



# Board of Adjustments Minutes

December 17, 2019 at 5:00 p.m.

City Hall | Chapman Room  
401 S. Park Ave. | Winter Park, Florida

## Present

Patrice Wenz (Chair), Phil Kean (Vice Chair), Michael Clary, Charles Steinberg, Ann Higbie, Tom Sacha and Steven Heller (Alternate). Director of Building, George Wiggins and Recording Clerk, Theresa Dunkle. Absent: Aimee Hitchner

## Meeting called to order

## Approval of minutes

Motion made by Charles Steinberg to approve the November 19, 2019 minutes. Phil Kean seconded the motion. The minutes were approved by a vote of 7-0.

## Opening statement and public comments

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

## Old business

1. Request of Richard Stubbs for a variance to allow the construction of a swimming pool and deck located 7 feet and 1 foot from the side lot line, in lieu of the required side setbacks of 10 feet and 5 feet respectively.

Located at 2661 Via Tuscany, Zoned: R-1AA

George Wiggins Director of Building, gave the following summary:

Mr. Wiggins reviewed the STAFF REPORT FROM the OCTOBER 15, 2019 MEETING.

The applicant requested variances to allow the construction of a swimming pool, deck and 4 foot high fencing encroaching 11 feet into the front yard setback. We also advertised an alternative request that encroached 5 feet into the side yard setback with the pool deck located 2 feet from the side lot line; whereas, the required side setbacks are 5 feet to the deck and 10 feet to the pool. Fencing in front yards is limited to 3 feet in height; therefore, the 4 foot high safety barrier, required by the Florida Building Code, would also need a variance.

The applicant advised us that they were not interested in the alternate variance option that does not encroach into the front setback but only into the required side yard. That alternate was offered by staff due to the likely difficulty of obtaining a 10 or 11 foot encroachment into the front setback for a new home.

The applicant is the architect for the owner and has been authorized to make this request in behalf of the owner. Questions were raised on how the Building Code pool barrier requirement will be met in the front yard setback area. A new home is under construction on this property and is at the final framing inspection stage. The adjacent property owner at 1160 Howell Branch Road submitted a letter expressing no objections to either one of the two prospective variance options as advertised.

Mr. Wiggins reviewed the UPDATES FOR THE DECEMBER 17<sup>TH</sup> REVISED REQUEST

The applicant has revised the previously tabled request to show the proposed construction of a swimming pool and deck located 7 feet, and at one point 8 inches, from the west side lot line, whereas the required side setbacks are 10 feet and 5 feet respectively. This removes any portion of the pool from the required front yard setback area as originally requested, leaving only side setback encroachments to the pool and pool deck location.

The applicant confirmed the application lists a 2 foot side setback to the deck; however, he would prefer a one foot setback as advertised in the public notices.

In closed session the board said they are not opposed to the request but felt the 2 foot setback to the deck could be provided without detriment to pool access.

## Findings

The board pointed out that this home under construction is situated on a small sloping corner lot. The 25 foot street side setback does not allow sufficient space for a swimming pool, and pools are typically enjoyed by many other residents in Winter Park, and pool and deck encroachments are minimal.

## Action

Based on these findings, Steven Heller made a motion, seconded by Tom Sacha, to approve the request with a two foot deck side setback. The requested variance as amended was approved by a vote of 7-0

1. Request of Sheila Cichra on behalf of the Mondrian at Winter Park Townhome Association, for a variance to allow the construction of two boat docks with a total area of 1,549 square feet, in lieu of the maximum allowed area of 600 square feet, in order to serve Mondrian Townhomes on Lake Killarney.

Located at Mondrian Circle, Zoned: R-2

George Wiggins Director of Building, gave the following summary:

Mr. Wiggins reviewed the STAFF REPORT FROM NOVEMBER 19 MEETING:

The proposed two boat slip docks are requested to serve 30 new townhomes (known as Mondrian Townhomes on Lake Killarney) on this property fronting on Lake Killarney which has an overall size of over three acres with over 300 feet of lake and canal frontage. Typically, only one boathouse or boat dock is permitted for a residential lakefront property. Currently no dock exists on this site.

The property is adjacent to an office zoned property on the west side, and on the east side is a canal leading to a small parcel owned by the City. The next property continues with office zoned properties to the east along Lee Road to Executive Drive.

The proposed dock on the east side has 5 boat slips and projects 40 feet into the Lake, and the west dock has 6 boat slips and projects out 41 feet. Lake Killarney has very shallow shorelines and our Zoning Code was amended to those allow those docks to extend out to 50 feet. In addition, the proposed walkways and deck area abutting the lake are within the allowable 10% coverage limitation permitted for accessory deck/walkway structures on lakefront properties.

If a variance was granted by this Board, the request would also go before the Lakes Board at their December meeting and issues relating to shoreline vegetation and obstruction of boat traffic would be addressed.

No letters from abutting property owners were provided. The property was posted with the required notice of hearing and notices were mailed to property owners within 200 feet.

Mr. Wiggins thereafter reviewed the UPDATED STAFF REPORT FOR this DECEMBER 17 MEETING:

At last month's meeting, after hearing from the applicant and after hearing comments by lakefront homeowners who live near these proposed boat docks expressing concerns that one of these two

proposed docks will interfere with boat traffic at this choke point leading to a canal from Lake Killarney, the Board tabled this request so that the applicant could take this request before the Lakes and Waterways Board to get their input on the proximity of these docks on the lake.

During the process of applying for approval by the Lakes Board at their December 10 meeting, the Public Works staff recalled that a substantially similar request for these boat slips had already been approved in April, 2016. The difference with this new request is that the number of boat slips have been reduced from 10 to 9. Information on the previous approval was distributed to the Board and discussed at the meeting.

Although the Lake Board's initial response was to let stand the previous approval, one Board member felt it necessary to review this new request which has a slight modification in the boat dock plan which reduces the number of boat slips from 10 to 9 even though this is a lesser request. The Board, therefore, proceeded with hearing the request, including hearing from the applicant and from 6 residents. After extensive discussion over the concern about the location of the 5 slip boat dock on the west side shoreline of the property and discussion on whether this would pose a safety issue to boat traffic near this dock, the Board tabled this request, taking no action on this matter. However, three of the four Board members present were leaning toward approving the request.

Having reviewed this matter with our City Attorney, he expressed that based on the prior Lakes Board approval and the fact that this request is virtually the same request less one boat slip, if the variance is granted by the Board of Adjustment, then it will not be necessary to go back before the Lakes Board.

The Board of Adjustments member packets include a memorandum from Tim Egan, former Lakes Manager, who was involved in the original approval of this request by the Lakes Board. He provided guidance on approving excessive dock area, dock location and navigation that may need to be considered if several residents come to the meeting expressing opposition to this request.

Additional information that may prove helpful is as follows: Mondrian Townhome Property: 3.1 Acres (135,707 sf) of R-2 Zoned land In R-2 Zoning 22 homes can be developed. However, the applicant chose go thru a Conditional Use zoning process which allows a greater density for cluster townhomes resulting in approving 30 units. Developing single family homes would allow 13 lakefront & canal front homes with ability to build a boathouse on each waterfront property. Lakefront shoreline distance: 452' allowing 9 lakefront homes at 50' lot width each. Canal front shoreline distance: 223' allowing 4 canal front homes at 50' lot width each. The area of permitted boathouses 9 lakefront homes would be 9 X 600: 5400 sf. The area of permitted boathouses 4 canal front homes would be 4 X 450: 1800 sf. Adding these two results is 7200 sf of boathouses for this R-2 zoned property. Based what is shown here, if the property was developed with homes in this R-2 Zoning District then there could be (7200 - 1549 sf) or 5651 sf more boathouse/dock areas allowed without a variance and also permitted to extend 50 feet into the lake.

There are two homes in this cove area of Lake Killarney that extend out to distances of 41' (575 Lakefront Blvd) and 46' (585 Lakefront Blvd). They are located in the southeast section of the cove next to each other near the entrance into the large section of Lake Killarney.

Mr. Wiggins said the applicant will need to respond to the Board's question regarding the method of boat launching. He confirmed other similar boat slips exist on Winter Parks Lakes serving multifamily residences, such as the ones on Lake Virginia that came before this Board and the boat slips on the east side of Lake Killarney.

The applicant, Sheila Cichra spoke stating that the code is overly restrictive on multifamily development and the request is minimal. She said the original design was changed to satisfy a multitude of authorities including the State of Florida, resulting in the current design with separated slips. The number of slips was reduced to satisfy government requirements. Ms. Cichra stated none of the slips will be covered and the proposed guards will have open cable rails. She has not determined how the boats will be delivered. When asked about lighting, Ms. Cichra stated that DEP does not allow lighting but reflectors may be added.

Jack Weisser of 4417 W Clear Ave in Tampa, with the developer BC Killarney LLC, responded to a board question stating the slips will be sold to townhome owners within the development and the boats can stay on the water.

Citizens who spoke in opposition of the request included the following: Gray Hencken of 2443 Lotafun Ave, David Robold of 612 Country Club Dr, Douglass White of 595 Lake Front Blvd, Dawn Bell of 2024 Lake Drive, John Carollo, of 2008 Lake Drive and Scott Jones of 2016 Lake Drive. Each has a mailing address of Winter Park.

Opponents stated their major concern was that the projections into the lake would reduce navigability of this portion of Lake Killarney which is a cove much smaller than the rest of the lake and would lessen development potential on the opposite side of the lake. It was argued that all 9 slips are not needed, especially at this juncture of the development and vegetation will be disturbed. It was mentioned that variances should not be granted for financial gain and strict compliance with established codes should be enforced.

Members of the public who spoke in favor of the request included the following: Jack Weisser of 4417 W Clear Ave Tampa, with BC Killarney LLC, Carl Lindell with Lindell Investments of 4320 W Kennedy Boulevard, Jorge Borrelli with Borrelli & Partners Inc of 3838 Neptune Drive, John Mcdade of 450 Beloit Ave Winter Park, Larry & Giovanni Jordan with Jordan Construction & Development at 1507 Bluewater Run Chuluota FL and David Rooney.

Proponents offered a wake zone as a solution regarding fears of reduced navigability within the 160 foot minimum clearance between shore lines. Redesigning the slips to the east would take significantly more time in a tedious and layered approval process in going back to the State. Proponents stated the slips will not be leased, but sold to owners within the development.

In response to a Board question, Mr. Wiggins confirmed that the Lakes board approved of the request a few years earlier and that the City Commission could have granted their request when it was approved for a conditional use permit.

In closed session Board member Charles Steinberg felt that comparing this proposal to what would be allowed if the plat was zoned as single family lots, in lieu of the townhome development it was rezoned for, is not the appropriate comparison. He stated docks should not be sold and deeded individually and should be addressed by the city code. But many Board members sympathized with the developers struggle to satisfy their future residents. Some have lived on the water and felt the navigation would be fine.

## Findings

The board considered the citizens who spoke before and against the request. They also considered Winter Park's planning and zoning and State Department of Environmental Protection's approvals. They ruled the hardship is that Winter Park's city code is overly restrictive to multi-family developments such as this one.

## Action

Based on these findings, Phil Kean made a motion, seconded by Michael Clary, to approve the request. The requested variance was approved by a vote of 5-2 with Charles Steinberg and Ann Higbie voting in opposition.

## New business

1. Request of Benjamin McCoy for a variance to allow a parking pad or driveway encroachment of 2 feet into the side setback, in lieu of the required setback of 2 feet, or a front setback encroachment of 18 feet, to provide a replacement required parking space for the space loss by enclosing the carport.

Located at 1830 Bryan Ave, Zoned: R-1A

George Wiggins, Director of Building, stated the applicant requested to table his request until the January 21<sup>st</sup>, 2020 meeting.

## Action

Based on these findings, Michael Clary made a motion, seconded by Charles Steinberg, to table the request until the January 21, 2020 meeting. The request was approved by a vote of 7-0.

2. Request of Sheila Cichra, on behalf of Charles Clayton, to allow the construction of a boathouse extending out 34 feet into Lake Maitland, in lieu of the maximum allowed distance of 30 feet  
Located at 2072 Venetian Way, Zoned: R-1AAA

George Wiggins Director of Building, gave the following summary:

The existing boathouse requires replacement due to deterioration and the water depth at this location of Lake Maitland necessitates the extra 4 feet of length to allow the functional use of a boat lift after entering the boathouse due to shall depth.

All other parameters with regard to allowable area, height above the ordinary high water line to the deck and allowable height from the deck to the top of the roof is being met with the proposed design.

The applicant will be providing details on water depth measurement prior to or at the meeting to verify the need to extend the rebuilt boathouse the requested 4 feet in length.

In addition, the applicant has include a necessary letter of approval from the adjacent property owner to allow a continuation of the 5 foot side setback in lieu of having to move the new boathouse to a 10 foot side setback. The adjacent neighbor's boathouse appears to also be located at a 5 foot side setback from the common lot line between these properties. The Planning and Zoning Board, the Lakes Board and staff have encourage locating boathouses adjacent to the common lot line on lakefront properties to enhance views to the lake.

This boathouse construction request came before the Lakes Board on December 11 and was approved pending granting a variance by the Board of Adjustments. With regard to the variance requested, the Lakes Division staff has also looked this request and does not have any objections to the variance requested.

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

## Findings

The board considered the fact that this replacement of an existing boathouse will not be longer than the adjacent boathouse. Placing the slip in the same location, at the proposed length, will allow for a useable approach year round, as enjoyed by other lakefront property owners.

## Action

Based on these findings, Phil Kean made a motion, seconded by Charles Steinberg, to approve the request. The requested variance was approved by a vote of 7-0

The meeting was adjourned at 6:12 pm.

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Theresa Dunkle, Recording Clerk