. There are no protections on the trees on that parcel. Mr. Vira asked if a single-family residence has the right to cut any tree down on their own property. Mr. Simmons replied yes. The Tree Ordinance does not apply. Mr. Vira stated that the house should be 35' from the front, but the current house is 24' and staff can give a 7' variance to come closer to the front, side or back. Mr. Simmons stated that the intent of the owner is to take the house down so the new house would need to conform to the 35' mark. The only relief that staff can give would bring the new house to 28'.

Mr. Baker asked if the front porch was covered which would bring the house to 20'. Mr. Simmons stated yes, the porch was covered but not as wide as the rest of the house.

Jason LaSource, owner, reiterated that the front porch was covered and sets back about 5' and 10' shorter than the house. Mr. LaSource stated that two of the limbs on the tree were going over the back of the house and the two-story part of the house would be in front of all of that. Full plans are not done due to paying for revisions and waiting for approval. Chris Francis, Tree Care, will work with Mr. LaSource to ensure the tree is not damaged during construction. Mr. LaSource stated that other homes in the neighborhood have similar setbacks to what he is requesting. Mr. LaSource continued that there is not enough room to push the house back.

Mr. Vira asked if the house would have some of it one story and some of it two-story? Mr. LaSource replied yes, the two-story would be in the front part and over the garage. There will be nothing above the master bedroom where the tree is.

Ms. Slagle asked about the stairway in the garage. Mr. LaSource stated that that area will be used for storage and a workout area with no running water, just electricity. Ms. Slagle asked if there were guidelines on whether running water was allowed. Mr. Jeffries replied yes, that would be reviewed at time of building permit application. Mr. Jeffries stated that if more than a half bathroom or a kitchen was installed, it would need to be removed before being permitted.

Mr. Vira asked if the house would be on pilings or a slab. Mr. LaSource stated it would be on footings. Mr. Lamia asked how deep the porch is. Mr. LaSource stated 8'. Mr. Simmons stated that, based on the plan, it does not look like the house is being moved. Mr. LaSource stated that the new plans will show that. Mr. Baker stated that it does not look like the house is moving very much away from the tree. Mr. LaSource stated that he plans on renovating the house and selling it. Mr. Baker asked why he didn't move the house to the west. Mr. LaSource stated that will make the driveway too narrow. Mr. Vira asked how wide the driveway was. Mr. Simmons stated that it is 18' and there is a 3' required landscape strip. Mr. Vira asked if that would help with pushing the house over. Mr. Simmons stated that there is roughly 3.5' that it could be moved. Mr. LaSource stated that if the house were moved over, it would encroach on the property west of his.

Mr. Lamia asked what the overall square footage of the proposed house is. Mr. LaSource stated approximately 2,500 square feet with an additional 400 square feet above the garage. Mr. Lamia asked how many square feet the house is now. Mr. LaSource replied approximately 1,150 with 350 in the back building. Mr. Vira confirmed that part of the second story will be cantilevered. Mr. LaSource agreed.

Mr. Baker stated that in the past, the BOA has granted a variance to save a tree, and he did not hear that in this request. Mr. LaSource stated that he is saving the tree by having Chris Francis monitor the tree during construction. Mr. Baker asked if the master bedroom could be moved back farther away from the tree and make the hallway longer to allow more space around the tree. Mr. LaSource stated that the master could be moved back, but he still needs the space in front of the house. Mr. Vira asked if the house had to be 10' away from the garage. Mr. Simmons stated yes, or the garage could be attached. Mr. LaSource stated that he will try to attach the garage if possible.

Mr. Baker asked for more definition of how far the house will be from the tree and what the second floor will look like in relation to the tree. Mr. Baker is in favor of saving the tree and granting a variance of some sort. Mr. Jeffries suggested a site plan be provided with exact dimensions that the structure shall be from that tree and a report of what limbs will need to be trimmed and/or removed to allow the construction of the second floor from the horticulturist. And Mr. Jeffries suggested consulting with the City Horticulturist Supervisor.

Ms. Cook stated that she agrees, and the only hardship is trying to save the tree. If the tree is not saved correctly or if there were not enough dimensions there, she would not approve it.

Chairman Vira opened the public hearing at 7:12pm.

Mac McCawley stated that all structures should comply with the Zoning Ordinance. The tree and house were there when he bought it and he needs to comply with the Zoning Ordinance.

The public hearing was closed at 7:13pm.

Motion:

Ryan Baker made a motion to table BOA 24.11 until the owner meets with staff.

Cathy Slagle 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.

Old/New Business

Mr. Simmons shared some changes for the Planning Commission cases. The staff's role is to write reports for the BOA and Planning Commission. Staff will begin establishing a final agenda one week prior to the meeting and once that is done, an applicant will need to come and ask that their case be tabled. Mr. Simmons suggests that is done with the BOA also. This proposal would require a zoning amendment which would be approved by the City Council.

Mr. Vira confirmed that the next meeting will be September 16, 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 Donna Cook

Nay: None.

Adjourned at 7:22p.m.



Anil Vira, Chairman



Cindy Beaudreau, Secretary