

**Minutes**  
**Orange Beach Board of Adjustment**  
**February 21, 2018 - 4:00 P.M.**  
**Council Chambers - Orange Beach Municipal Complex**

**A. Call to Order**

Chairman Mike Contorno called the meeting to order at 3:58 p.m. and asked the secretary to call the roll.

**B. Roll Call**

Present:        Bob Barnett  
                  Tim Blackwell  
                  Tem Blalock  
                  Mike Contorno  
                  Cecil Young  
                  Pete Peterson  
                  Linda Bradley  
                  John Lawler, City Attorney  
                  Kit Alexander, Community Development Director - absent  
                  Griffin Powell, Community Development Planner II  
                  Paulette Taylor, Community Development Planner I  
                  Mindy Smith, Community Development Office Manager

**C. APPROVAL OF MINUTES**

1. Approval of minutes from the Regular Meeting on January 17, 2018.  
**Motion made (Barnett/Blackwell) to approve the January 17, 2018 minutes.** Roll call revealed: Barnett, yes; Blackwell, yes; Blalock, yes; Contorno, yes; Young, yes; Peterson, yes; Bradley, yes. **Approved (7-0).**

**D. VARIANCES**

1. **Case No. 0102-V-18, 5386 Armadillo Avenue**  
Heather Costley and Steve Merna request variances to Section 4.03, Minimum Setbacks, to encroach 5'4" into the 30-foot front setback and 8'5" into the 20-foot rear setback and a variance to Section 4.02, Lot Area, Lot Width and Other Factors, to exceed the 30% maximum building coverage by 15 square feet for the purpose of expanding an existing single-family residence. The property is located at 5386 ARMADILLO AVENUE and is in the RS-2 (Single-Family Residential) zoning district.

Heather Costley and Steve Merna were present to address the Board of Adjustment. Heather stated they will remove their existing deck. Their new plans show they will move the entrance to their house to the opposite side which will be within the setbacks.

Chairman Mike Contorno opened the public hearing for comments. Cheryl Hayes, who owns the adjacent lot on the side of the existing deck, said her only concern was that the applicants remove the deck; she did not have a problem with the other parts of the variance request.

**Motion made (Barnett/Young) to approve variance request with the exception that the deck must be totally removed.** Roll call revealed: Barnett, yes; Blalock, yes; Blackwell, yes; Contorno, yes; Young, yes. **Approved (5-0).**

2. Case No. 0201-V-18, 26361 Cotton Bayou Drive

Jimmy Boyd, on behalf of Dan N. Denton, requests a variance to Section 4.02, Requirements for Lot Area, Lot Width, and Other Factors, to reduce the minimum lot width requirement from 75 feet to 50 feet for the purpose of subdividing the lot located at 26361 COTTON BAYOU DRIVE in the RS-1 (Single-Family Residential) zoning district.

Jimmy Boyd, who lives at 3793 Illinois Street, was present to address the Board of Adjustment. He was the agent representing Dan Denton, the owner of the property. Jimmy Boyd stated that Dan Denton came to Orange Beach looking for a piece of property where he could build a duplex, live in one unit, and do short term rentals out of the other unit. They looked throughout Orange Beach for locations that had duplexes and short term rentals of like-kind. In identifying this lot, which is located across street from Romar Marina, they found there were six other duplexes already on that street. There were two additional lots which had three houses built on each lot. Jimmy Boyd stated five of those lots were doing short term rentals. When they put their business plan together, they thought this lot was the perfect location for Dan Denton. He said they paid more for the property than what would normally be paid for a lot like that.

Jimmy Boyd said that the City started talking about the short-term rental moratorium three weeks after they closed on the property on December 1st [2017]. He said that in those discussions, the City said any properties currently in the process of doing this would be given an exception or would be allowed to continue. But, when he went back to the City in January, he was told they could no longer do short term rentals. Now, they are looking for a solution since they have overpaid for the lot.

Since they have a 100 foot wide lot, they are requesting to divide it into two 50 foot lots. Then, Dan Denton could build and live on one lot and he could sell the other lot. Jimmy Boyd stated he understands that it is zoned RS-1 which requires 75 feet width; however, on the same street, there are other lots that are under the 75 foot lot requirement. He said they did their due diligence in purchasing this property. But because of the moratorium that was put through in less than a month after purchasing it, Dan Denton can no longer do what he planned. He said they will forgo the short term rental process if they can subdivide the lot so they can sell one of the lots.

Jimmy Boyd stated this situation is unlike any other property that will come before this Board due to the nature and the rapidness of how the City handled the short-term rental moratorium. He said that the lot that did not have a hardship, but now it has had a hardship created on it all of a sudden with no fault to the owner. He said they understand the conditional use process of having to go through Planning Commission and then City Council in order to get approved for building a duplex there.

Tem Blalock asked the applicant how much the owner paid for the lot. Jimmy Boyd said the asking price was \$100,000 and the owner paid \$87,500, so he paid almost \$20,000 too much for it. Tem Blalock said he did not think that was too much. Jimmy Boyd said that according to the tax records, the value was listed about \$65,000. He said that the reason he is here today is because he took the information he had at the time, did his due diligence, and made an educated business decision but the rug was pulled out from under them at no fault to the purchaser.

Chairman Mike Contorno asked if the Board rejects this application, would they be able to still do short term rentals. Jimmy Boyd clarified that he has been told that short-term rentals are completely off the table for this property.

Chairman Mike Contorno asked John Lawler, since they have never had a situation like this, if this can be considered a hardship. John Lawler stated that the courts have said the hardship must relate to the land, not to the individual land owner. He said a variance is not a license for a particular person or owner. It is granted to the land on the basis that the land is unable to be used as it is zoned. If it is prohibited from meeting the regulations because of some physical hardship related to the land, then a variance is in order. He said that a legal lot of record that can be used within the regulations does not have a hardship. He said that zoning can change and ordinances can be passed that affects land and how property can be used.

Jimmy Boyd said he is requesting RS-2 zoning now that the property has had a hardship placed on it. Cecil Young stated that, to him, the property does not have a hardship. The hardship is that he cannot build two houses on one lot. Chairman Mike Contorno said that the Board does not have the ability to change zoning, they can only give a variance for the particular zone that the property is located. Cecil Young asked if they could send this to the City Council since they are the ones who are ruling on it. Chairman Mike Contorno said that City Council sent it to the Board. Jimmy Boyd said that the City Council does not know about it though because Community Development said that he had to go to the Board of Adjustment.

John Lawler asked Griffin Powell when there will be a public hearing of the short term rentals. Griffin Powell said it will be on March 20<sup>th</sup>. John Lawler stated that the City Council will then determine if there is going to be an ordinance and what the terms of that ordinance will be. Bob Barnett asked if that decision would let them build a duplex on a 100 foot lot. Griffin advised that to build a duplex, the applicant would have to get a conditional use approval which is at the discretion of Planning Commission and then City Council.

John Lawler suggested that Jimmy Boyd go to the public hearing at the City Council meeting and ask if this can be an exception to the ordinance and ask the Council for direction. Bob Barnett stated that this request has nothing to do with short term rental; they are requesting to divide a 100 foot lot into two 50 foot lots. Jimmy Boyd said that because of the moratorium, they cannot build what they wanted to build. Linda Bradley said that they can build one house on that 100 foot lot. John Lawler said they could build a duplex on the lot if they get approval. Griffin said yes, if they get conditional use approval, but there are no guarantees that they will get approval. Tim Blackwell asked Jimmy Boyd why they could not put just a single house on the lot and try to recoup the owner's money by selling it. Jimmy Boyd said he is in real estate but that he cannot make those assumptions. He said they followed all the rules, purchased the land, then the rules changed within three weeks. Tim Blackwell asked if it was an investment in that land. Jimmy Boyd said it was an investment that the purchaser would live on half of the property and would rent the other half. Tem Blalock asked if they could do long term rentals. Jimmy Boyd said that the money does not work with long term rentals. Tim Blackwell asked if this is just about the money. Jimmy Boyd said this is about not being able to build on the property what they planned before they made the investment. Tim Blackwell said he feels as if Jimmy Boyd is trying to get the Board to guarantee his investment and to make sure it pays off. Jimmy Boyd said it is the same as if you buy a

car with a warranty, drive off the lot, then three weeks later they call and say the warranty is no longer in effect because it has changed. Cecil Young said there was no warranty on the lot they purchased either.

Chairman Mike Contorno stated he thinks they are getting the cart before the horse because the ordinance has not even been passed as of yet. If it is passed, then they could come and ask for the lot size change. John Lawler said he would counsel against assuming that it will be passed. He said the hardship must be based on hardship to the land, and not based on economics.

Chairman Mike Contorno said that Jimmy Boyd cannot go to City Council if the Board votes no; he will have to appeal to the Circuit Court. Jimmy Boyd asked to step outside and speak to Dan Denton in private for a moment. Chairman Mike Contorno said he would allow five minutes.

Jimmy Boyd returned and asked that the Board table the request until after the public hearing at the City Council meeting on March 20<sup>th</sup>.

**Motion made (Blackwell/Young) to defer the application.** Roll call revealed: Barnett, yes; Blalock, yes; Blackwell, yes; Contorno, yes; Young, yes. **Deferred (5-0).**

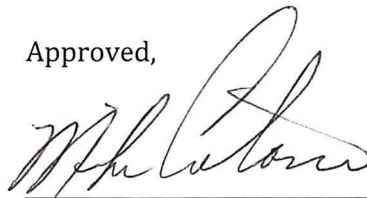
- E. APPEALS
- F. NEW BUSINESS
- G. OTHER BUSINESS
- H. ADJOURN

The meeting adjourned at 4:40 p.m.

Respectfully submitted,

  
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Mindy Smith, Office Manager

Approved,

  
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Mike Contorno, Chairman