



Code Compliance Board Minutes

September 3, 2020 at 3:00 pm

City Hall, Commission Chambers
401 S. Park Avenue, Winter Park, Florida

Meeting Called to Order

The meeting was conducted via ZOOM.

Clay Roesch called the regular meeting of the City of Winter Park Code Compliance Board to order at 3:00 p.m.

Present

Board Members: Mary Sarah Johnson, Maria Bryant, Todd Boyer, Sherwin Sargeant, Paul Mandelkern and Clay Roesch. Director of Risk Safety & Fleet Keri Martin, Safety & Code Compliance Officer's Susanne Porras and Smitha Barlatier, City Attorney Richard Geller and Recording Clerk Bonnie Storm.

Assistant City Attorney's Statement

City Attorney Richard Geller explained that the Governor's executive orders, as extended, authorized the virtual setting for the meeting and that all who received a Notice of Hearing were informed of how to participate, including the ability to make arrangements to use a city computer or to appear by telephone.

Approval of minutes

Paul Mandelkern requested that the motion on page 6 be amended to reflect the names of the "yes" and "no" votes due to the vote not passing unanimously; **Motion made by Paul Mandelkern to accept the July 30, 2020 minutes as corrected (Upon a roll call vote on the motion to approve finding the Respondent Florida Federation Garden Club (tenant) of 1400 S. Denning Drive, Winter Park, Florida 32789, Code Compliance Board Case # 19-1411 in violation of Chapter 62, Section 62-95, 62-96 (a) & (b), 62-97 (2) & (3) City of Winter Park Ordinances; Todd Boyer, Maria Bryant, Sherwin Sargeant and Mary Sarah Johnson voted yes. Terry Rooth, Clay Roesch and Paul Mandelkern voted no. Todd Boyer seconded the motion. Motion carried with a 4-3 vote.)**

Clay Roesch read the statement of purpose into the minutes.

Swearing in of Witnesses

All witnesses were sworn in.

Compliances

None.

New Business

Case #20-60

358 W. Comstock Avenue, Winter Park, FL 32789.

Violation: Permit # 13-730 for Residential Alteration was issued 3/29/2013 and has not been completed within 12 months from permit issuance date. Storage of materials or debris, overgrowth of vegetation, cleanliness of the building site. Codes Cited: Chapter 22, Section 22-28, 105.4 (Conditions of Permit), 105.4.1, 105.4.1.2, 105.4.1.3 of the Florida Building Code adopted and amended by City of Winter Park.

Officer Porras presented the case with photographs and provided a brief history and timeline including:

- Notice of Hearing Issued: August 7, 2020 (via email) August 10, 2020 (regular and certified mail) and hand delivered on August 20, 2020.
- Photos, map and property information obtained from the Orange County Property Appraiser office were presented detailing the location of the residence. Photos of the front of the residence taken March 22, 2006, May 13, 2014, December 13, 2016 and a recent, undated photo taken this year, showing modest changes to the front entrance of the house and foliage planted in the right of way.

Assistant Director of Building, Permitting and Sustainability, Kris Stenger presented a history of inspections that have occurred between June 14, 2013 through June 25, 2019. Mr. Michael applied for a variance to zoning requirements and was approved a variance in February 2013. In March 2013 an additional permit was obtained for windows, arbors, doors and terrace walls to be installed. As of July 23, 2013, the construction activity did not proceed to the point that another inspection was necessary therefore the permit was held dormant as it had exceeded six months since the last inspection. The permit was held as dormant from 2014 until 2016 when Mr. Michael made a request to reopen the permit which was granted by the Director of the department. By the middle of 2017 construction activity had again commenced requiring inspections. By June/July of 2017 the permit had been extended an additional six months. Mr. Michael was alerted that it had been six months without additional inspections at which time a further continuation was requested and another inspection was completed and passed. Passed inspections would continue the extension process as the City continued to work with the homeowner.

By November 2019 there had not been a passed inspection on record. Multiple extensions have not yielded a completed project and the project has gone beyond the normal amount of extensions. At this time Mr. Stenger recommended that the homeowner complete the front facing façade elements within 120 days. Further recommendations include completing stucco and painting of columns to provide a completed appearance from the street as well as the removal of any construction material and debris.

Assistant Director of Public Works/City Engineer, Donald Marcotte presented testimony addressing areas along the right of way that present a trip hazard. Mr. Marcotte recommends that soil should be brought in to fill areas along the right of way to bring the soil even with the top of the sidewalk to comply with the permit.

City Attorney Richard Geller discussed a memorandum submitted by his associate Mr. Kelly pertaining to Mr. Michael's Native American ancestry and sovereign immunity. Mr. Geller stated that Mr. Kelly examined the merit of the legal argument presented by Mr. Michael. Chairman, Clay Roesch suggested delving further into the claim following the presentation of Mr. Michael's case.

Respondent, Forest Michael participated via ZOOM. Mr. Michael gave an overview of his past experience relating to landscape engineering. Mr. Michael presented the following timetable and anticipated steps to complete the project: Construction yard is mostly unused and is a wildflower garden. Landscape plan and rock wall - 100% FINISHED, Building slab – 100% FINISHED, Building columns – 95% FINISHED, Lintel and cornice – On hold 3/2020 per K. Stenger (Next step), Clerestory and roof – Next step, Final stucco and finishing off (Next step), Project finished.

Mr. Michael stated that the construction yard is now 95% unused and no construction materials are visible from the street. The construction yard area is now a wild flower garden, the rock wall has been completed and very little needs to be done to complete the columns. At Kris Stenger's suggestion the lintels and cornice are now on hold pending the findings of the Code Enforcement Board. Mr. Michael stated that he is the third generation and his daughter is the fourth-generation indigenous person that was granted the authority to live on the Indian Reservation by the United States government.

Chairman Clay Roesch asked Mr. Michael if he was taking the position that the City of Winter Park cannot enforce its code because of sovereign immunity under the 1823 Treaty of Moultrie. Mr. Michael stated that he firmly believes in sovereign immunity and believes that the US Government promised the land to indigenous people but he is not staking a claim on the treaty at this time. Mr. Michael emphasized that he abides by City of Winter Park ordinances and attempted to complete the project within the permitted timeframe. However, he is not able to perform construction quickly and asserted that he will work with Kris Stenger and make a solid effort to reach required

benchmarks. Clay Roesch again asked Mr. Michael if he was claiming sovereign immunity. Mr. Michael stated that he was not claiming sovereign immunity at this time.

Maria Bryant asked Mr. Michael if he had sought out help from the City with completing the project. He stated that he had acquired assistance forms from CRA but had not yet completed the application. Mr. Michael assured board members that he would submit the CRA grant application and will hire a contractor to complete the columns and stucco work.

The following offered public comment:

Dan Bellows, 411 W. New England Avenue participated via telephone. Mr. Bellows stated his address and other properties that he owns within the City of Winter Park including two properties located directly across the street from Mr. Michael's residence. Mr. Bellows expressed his dissatisfaction with the length of time that this project has been allowed to continue. He stated that due to the years that the project has been open ended that the open structures have been compromised and should be removed. Mr. Bellows also stated that he, as a contractor, would not be permitted the lenience that he feels has been extended to Mr. Michael. Mr. Bellows suggested stringent fines, no additional extensions and substantial penalties should be issued.

Morgan Bellows, 335 W. Comstock Ave participated via telephone. Mr. Bellows stated that he seconded the statements provided by Dan Bellows. His interests in the property mirror Dan Bellows' concerns.

There were no other public comments.

Board closed portion of hearing for discussion. City Attorney Richard Geller, Clay Roesch and City Staff responded to board member questions.

Clay Roesch made a motion that from the evidence presented today, this board is issuing an order finding the Respondent Forest G Michael owner of 358 W. Comstock Ave., Winter Park, Florida 32789, Code Compliance Board Case # 20-60 in violation of Chapter 22; Sec.22-28 Amendments to the Florida Building Code Sec.105.4 Conditions of Permit, 105.4.1 Conditions of Permit, Permit Term and Intent, 105.4.1.2 and 105.4.1.3 of the Florida Building Code as adopted and amended by the City of Winter Park.

The respondent is ordered to complete the front façade and all of the work that can be viewed from the public right-of-way as stated in permit # 13-730 or restore the structure to its preconstruction condition within 120 days. Respondent is further ordered to add fill to the area adjacent to sidewalk to make the area level with the sidewalk as stated in permit # 13-730 and to do so within 30 days. Respondent is further ordered to clean all debris and construction material from the site so that material can not be viewed from the public right-of-way within 30 days. Paul Mandelkern seconded the motion. The motion carried 7-0.

Old Business

None.

Other Business

City Attorney Richard Geller suggested amending the procedures pertaining to the 5:00pm meeting end time. Richard Geller will get with staff to prepare a proposal that will give the board more flexibility regarding meeting times.

Next Meeting Date

October 1, 2020

September 3, 2020
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Adjournment of Meeting: There being no further business, the Code Compliance Board meeting was adjourned at 4:57 pm

Respectfully submitted,

Bonnie Storm, Recording Secretary

Paul Mandelkern, Vice Chairman