



Board of Adjustments Minutes

April 20, 2021 at 5:00 p.m.

Hybrid Meeting

Present

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

Call to Order

Robert Trompke called the meeting to order.

Consent Agenda

Motion made by Ann Higbie to approve the March 16, 2021 minutes. Tom Sims Jr. seconded the motion. The minutes received approval by a vote of 7-0.

Staff Updates

No action items brought forward.

Citizen Comments

Robert Trompke explained the rules of procedure for variance cases and opened the floor for any disclosures, public comments or questions. Steven Heller disclosed he had a conversation with one applicant, Brad Caldwell, regarding 241 Rockwood Way.

Action Items

No action items brought forward.

Public Hearings

1. Tabled from the March 16, 2021 meeting: **Request of Thomas Ladyman, on behalf of Idelisa Torres, for a variance to allow an existing screen enclosure to remain located 9.1 feet from the rear lot line, in lieu of the required rear setback of 10 feet and to allow 169 square feet of screen enclosure beyond the allowable area.**

Located at 1737 Magnolia Ave., Zoned: R-1A

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

The pool screen enclosure was constructed over an existing pool prior to final permit approval or issuance and after receiving complaints from the adjacent property owner located to the rear of this applicant's property who expressed concern that the enclosure appeared to encroach into the rear setback.

The property owner to the rear of this property had registered complaints concerning the height of the enclosure as well, and the size of the enclosure across the width of the property. However, the allowable height at the required 10-foot rear setback is permitted to be 13 feet at the apex of the enclosure as part of this dome shaped enclosure. The enclosure as constructed complies with this permitted height.

The rear setback to the enclosure is shown as 9.1 feet on one survey and 9.4 feet on another survey with each prepared by different state registered surveyors. When the original plans were submitted for a permit the indicated setback was 9 feet at the rear and the request for a permit was rejected.

The pool enclosure contractor proceeded with constructing the enclosure even though it was not compliant with the 10-foot rear setback or allowable area and without issuance of the permit. With regard to

remedial action that can be taken by the applicant if the Board is inclined to grant the setback variance, the placement of a tall landscape buffer across the rear of the enclosure with a material such as bamboo may be one solution to consider, however, modifications will need to be made to reduce the area of the enclosure by 169 square feet unless a variance is granted for this additional area.

The property owner abutting this owner's property had submitted several email complaints concerning this enclosure over the last several months while surveys were conducted. After a delay in acting on corrections to the enclosure the owner decided to file for this variance.

We have received 2 letters in support of this request and emails from the owner to the rear of this property expressing opposition to this request.

Mr. Wiggins pointed out that the screen enclosure is 169 square feet over the allowable 8 percent of the lot area permitted by the Zoning Code. The total area of the enclosure is actually 936 square feet. Mr. Wiggins further clarified that the worksheet received with the original approved building permit and this variance application incorrectly listed a pool screen area of 767 square feet. In addition, the approved permitted plans document a minimum rear setback of ten feet, which was not provided across the entire length of the enclosure. In response to board questions, Mr. Wiggins confirmed that the permit was originally denied due to having shown a rear setback of only 9 feet.

The applicant, Mathew Thomas Ladyman, with Nishad Khan P.L. Real Estate and Business Law, at 617 E Colonial Dr. Orlando, spoke on behalf of the owner Idelisa Torres and submitted three additional photographs of site conditions. The photographs were distributed to the board members. Mr. Ladyman stated his client purchased the home in 2015 and stated that the screen enclosure followed the location of the existing pool footings. Mr. Ladyman pointed out that originally only the rear setback was in question and has now made aware of the area overage within the past month. Reducing the enclosure size will not cover the both the pool and spa, which is an inherited problem.

Board member Michael Clary asked Mr. Ladyman why construction started without a permit. Mr. Ladyman stated the screen company representative told him it was the error by new new employee. He stated the owner, Ms. Torres, was unaware the screen enclosure company had not obtained a permit before starting. In response to Board member Steven Heller, Mr. Ladyman said the screen company estimated the cost to reduce the screen enclosure in the master bedroom area is between seven and ten thousand dollars and that they are unwilling to cover the cost of the change. The board suggested the issue is between the owner and the contractor. Mr. Ladyman added the hardship relates to needed protection for the owner's daughter who has a strong bee allergy if stung.

Mr. Wiggins offered a potential compromise. Lowering the back wall of the enclosure to a height of 7.5 feet at the rear and sloping the roof structure towards toward the home will reduce the massiveness that the neighbor views and might allow the owner to keep the additional square footage if that part of the variance is granted since the rear setback for a 7.5 foot high enclosure is only 7.5 feet. Mr. Ladyman said he could not accept the option without the approval of Ms. Torres and stressed he could not see the hardship to the neighbor. The heavy landscaping along the shared lot line obstructs the view of the screening as shown in the picture.

Brandon DeGel, Esq. with Winderweede, Haines, Ward & Woodman, P.A., at 329 Park Ave N. 2nd floor, Winter Park, spoke on behalf of Lance and Sharon Sanders at 1676 Hibiscus Avenue located immediately to the rear of the applicants property. Mr. DeGel stated that the screen enclosure is oversized and sits too close to his client's property. Even if only one foot over the allowable rear separation distance, that is one foot across fifty feet of lot width. The Sanders have resided in their home for thirty-one years, whereas the home at 1737 Magnolia was built in 2014, included new footers and a raised elevation. Mr. DeGel, reiterated the permit was originally denied, but constructed anyway before permit issuance. Mr. DeGel stated there is no hardship. The contractor constructed the enclosure without a permit, the homeowner is the agent for the contractor, and a bee allergy is a personal circumstance, not a unique hardship with grounds for a variance. The enclosure can comply with Winter Park's land development codes. At present, it is too large by 169 square feet and too close by fifty square feet.

When asked by the Board if Mr. and Mrs. Sanders would accept the suggested compromise, Mr. DeGel stated his client is not interested in a reduction from the codes at this point. In response, Mr. Wiggins noted a nine-foot rear setback with a maximum wall height of 9 to 7.5 feet is allowable in Winter Park's land development code.

In closed session, the board members stated they could not support the request.

Findings

With the enclosure being built without an approved permit, the board members felt this issue should be between the contractor and the homeowner. They considered the option presented by Mr. Wiggins and felt there should be an allowance for the applicant to come back with an alternate design if desired.

Action

Based on these findings, Tom Sims Jr. made a motion, seconded by Ann Higbie to approve the request. The request was denied by a vote of 0-7. A second motion made by Tom Sims Jr. to allow the applicant to return next month with a lesser variance request, was seconded by Steven Heller. The amended request to allow the applicant to return with an alternate plan, passed by a vote of 7-0.

- 2. Request of Emiel McNish, on behalf of Ketan Pandya, for variances to allow the construction of a boathouse to extend approximately 70 feet into Lake Berry in lieu of the maximum permitted distance of 30 feet and allow an area of 960 square feet, in lieu of the maximum allowed area of 600 square feet**

Located at 1661 Chase Landing Way, Zoned: PURD

This item was recorded by court reporter Robin Trudeau with Veritext.

A letter from H. Clay Parker, dated April 20, 2021, on behalf of the applicant, was received the day of the meeting and provided to the board members at the start of the meeting.

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

This boathouse received a building permit after revising the original plan that did not meet our typical boathouse criteria limiting the area to 600 square feet and 30 feet into a lake beyond the ordinary high water line. Construction proceeded and was later stopped due to a complaint from the neighboring property owner when it became apparent that the boathouse was not complying with the area and distance into the lake indicated on the approved plan. In addition, the neighbor pointed out that the boathouse will block his lake view and that it was his understanding that this boathouse was to be built on the opposite side of the lot rather than near the west side lot line.

With regard to having a definitive City Commission condition that all boathouses along the southwesterly shoreline of Lake Berry must be grouped next to each other along common lot lines with no side setback, I have not conclusively found a record of a boathouse grouping condition in the minutes of the Commission meeting in 1999 when the plat of the Windsong- Preserve Point Subdivision was approved for all lots along the south or western shore of Lake Berry. However, there was a condition approved that "the boathouses for Lot 8 & 9 be constructed immediately adjacent to each other (zero lot line)". An excerpt of those minutes is included in this report.

With regard to hardship criteria, we asked for water depth information, however, the information provided on a marked up survey appears to indicate that the boathouse can be closer to shore with a water depth indication of 6 feet in the middle of the boathouse. Therefore, we have not received sufficient information from the applicant to justify granting extending the boathouse over 30 feet into the lake or for adding significant additional area to the boathouse.

No letters received expressing non-objection to this request; however, we have heard from the attorney representing the property owner adjacent to this property on the west-side expressing objection to this request.

Mr. Wiggins, noted that the dock permit was approved after a revised site plan documented the maximum thirty foot out into the water. However, the dock was built approximately eighteen feet from the west lot line and approximately seventy feet out from the normal high water line and approximately sixty-five feet out from the shoreline. Mr. Wiggins noted the builder provided some of the water depths originally and provided more detailed water depths the day of the meeting. The plan documents a water depth of four feet four inches, where the boat would be housed closest to the shore. Mr. Wiggins estimated a boat needs approximately thirty inches to allow lift to be utilized within the boathouse. The boathouse would still be functional if substantially shortened.

Mr. Wiggins stated in 1999 boathouse/dock requirements, for this body of water (Lake Berry), may have been addressed by the City Commission during the plat approval of the Windsong - Preserve Point Subdivision. The results indicate lots eight and nine could have boathouses next to each other. City staff could not locate an official record stating boathouses must be on a particular side of the lot, however, that may have been the case in an official record. Regarding existing boathouses that extend fifty feet into the water, Mr. Wiggins stated Winter Park's Lakes Board had begun review of structures over the water around 1999 and determined a shelf along Lake Berry required some boathouses to extend further out. The lot to the west has a boathouse built greater than thirty feet out. Mr. Wiggins pointed out the Ordinary High Water Line comes in several feet from the shoreline, at 1661 Chase Landing Way. Mr. Wiggins also noted that prior to permitting any new boathouse the existing dock on this property will need to be removed in order to comply with the Winter Park Zoning Code regarding number of docks permitted at a lakefront property.

In response to Board questions, Mr. Wiggins confirmed the applicant has a permit based on the revised site plan, but the requested revised construction plans are still pending receipt. Mr. Wiggins noted that some of the added square footage is due to the roof covered Jet Ski area shown on the framing plan.

The builder and applicant Emiel McNish, spoke on behalf of the owner, Dr, Ketan Pandya. Mr. McNish stated he built the dock to match the construction documents and judged the normal high water line based on his neighbor's boathouse. He said the dock plans submitted with the building permit could not fit in the thirty-foot projection.

Mr. Wiggins stated the plan reviewer requested revised plans that matched the survey and the approved plan only showed a site plan with the boathouse only 30 feet into the lake with a conforming area of 551 square feet shown on the plan. Mr. McNish said he was not told by the Building Department to reduce the size of the plan. In February Mr. McNish stated that he received an email saying the discrepancy was overlooked although no record of this has been provided and the approved plan clearly shows conforming boathouse length and area.

Mr. Wiggins confirmed the plan was approved by the Lakes plan reviewer in our without the review of our Lakes Board as is normally required for a new boathouse. He also noted we received a marked up plan on revised survey from the contractor that identifies the dock would be constructed at an angle to the shoreline with 25 linear feet of distance out from the Normal High Water Line.

H. Clay Parker, Esq., with The Florida Lawyer, at 108 Hillcrest St., Orlando, spoke on behalf of the owner, Dr. Ketan Pandya. Mr. Parker stated the hardship is the water depth required for boat mooring. At thirty feet out, the thirty-five inch depth is not sufficient. Mr. Parker noted the side setback is within allowable limits and that opposition to locating the boathouse on the west side should not be in question.

The owner, Dr. Ketan Pandya, stated he purchased the home in August of 2019. The boathouse was eighty percent completed before notification that his boathouse was in non-compliance. He would like to enjoy the same benefits as his neighbors, who also have boathouse beyond thirty feet into the water.

Sandi J. Kracht, Esq. with Kracht Law Firm, P.A. at 831 W Morse Blvd., Winter Park, spoke on behalf of the adjacent neighbors Michael and Paige Cooper at 1653 Chase Landing Way. She stated her clients are in favor of the dock extending as far out as they want on the east side of the property, the same side as their existing dock. Ms. Kracht stated her clients were not given due process because this did not come before the Lakes Board. She stated there is no hardship and a dock could be constructed in compliance using twenty-one inches as a minimum mooring depth. The boathouse square footage cannot be considered a hardship. As built, a jet-ski or boat would have to go onto his client's property to access the structure. Ms. Kracht reiterated that this has not gone to the Lakes Board and granting a variance approval would be premature. The Lakes Board may suggest additional restrictions.

In rebuttal, H. Clay Parker, Esq., stated his client will go before the Lakes Board. However, the neighbor should have been aware of the request because it was on the homeowners' association agenda. Mr. Parker stressed there is no restriction against placing the dock on the west side of the lot, as approved by the homeowners association.

The neighbor, Michael Cooper at 1653 Chase Landing Way, said the dock was not built to the plan and it cannot be built on the side adjacent his property.

Mr. Wiggins showed the approved survey and said that work was stopped after receiving the Cooper's complaint. He confirmed that staff who perform Winter Park's Lake review had approved the submittal in our database without it going to the Lakes Board. At this point it is not set to be heard by the Lakes Board due to insufficient information provided by the applicant and noncompliance with the Code.

In response to a question by Mr. Trompke's, Mr. Wiggins confirmed he is not aware of any East or West side boathouse location requirement but this requirement may be of record in past records. Dr. Ketan Pandey stated he does not plan to locate the dock on the East side; the dock meets the minimum ten-foot side, by providing an eighteen-foot side setback.

Hsia Tain-yen of 1637 Chase Landing Way resides three homes away and opposes the request due to its size, stating it is larger than other boathouses.

In closed session, the Board noted the side placement was not an issue. However, they expressed opposition to the request because it did not match the construction documents.

Findings

The boathouse was built without following the approved site plans, and the board members felt this issue should be addressed between the contractor and the homeowner.

Action

Based on these findings, Steven Heller made a motion, seconded by Tom Sims Jr. to approve the request. The request was denied by a vote of 0-7. The owner must take the necessary action to remove the partially built boathouse not built to the approved site plan.

- 3. Request of Jessica Kendrick for a variance to allow; construction of a second story addition to be located 7.3 feet from the side lot line, in lieu of the required setback of 12.5 feet, and without a minimum setback of 2 feet behind or in front of the garage opening.**

Located at 1610 Chestnut Ave., Zoned: R-1A

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

In order create usable living space (child's playroom) on the second floor of a two-story home in a location that is currently a second-floor balcony, the applicant seeks two variances from the larger second floor setback of 12.5 feet and from having a front facing garage articulation which is normally achieved with the garage opening stepped back behind the front wall of the home or projected out in ahead of the main front wall of the home.

The proposed design of this second-floor area includes a much larger glazed opening at the second-floor level and a new glass garage door on the lower level to match the architecture of the home.

The area of this new space is 171 square feet bringing the gross area of the home to 2,745 square feet, which is just under the maximum permitted area of 2,803 square feet. With this addition, there is no impact on impervious coverage for this property. The overall height of the home and addition will remain at approximately 25 feet which is 7 feet below the permitted height of 32 feet which is allowed with this steeper roof slope of 8 in 12. The additional wall above the first floor is approximately 8.5 feet with a total sidewall height of 18 feet that matches the existing sidewall.

We received nine letters of support for this request, but none are directly the subject property.

In response to Board questions, Mr. Wiggins said the existing side setback complied with the setbacks at the time it was constructed.

The owner and applicant, Jessica Kendrick, said she has the adjacent neighbor's approvals but did not obtain letters from them. She stated the existing porch is leaking, in need of repair and the flat front elevation is similar to a home built by Lundev Construction a few homes down the street.

Richard Haines, with RLH Construction LLC, stated it is structurally non-feasible to deviate from following the existing exterior walls. He also referenced the nearby Lundev home in the neighborhood.

In closed session, the board voiced support for the request.

Findings

The board members stated the hardship was the change in land-development code required a stepped in second floor setback from the time when this home was originally built and the need to provide architectural continuity of the existing home.

Action

Based on these findings, Ann Higbie made a motion, seconded by Tom Sims Jr. to approve the request. The request approved by a vote of 7-0

4. **Request of Brad Caldwell for a variance to allow a 5 feet high masonry wall located 5 feet from the front lot line in lieu of the maximum permitted height of 3 feet; and to allow an open roof connection 22 feet wide between the existing home and garage (with an existing rear setback of 10 feet), in lieu of the maximum permitted open walkway width of 8 feet and in lieu of meeting the current rear setback of 25 feet when connecting the garage directly to the home.**

Located at 241 E Rockwood Way, Zoned: R-1AA

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

The Board may recall that at February meeting, a 5-foot high wall variance was granted at the corner property across the street at 240 East Rockwood Way, along the property fronting along Winter Park Road subject to maintaining the existing dense hedge as a buffer. This applicant is seeking a similar variance; however, in this case the proposed wall will be in the front yard. However, a dense hedge also exists on this property and the applicant notes that he is seeking a safe and protected children's play area and the 5-foot high wall will help provide a barrier from traffic along Winter Park Road.

With regard to the extended roof covered area onto the rear of the home, the main purpose of the 8-foot wide limit to this connecting roof was to provide protection from weather from a detached garage or other accessory building while still allowing the more lenient 10-foot rear setback to the garage. In this case, however, the home was built in 1950 and not in recent years when the 8-foot rule was put in place. I understand that this wider covered area will also serve as a cabana for the pool due to lack ability place another structure in the rear yard.

The applicant has provided several photos and renderings in order to show that this proposed wider roofed connection will be open when viewed from the street and not will be any more imposing than the typical permitted 8 foot wide covered walkway connection to the garage.

With this proposed roofed connection, none of our coverage requirements are exceeded.

Applicant included a petition signed by 20 nearby property owners expressing support of the variance requests in this application.

The owner and applicant, Brad Caldwell, stated his hardship is the reduced usable area, coupled with corner lot conditions. The greater street side setbacks this corner lot limit the functional porch area required for weather protection. He noted the surrounding neighbors are in support of the request. In regards to his wall request, Mr. Caldwell said he desires the increased height to buffer road noise and provide safety. The existing hedges in front of the proposed walls will remain. New hedges be will installed, should the wall construction affect their growth.

In response to a board question, Mr. Wiggins stated the purpose of limiting breezeways to eight foot in width, is to restrict having large wide covered walkways when they extend a long distance to a detached accessory building such as a garage when their main purpose is to provide protection from weather.

In closed session, the board felt the hardships presented by the applicant were clear. They considered the neighbors approval of the widened walkway which will have only a limited visual impact from the street. They discussed landscape buffering the same height of the wall be placed as a condition of approval on the wall.

Findings

The board members found the hardships for the wall are the extra-large right of way on the abutting street, the busy heavily traveled road and the existence of a large dense hedge which will shield the view of the wall. They felt the widened covered walkway will have little negative visual impact from the street.

Action

Based on these findings, Tom Sims Jr. made a motion, seconded by Ann Higbie to approve the request with a condition. The condition includes requiring the installation or maintenance of landscaping in front of the wall

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to provide a dense visual barrier with a minimum height of five feet. The request with the condition passed by a vote of 7-0.

The meeting adjourned at 7:07 pm.

Theresa Dunkle

Theresa Dunkle, Recording Clerk

May 18, 2021

Date of Board Approval