

**STATE OF ALABAMA
SHELBY COUNTY**

SHELBY COUNTY PLANNING COMMISSION MINUTES

Regular Meeting – March 4, 2019 – 6:00 PM

Members Present: Jim Davis, Chairman; Michael O’Kelley, Vice Chairman; Bob Land; Samuetta Nesbitt; Jay Gunther

Members Absent: Bill Kinnebrew; Kenneth Wilder

Staff Present: Chad Scroggins, Development Services Manager; Christie Pannell-Hester, Planning Services Supervisor; Sharman Brooks, Senior Planner; Kristine Goddard, Principal Planner; Josh Cameron, Principal Planner

PUBLIC HEARING

The meeting was called to order at 6:00 P.M. by Jim Davis, Chairman. **Commissioner Davis** introduced the members of the Planning Commission and the County staff. There were approximately four audience member(s) present in addition to the Planning Commission members and County staff.

Approval of the Minutes of the February 18, 2019 Planning Commission Meeting.

Commissioner Land made a motion to approve the minutes of the February 18, 2019 meeting with corrections. The motion was seconded by **Commissioner O’Kelley**. By a unanimous vote of five (5-0), with Commissioners Davis, Land, O’Kelley, Nesbitt and Gunther voting in favor, the minutes of the February 18, 2019 meeting were approved.

1. V19-001 Western Sales Rear Yard Variance

This is a request from Josh Durden, Western Sales, for approval of a rear yard variance of four feet to reduce the required setback from 20 feet to 16 feet for a constructed accessory warehouse building.

The subject property is zoned B-2, General Business District and is located at 3660 Cahaba Beach Road. Parcel Identification No. 58-03-9-31-0-001-035.000.

Ms. Kristine Goddard described the case and presented the following information to the Planning Commission:

The subject property is located approximately one half mile north of U.S Hwy 280 on Cahaba Beach Road, adjacent to the Lofts at Edenton to the west; Edenton Office, Cahaba Beach Office Park (each zoned B-2) and Cahaba Beach Townhomes (zoned R-4) to the north, and a mix of office and residential uses (each zoned B-2) along Cahaba Beach Road to the east.

In 2018 the applicant completed a site plan to add a warehouse to the property located at 3660 Cahaba Beach Road. The site plan (SP18-001) was certified on July 10, 2018 and a building permit was issued for construction. The certified site plan depicted a 20 foot rear yard setback as required for commercial structures when abutting a residential district (R-5 SD). The subject property abuts the Lofts at Edenton to the rear. ↑

All new developments in unincorporated, zoned Shelby County are required to submit a setback verification survey as part of the inspection procedures for new construction. This requirement is identified in the building permit application packet provided to all applicants. According to the applicant's justification statement his builder located the corners of the proposed building in lieu of his surveyor. A copy of the justification statement for his request has been included with this report.

When the building was surveyed by a certified land surveyor and submitted for review it was determined that the building had not been constructed per the certified site plan with one corner of the new warehouse building being located at 19.7 feet to the rear property line and the other corner located at 16.3 feet to the rear property line. The applicant is requesting a four foot reduction to the rear yard setback. The proposed variance request would result in a 16 foot rear yard setback.

The building is currently 95% complete with final inspections on hold until the setback issue is resolved. The rear property line for the subject site abuts the parking area for the Lofts at Edenton. Included in this report are some site photos of the existing conditions. Landscaping installation has not been completed at this time though slope stabilization in the detention pond is mostly complete.

Section 3 of Article XXIII of the *Zoning Regulations of Shelby County, Alabama* identifies that the Planning Commission may authorize a variance based on the existence of the following conditions:

1. *That the special circumstances or conditions applying to the building or land in question are peculiar to such premises and do not apply generally to other land or buildings in the vicinity.*
2. *That the granting of the application is necessary for the preservation and enjoyment of a property right and not merely to serve as a convenience to the applicant.*
3. *That the authorizing of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Shelby County.*

CONCLUSION

The applicant has indicated that the building corners were not located by a land surveyor prior to advancing construction of the building. Variances granted by the Shelby County Planning Commissions must meet all criteria of Section 3 of Article XXIII of the *Zoning Regulations of Shelby County*.

Josh Durden, owner, applicant, explained that his excavator marked the corners incorrectly not a surveyor. He stated that this was an accident it was not intentional.

Commissioner Davis asked if this was a miscommunication with the surveyor.

Mr. Durden stated that he was the general contractor on the job. He stated that the corners were marked at the time the company came out to do the footings. He explained that the excavator

came back out to clean up corners some slat changes occurred and possibly shifted the established corners.

No one spoke in favor of the proposal.

No one spoke in opposition to the proposal.

Commissioner Land stated that other cases have involved the same criteria as this case. He feels that all three conditions should be met. He stated that it appears that the applicant has met criteria numbers 1 and 3, but criteria number 2 has not been met. He stated that this is not a property right, it is more of a convenience. He does not believe it meets as anything other than a convenience.

Commissioner Gunther stated that he does not look at this as a convenience, but as an honest mistake.

Commissioner Land stated that he does not see this as a property right. He stated that the certified plan was not followed. He stated that he understands the explanation, but he is still concerned that all three criteria has not been met.

Commissioner Gunter asked if a variance constitutes an exercise of that property right.

Commissioner Nesbitt asked what would happen to the building if the request is denied.

Ms. Goddard explained that the building would have to be cut back to meet the required setback.

Commissioner Land stated that there have been previous cases that did not meet all the criteria and variance request have been denied. He stated that he is trying to give the same treatment to every case.

Commissioner O'Kelley stated that he sees the black and white, but struggles with not trying to do the decent thing. He stated that granting the variance is not going to harm anyone. He stated the other two requirements have been clearly met.

Commissioner Davis agreed that it does not meet criteria number 2, and it is for the applicant's convenience, but who's inconvenience.

Commissioner Land stated that he does not feel the request is about the inconvenience of others.

With no further discussion, **Commissioner Davis** called for a motion. **Commissioner Land** made a motion in Case **V19-001 Western Sales Rear Yard Variance** the evidence and testimony warrant Denial subject to not meeting all requirements of the Zoning Ordinance. The motion was seconded by **Commissioner Davis** and by a vote of 2 – 3 with Commissioners Land and Davis voting in favor of the motion and Commissioners Gunther, O'Kelley and Nesbitt voting against the motion, the motion fails.

Commissioner Davis called for a second motion.

Commissioner Gunther made a motion in Case **V19-001 Western Sales Rear Yard Variance** the evidence and testimony warrant Approval. The motion was seconded by **Commissioner Nesbitt** and by a vote of 3 – 2 with Commissioners Gunther, Nesbitt and O’Kelley voting in favor of the motion and Commissioners Land and Davis voting against the motion, the following resolution was approved:

WHEREAS, Josh Durden, president, Western Sales, property owner, has petitioned the Shelby County Planning Commission for approval of a rear yard variance of four feet to reduce the required setback from 20 feet to 16 feet for a constructed accessory warehouse; a variance of Section 3, Article XV., pursuant to Section 3, Article XXIII; and,

WHEREAS, the subject property is zoned B-2 and is located at 3660 Cahaba Beach Road; Parcel Identification No. 58-03-9-31-0-001-035.000; and,

WHEREAS, the required rear setback for commercial structures abutting a residential district is a minimum of 20 feet; and,

WHEREAS, the certified site plan identified a 20 foot residential setback from the rear property line; and,

WHEREAS, the rear property line of the subject property adjoins the parking area for the residential development; and,

WHEREAS, the request to reduce the setback, is due to incorrect placement of construction corners by the excavator when pouring the slab; and,

WHEREAS, the Planning Commission has determined that the special circumstances or conditions applying to the building or land in question are peculiar to such premises; and,

WHEREAS, the granting of this application would allow the applicant to complete the construction and receive final inspections on his building; and,

WHEREAS, reducing the rear yard setback requirement by four feet will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire, or imperil the public safety, or unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of Shelby County; and,

NOW, THEREFORE, BE IT RESOLVED by the Shelby County Planning Commission that the application of Josh Durden, president, Western Sales, property owner, for approval of a rear yard variance of four feet to reduce the required setback from 20 feet to 16 feet for a constructed accessory warehouse; a variance of Section 3, Article XV., pursuant to Section 3, Article XXIII, located at 3660 Cahaba Beach Road; Parcel Identification No. 58-03-9-31-0-001-035.000 be, and the same is hereby **Approved**, subject to:

- Compliance with the regulations, policies and guidelines of Shelby County.

2. SN19-001 The Lake Resurvey of Lot 1 & Acreage

This is a request from Jesse Touchstone, on behalf of Tommy Turpin, property owner, for approval of a final plat to resurvey 3.54 acres into Lot 1 of The Lake to create Lot 1A, a residential lot, to be known as The Lake Resurvey of Lot 1 & Acreage.

The subject property is not zoned and is located at 10367 Chelsea Road. Parcel Identification No. 58-15-1-02-0-001-003.007.

Ms. Kristine Goddard described the case and presented the following information to the Planning Commission:

The subject property is located at 10367 Chelsea Road, the southwest corner of the intersection of Forest Oaks Drive and Chelsea Road (County Road 47). The Lake subdivision (S-27-92) was reviewed administratively and recorded in Map Book 16, Page 124 on November 16, 1992. The subject property is unzoned.

An existing pond is located on the west side of the subject parcel and Frogbottom Lake is located along the southern boundary. Several homes of varying sizes are located at the east end of the lake and south of the subject property. Brook Chase Estates is located to the north and Spring Meadows Farms is located to the northwest in the City of Chelsea. Chelsea Elementary School is located to the west along Forest Oaks Drive.

The preliminary plat of Beech Hollow, a gated, 11 lot residential subdivision, west of the subject property, with access via County Road 337 (Forest Oaks Drive) was approved by the Planning Commission on June 18, 2012 but expired due to the realignment of County Road 337 (Forest Oaks Drive) that had to complete construction prior to final platting of the property. The Planning Commission reviewed and conditionally approved a revised preliminary plat for Beech Hollow on July 17, 2017. A final plat for Beech Hollow is under administrative review but has not received final approval for recording.

In 2012, when the initial preliminary reviews for the Beech Hollow subdivision were occurring, the developer and the property owner of The Lake, Lot 1, agreed to a boundary adjustment between their two properties. The resurvey was not reviewed by the Department of Development Services in 2012 for compliance with the Shelby County Subdivision Regulations. The Lake is a recorded subdivision; any addition of property into a previously recorded subdivision requires Planning Commission Approval.

The revised boundary will add 3.54 acres from the Beech Hollow acreage tract to create Lot 1A of The Lake, totaling 17.75 acres. (*see to the left*). Relocating the property line will not change the approved layout of Beech Hollow. Proposed Lot 1A of The Lake will retain an existing residential structure and the revised boundary will encompass the entire small pond.

Water Service from Shelby County is available. The applicant should contact Shelby County Water Services for any changes to their current water service. No additional comments were received from the Chelsea Fire Department as the structures on the lot are already in place and no new structures are proposed at this time.

The subject property is located within the Coosa River Basin. Land disturbance should include Best Management Practices (BMPS) that are designed and installed in accordance with the *Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas* to prevent sediment from entering drainage ways or streams. If disturbance area is one acre or greater, a NPDES construction permit should be acquired from ADEM prior to disturbance.

CONCLUSION

The subdivision, as submitted meets the requirements of the *Subdivision Regulations of Shelby County* subject to the following items:

- Applicant submitting a record map for approval and recording;
- Compliance with the regulations, policies and guidelines of Shelby County, Alabama.

Commissioner Nesbitt asked what caused the lot line to change.

Ms. Goddard explained that the developer and the property owner of The Lake, Lot 1, agreed to a boundary adjustment between the two properties.

Jesse Touchstone, applicant, was present for any questions.

No one spoke in favor of the proposal.

No one spoke in opposition to the proposal.

With no further discussion, **Commissioner Davis** called for a motion. **Commissioner Land** made a motion in Case **SN19-001 The Lake Resurvey of Lot 1 & Acreage** the evidence and testimony warrant Approval subject to addressing staff comments. The motion was seconded by **Commissioner O’Kelley** and by a unanimous vote of five (5-0), with Commissioners Davis, O’Kelley, Land, Nesbitt and Gunther voting in favor, the following resolution was approved:

WHEREAS, Jesse Touchstone, on behalf of Tommy Turpin property owner, has petitioned the Shelby County Planning Commission for the approval of a final plat to resurvey 3.54 acres into Lot 1 of The Lake to create Lot 1A, a residential lot, to be known as The Lake Resurvey of Lot 1 & Acreage; and,

WHEREAS, the subject property is located at 10367 Chelsea Road; Parcel Identification No. 58-15-1-02-0-001-003.007; and,

WHEREAS, the subject property is not zoned; and,

WHEREAS, the final plat and documents meet the requirements of the *Zoning Ordinance of Shelby County*; and,

NOW, THEREFORE, BE IT RESOLVED by the Shelby County Planning Commission that the request from Jesse Touchstone, on behalf of Tommy Turpin property owner, for the approval of a final plat to resurvey 3.54 acres into Lot 1 of The Lake to create Lot 1A, a residential lot, to be known as The Lake Resurvey of Lot 1 & Acreage and located at 10367 Chelsea Road; Parcel Identification No. 58-15-1-02-0-001-003.007, be and the same is hereby **Approved** subject to:

- Applicant submitting a final plat for recording; and
 - Compliance with the regulations, policies and guidelines of Shelby County.
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There being no further business, **Commissioner O’Kelley** made a motion to adjourn. The motion was seconded by **Commissioner Land** and by a unanimous vote of five (5-0), with Commissioners Davis, O’Kelley, Land, Nesbitt and Gunther voting in favor, the meeting of February 18, 2019 was adjourned at 6:10 P.M.

Christie Hester
Planning Services Supervisor

Jim Davis, Chairman
Shelby County Planning Commission