



Board of Adjustments Minutes

September 15, 2020 at 5:00 p.m.

Virtual Meeting

Present

Michael Clary (Vice-Chair), Aimee Hitchner, Tom Sims Jr, Charles Steinberg, Ann Higbie and Steven Heller. Director of Building, George Wiggins and Recording Clerk, Theresa Dunkle. Absent: Robert Trompke (Chair)

Meeting called to order

Approval of minutes

Motion made by Ann Higbie to approve the August 18, 2020 minutes. Steven Heller seconded the motion. The minutes received approval by a vote of 6-0.

Opening statement and public comments

Michael Clary explained the rules of procedure for variance cases and opened the floor for any disclosures, public comments or questions. No disclosures or public comments made.

Old business

1. Request of Majid Sarmast on behalf of Mazda Ekbatani, to allow remodeling and a second story addition to an existing dwelling with the following variances: Increase the height at a portion of the north side wall, and for 2 linear feet of the front wall, to a height of 12', with existing side setbacks ranging from 5.3' to 4.85,' in lieu of the required setback of 7.5'; Allow 10' setback to the 2nd floor in lieu of the required setback of 12.5 feet; Allow a 2nd floor rear setback of 32.3' in lieu of 35'; Allow the nonconforming side setbacks to permit a floor area ratio of 42.6% in lieu of the maximum of 38% due to the nonconforming side setbacks.

Located at 626 Bonita Drive, Zoned: R-1AA

George Wiggins, Director of Building, gave the following summary:

After making certain modifications, the applicant is returning to the Board this month, repeating all but one of the variances from last month.

Staff Report from August 18, 2020 Meeting:

The applicant is requesting variances to allow remodeling and a second story addition to an existing dwelling with the following variances:

- 1) *Increase the height of a part of the north side wall and 2' of the front wall to a height of 12' with an existing side setback ranging from 5.3' to 4.85' whereas the required setback is 7.5',*
- 2) *Allow 10' setback to the 2nd floor whereas the required setback is 12.5 feet;*
- 3) *Allow a rear setback of 32.3' whereas the required setback is 35',*
- 4) *Allow the nonconforming side setbacks to permit a floor area ratio of 42.6% whereas the maximum FAR is 38% (based on the existing north side setbacks),*
- 5) *Allow the new south sidewall to be constructed with an alternate articulation concept.*

The applicant is proposing substantial architectural changes to the existing home in order to maximize allowable floor area and utilize the existing north-side nonconforming setback of the home.

With regard to request #1 above, the existing nonconforming north sidewall will be increased in height 15' for a distance of 24' on the side of the garage and will continue along the front face of the garage at the same height. I understand that the designer may be agreeable to reduce this height to 12' the maximum height allowed for a first floor wall at the required setback.

With regard to request #2, the applicant proposes to demolish the existing nonconforming sidewall and move it in to a setback of 8' for the first floor and utilize a 10' second floor setback for the proposed addition instead of 12.5' as required.

With regard to request #3, the proposed second floor addition will also encroach into the rear setback by 2.7'.

With regard to request #4, in order to overcome a limited floor area ratio of 38% based on the nonconforming existing north side wall and new second floor side wall at a setback of 10', these setbacks must be nonconforming setbacks must be approved to allow a floor area ratio increase to 42.6%.

Item #5 may not need a variance if the Board does not object to the staff determination that the alternate articulation concept proposed is acceptable. Under the Zoning Code, a side wall can be constructed without normal projection or inset articulations if 25% of the wall consists of glazing. In this case, the south side wall has glazing in excess of 25% of the wall area, AND, in addition has a 16' long projecting bay window. This side wall articulation proposal is a hybrid concept utilizing the both wall glazing along with a projecting articulation element.

Five letters were provided expressing no objection to this request from nearby and abutting property owners surrounding this property.

At last month's meeting, concerns were expressed about the scale of the variances needed to accomplish this new architectural design for this home including the higher wall along the side, the second floor setback of only 10' and the appearance of a tall entry feature at the front of the home. In addition, items requiring variances were shown on a plan provided with the application including a questionable location of a swimming pool and height of walls along the side and front of the property that did not appear to meet zoning code setback and height allowances.

The designer has provided updated and more accurate drawings for the Board to view including a rendering of the home with the proposed modifications and a modification of the articulation element sufficiently to be approved without a variance. Therefore, the applicant has reduced the previously 5 variances to 4 variance requests.

No additional letters of non-objection have been provided beyond the original 5 letters expressing no objection.

Mr. Wiggins reiterated the articulation request dropped from last month's request; but a rear setback request was added. A tradeoff for the demolition of the south sidewall in non-compliance is the small setback request on the north side. The impervious coverage is within code requirements.

There were no questions for the Building Official from the Board.

Majid Sarmast, who resides at 13309 Fox Glove Street in Winter Garden, FL., spoke on behalf of the owner, Mazda Ekbatani. He noted the second floor addition allows the home to remain occupied during construction. Mr. Sarmast stated the most crucial request is the 10' side setback to the second floor, in lieu of the required 12.5 feet side setback. The proposed second floor addition is minimal and does not encompass the entire footprint of the existing home. The first floor side setback on the south side provides greater separation from existing conditions. Mr. Sarmast stated the proposed work improves the neighborhood; he has taken care to ensure the building height is less than the two-story home on the north side.

The owner, Mazda Ekbatani, who resides at 626 Bonita Drive, said the proposed design is less massive than neighboring homes. He has a family of 4 and they enjoy the quiet neighborhood and dead end street location. Mr. Ekbatani noted the hardship is the positioning of an existing home and the need for more space. He purchased the home three years ago, prior to knowing his family could have a baby. After a pleasant surprise, he now has a 19 month old and nanny to accommodate.

In response to board questions, Mr. Sarmast confirmed the front yard would be fifty percent green area. Mr. Clary offered that front landscaping would help in the approval of the request.

In closed session, Mr. Clary noted the lot is at the end of a cul-de-sac so the proposal is not imposing on the neighborhood. They considered that the applicant requires extra space, due to an unexpected family size increase. With neighbors on all sides of the property in approval, the Board members said they could support the second-story south-side-setback request. However, they were against all the other variance requests.

No one from the public spoke concerning this request.

Findings

The board members agreed that the hardship for the second story addition is the existing home on a narrow lot. They could not find a hardship for increased FAR, increased height on the north side, or rear setback encroachment.

Action

Based on these findings, Aimee Hitchner made a motion, seconded by Steven Heller to approve all of the requests as presented. The combined requests were denied by a vote of 0-6.

Charles Steinberg made a subsequent motion, seconded by Ann Higbie to approve a single item of the request, to allow a second story south-side addition with a 10' side setback to the second floor, in lieu of the required side setback of 12.5 feet. The request, as amended, passed by a vote of 6-0.

New business

1. Request of Angela Whitford-Narine & John Gregory Engeman for variances to allow the construction of a residential deck and pergola .5' and 4' respectively from the rear lot line, and allow the height of sections of the pergola at 14' and 11' above grade in lieu of the maximum permitted height of 10' above grade.

Located at 1664 Cypress Point Lane, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

This property is located on a cul-de-sac which backs up to the Winter Pines Golf Course that has a drainage ditch immediately adjacent to this home. The Zoning Code allows relaxing the rear setback to 10' for a home that abuts a non-residential zoning. In this case, a pergola can be placed 5' from the rear lot line with the 10' height limit. See zoning code reference below:

Sec. 58-71. - General provisions for residential zoning districts.

(i)(9) An arbor, pergola or trellis structure may be placed up to five feet from side and rear lot lines and the overhead beams or framing members may be permitted to terminate on top of a six-foot wall or solid fence subject to a maximum length of 18 feet when attached along a side or rear yard wall or fence. The overall maximum height shall be ten feet, except within the building area of the lot, the structure may extend to no higher than the height of the principal building on the property.

The plan includes digging down into the rear yard existing grade near the house wall in order to build a deck which will extend out to a retaining wall that returns to the natural grade. The pergola will then be built on top of this new deck surface. The deck will be lower than the house floor elevation by 1'2" and then the taller section of the pergola will have a height above the deck of 12' 1". This plan shows the tallest portion of the pergola at a height of approximately 2' above the edge of the roof of the home, and then the remainder of the pergola on each side has a height of 9.1' above the deck. Depending on the amount of excavation or fill for the deck, the resultant height as shown on the plan provided will be slightly less than 14' for the taller section and slightly less than 11' for the other portions of the pergola.

The new deck will extend into the required 5' rear setback almost to the lot line with steps, will have a height less than 29" at the lower portion of the existing yard area, and is shown on one plan to have guard railing along the southern portion of the deck. Under the building code, a guardrail is required when the elevation drop to grade is 30" or more.

No letters received concerning this request.

Mr. Wiggins confirmed the existing deck will be removed and he noted that homes abutting non-residential zoning allow for 2-stories of height at a ten-foot rear setback.

The applicant, Mr. John Gregory Engeman who resides at 1664 Cypress Point Lane, stated his hardship is the shallow rear yard area.

No one from the public spoke concerning this request.

The Board felt they could render a decision without further discussion based on the information provided.

Findings

The Board considered that no neighbors object and the property abuts a golf-course. The hardship is the existing shallow rear yard area.

Action

Based on these findings, Tom Sims Jr. made a motion, seconded by Aimee Hitchner to approve the request. The request passed by a vote of 6-0.

2. Request of Kent Taylor and Charles Almand for a variance to allow side setbacks of 4.8' to 5.9' along the east side yard wall of a recently constructed dwelling in lieu of the required side setback of 7.5'.

Located at 1035 Kentucky Avenue, Zoned: R-2

George Wiggins Director of Building gave the following summary:

Due to a (boundary line) surveying error not found until after the construction of this new home occurring when construction began on the adjacent lot, the applicant is seeking a formal variance to recognize these nonconforming side setbacks on one side of this home. This error was only recently discovered and will restrict the owner's ability to sell the property in the future if not resolved through receiving a variance. No other zoning parameters are impacted by this request; however, a slightly larger setback is achieved on the west side of this property by a distance of 1.2' at the northwest corner of the home.

No letters received concerning this request.

Pat Ireland of Ireland & Associates Surveying, whose business is at 800 Currency Circle 1020, Lake Mary FL, spoke on behalf of the owners, Kent Taylor and Charles Almand. He stated his company discovered the surveying error when adjacent lot 6 was being developed. They discovered the interior lot lines were not at 90-degree angles as initially drawn, resulting in a parallelograms configuration and subsequently a reduced side setback of the 1035 N Kentucky home.

The Board had no questions for the owners and felt they could render a decision without further discussion based on the information provided.

Findings

The Board found the hardship is that the surveyor only discovered the original boundary lines were established incorrectly when the adjacent lot was being developed. The Building Department had already approved the setbacks of the constructed home and issued a Certificate of Occupancy based on the survey they received at the time. Non-approval of the request would leave the owners without a clear title.

Action

Based on these findings, Tom Sims Jr. made a motion, seconded by Steven Heller to approve the request. The request was approved by a vote of 6-0.

3. Request of Glenn Dobkin for a variance to allow the construction of a warehouse building to be located 10' from the rear lot line, in lieu of the required setback of 30'.

Located at 661 Harold Avenue, Zoned: I-1

George Wiggins Director of Building gave the following summary:

The Board granted a similar variance for a warehouse building directly across the street on 12/15/2017.

The subject property is a lot with dimensions of 50 feet by 136 feet (6,800 square feet) and is zoned I-1, Limited Industrial & Warehouse District. In this zoning district, the required rear setback is 30 feet.

Generally, I-1 zoning properties in areas are located along the railroad such as the properties on Solana and Railroad Avenue. However, in this case this site backs up to Having one small narrow industrial zoned lot backing up to other commercially zoned properties that already have buildings with smaller rear setbacks is unusual except in this transitional area of the City.

This situation was created when these abutting properties were developed in unincorporated Orange County before annexation into Winter Park and the smaller rear setbacks were allowed in the range of 5 to 10 feet. Several surrounding buildings do not have rear setbacks of 30 feet, including the abutting property on the north side and behind that same property.

The proposed use of the building as a warehouse requires minimal parking at a ratio of one space for each 1,000 square feet of gross building area, and three spaces are planned to be provided for 3,040 square feet of building area. All other city code criteria, such as storm water retention and landscaping will be required to be met if this variance is granted. The applicant has proceeded with addressing this area as shown on the plan provided.

No letters received regarding this request.

The owner, Glenn Dobkin stated his son is in a wheelchair and will use the space as a workshop and studio. The warehouse will be for his personal use.

In response to Board questions, Mr. Wiggins noted a small home is currently on the lot. Mr. Wiggins noted the thirty-foot rear setback was instituted to address commercial properties adjacent residential properties.

Findings

The Board found the hardship is that this property was annexed into Winter Park and the setbacks changed. Because a similar request was approved by the board, they noted this applicant should not be deprived of the same variance.

Action

Based on these findings, Charles Steinberg made a motion, seconded by Tom Sims, Jr. to approve the request. The requested variance was approved by a vote of 6-0.

4. WITHDRAWN: Request of Thomas Lamar for Kristopher & Brooke Kest to allow the construction of a one story building addition located 10.7 feet from the east side lot line, in lieu of the required side setback of 14 feet.

Located at 2101 Banchory Road, Zoned: R-1A

George Wiggins Director of Building noted case withdrawn prior to the meeting on September 10, 2020.

The meeting adjourned at 6:14 pm.

Theresa Dunkle, Recording Clerk