



Board of Adjustments Minutes

February 18, 2020 at 5:00 p.m.

City Hall | Commission Chambers
401 S. Park Ave. | Winter Park, Florida

Present

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

Meeting called to order

Approval of minutes

Motion made by Tom Sacha to approve the January 21, 2020 minutes. Ann Higbie seconded the motion. The minutes received approval 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 made.

Old business

1. Request of Kelly Carr on behalf of Christine Armstrong, for a variance to allow the construction of a two story building addition located 7.9 feet from the east side lot line in lieu of the required side setbacks of 9 feet to the first floor and 12 feet to the second floor.

Located at 2532 Fifeshire Drive, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

This item was tabled last month, to allow the applicant time to provide a study that included the option of a one-story addition.

First, Mr. Wiggins recaptured the January meeting:

He reminded the board that in order to increase living area on this home and maintain the current side and rear wall line and setback, the applicant proposed to enlarge the first floor bonus room and add a second floor bonus room at the same side setback.

The designer who prepared the plans pointed out that taking this approach for expanding the living area results in balancing out the architecture of the building, since the home also has a two story wall on the west side of the home which has a similar side setback as this request.

This home was built in 1961. At that point in time, the required side setback for a two-story home was five feet, or 10% of the lot width, whichever was greater. The lot width is 70 feet, which allowed a side setback of 7 feet to both floors. The existing west side two story wall appears to have a setback of 7.8 feet to both floors which was compliant with the Code at that time, and the east side one story portion with a side setback of 7.9 feet was also compliant.

With regard to impervious coverage (50%) based on the lot size, the proposed addition would be within the allowable coverage at 3,606 square feet. The total proposed new area of the home at 2,699 square feet results in a floor area ratio of 35%, which is under the allowable area of 2,924 square feet.

The applicant provided five letters of non-objection from the adjacent property owner and other nearby property owners.

Second, Mr. Wiggins summarized the changes for this meeting:

The applicant's designer has provided the requested one story addition study, along with plans, and has listed several concerns in utilizing this option including also needing a variance for the additional wall length and substantially increasing the impervious coverage on this property. The one-story option will create a sidewall that is 47 feet in length without articulation at the nonconforming side setback of 7.9 feet.

The applicant provided twenty letters of support for the original variance request from nearby property owners.

The applicant and designer, Kelly Carr, who resides at 2929 Alamo Dr, explained the 2nd floor addition is preferable to the owner. With small children, the owner hopes to situate the Master Bedroom on the second floor, closer to her children's bedrooms. Ms. Carr noted the 2-story design is more balanced. In addition, the owner does not want to reduce the rear yard area, which is the ideal size for play. Ms. Carr noted the 1-story design requires variance approval as well. It creates a very long wall, is without articulation, and at the same proposed setback as the 2-story proposal.

The owner, Christine Armstrong of 2532 Fireshire Drive, read a prepared letter. She noted her emotional attachment to the home and her desire to modify the home to meet her family's needs, instead of moving. Ms. Armstrong identified her community involvement as a Girl Scout leader and stated her troop enjoys the rear yard area as is. Her current home provides close access to assist her aging mom. Her neighbors and the City staff support her proposed addition.

The Board asked the owner which plan the neighbors approved and is she oppose to the single story option. Ms. Armstrong responded that the neighbors approved of the two-story addition and she is against the single story option. She noted the single story addition affects more of the privacy of the adjacent neighbor, and reduces the size of the back yard.

In closed session, the board discussed the owner's investment in the neighborhood and strong support received from the neighbors. Mr. Clary felt the one-story option was less intrusive and adding 2-window could break up the long plane. Patrice Wenz commented that perhaps minimum setbacks change in this 'annexed' neighborhood.

Findings

Some board members felt the hardship was the annexation into the City, resulted in more stringent setback requirements. Others stressed that financial hardships are not applicable. Most felt they could support the one-story option.

Action

Charles Steinberg made a motion, seconded by Steven Heller, to approve the request. The request for a two-story addition was denied by a vote of 3-4. Ann Higbie, Aimee Hitchner, Patrice Wenz and Michael Clary voted in opposition. Thereafter, Michael Clary made a motion to approve the single story addition option, located 7.9 feet from the east line and without articulation, with the condition of the installation of two windows in the east wall of the addition. Ann Higbie seconded the motion. Approval of the single story request passed by a vote of 7-0.

2. 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 for Winter Park noted the applicants' 2015-variance application is with the Board members current reference materials. He distributed copies of applicable Winter Park Land Development Code Sections 58-86, 58-71 and 58-92 and read code section 58-86.

Thereafter, Mr. Wiggins gave the following summary:

The applicant converted a carport into living space for his house without a building permit or construction inspections. He is currently in violation of the City's off-street parking ordinance by not having a required parking space behind the required front setback of his house.

He is requesting a variance that would have the same effect as one he requested on December 15, 2015, disapproved of by the Board of Adjustment. The current request would: (1) allow a parking pad or driveway encroachment of 2 feet into the side setback in lieu of the required setback of 2 feet or, alternatively, (2) permit a reduced required front setback to 18 feet, which would leave sufficient space for a car to park in the front driveway. The latter option, if granted, would theoretically replace the required parking space lost when he removed the carport and built enclosed living area.

In 2015, the City informed the applicant that converting his carport into living space would violate the City's off-street parking ordinance, which requires two parking spaces behind the required front yard setback of a dwelling. In situations where only one parking space is provided in a carport or garage, which is the case here, we considered this as having only one space grandfathered in.

Having been informed of these Zoning Code parking requirements, the applicant nonetheless began converting the carport into living space for his house without obtaining a building permit. The City issued a "Stop Work" Order and Notice of Code Violation.

The applicant then said he wanted to pursue a zoning variance before the Board of Adjustment. The Code Compliance Board voted to table the matter while he pursued the variance.

The applicant applied for a variance to allow the enclosure of the existing carport and the removal of a required parking space for the dwelling, which was heard on December 15, 2015. In that hearing, the applicant stated he needed the variance so that he would have a "quiet workspace," which he described as an accommodation under the Americans with Disabilities Act for his ADHD.

The minutes further state, "An addition to the rear of the home was suggested as a viable solution to providing a private workspace." According to the minutes, he claimed, "an addition at another location would prove too costly."

The Board of Adjustment's vice chair stated he was "not aware of a disability exemption for building without a permit."

The Board unanimously found that the requisite hardship for a zoning variance did not exist. The minutes state, "The Board did not find a hardship without alternatives, stating privacy could be provided within the existing home or in the rear yard." Construction of an addition to the house in the rear yard, properly permitted, would avoid violating the City's off-street parking ordinance. The Board of Adjustment gave the applicant 30 days in which to return the construction "to its original condition."

The applicant never appealed the Board of Adjustment's decision.

On April 12, 2016, the City received plans and a Building Permit Application from applicant with his signature to "Demo front block on carport and install new garage door." He signed an "Owner Building Affidavit" stating that he would supervise construction of the garage.

On May 3, 2016, the City issued a permit to build the garage with a functioning garage door.

After receiving the permit, the City received no request from the applicant for an inspection of work approved under the permit.

After several months, the City discovered that the applicant proceeded with work without any inspections and had completed conversion of the former carport area into enclosed living space. The approved building plans only included converting the former carport into a garage with a garage

door. The applicant ignored the Building Department's request to remove the non-permitted work, reinstate the then-expired permit, and complete the work under the approved plans for a garage.

For a second time, the matter was turned over to code compliance, which issued a Notice of Violation to the applicant for proceeding with unauthorized construction in violation of the approved plans. After failing to take corrective action, the applicant was summoned to appear before the Code Compliance Board, but he did not appear. At the hearing, on February 2, 2017, the Board found violations of:

1. City Code sections 22-27 and 22-28, which incorporate Florida Building Code sections 110.1 (failing to obtain a permit and thereby precluding "inspection by the building official") and 105.7 (commencing work before issuance of permits, which "must be kept at the work site until completion"); and
2. City Code sections 58-86(b)(20) & (c)(2)(B), which require two off-street parking spaces "per dwelling unit" but which "shall not be located within any required front yard...."

The Code Compliance Board voted unanimously to fine the applicant up to \$250.00 per day. The applicant received Findings of Fact, Conclusions of Law, and Order of Affirmation signed on February 6, 2017, ordering applicant to contact the building department to reinstate the permit and complete work under the approved plans, which must include providing inspection and certification of all work done to verify code compliance, removal of all work not permitted in plans where the carport opening has been enclosed and meet the building inspector at the site to verify compliance with building and zoning code provisions for all work.

On March 2, 2017, the applicant appealed the Code Compliance Board Order to Orange County Circuit Court. The applicant asked the Circuit Court to "quash the [February 2] Order and direct the City to allow a variance in compliance with the ADA [Americans with Disabilities Act] and Section 504."

The City responded that the applicant had failed to preserve his arguments before the Code Compliance Board by not appearing, that the Code Compliance Board lacked statutory authority to grant zoning variances, and that he was attempting to re-litigate a matter previously decided by the Board of Adjustments in 2015. A legal principle called collateral estoppel bars the same parties from re-litigating issues previously adjudicated, including those before quasi-judicial entities like the Board of Adjustment.

After two and half years, on August 13, 2019, the Circuit Court affirmed the Code Compliance Board's February 6, 2017 Order without comment.

The City then brought this matter back to our Code Board, which issued an order on November 7, 2019, upholding a continuing fine of \$100.00 a day until the property is brought into compliance.

On November 5, 2019, the applicant submitted the application for the variance before you, which was tabled at the December 17, 2019 at the request of the applicant, and then tabled again at the January 21, 2020 meeting due to the failure of the applicant to properly post his property for 15 days prior to the hearing.

In the Building Department's view, off-street parking requirements are a fundamental aspect of the Winter Park zoning code. The code provisions at issue, which establish and require off-street parking behind the required front setback, promote aesthetics in the City's residential neighborhoods by not forcing all vehicles to be parking in front of the residence or in the street. Our code reflects a legislative prerogative that parked motor vehicles should not have an overbearing presence on residential streets and front yards. At the 2015 hearing before the Board of Adjustment, the Building Department stated that removing the covered parking and converting this space into living area "forced more parking to occur in front of the home or out into the street, and results in the devaluation of the property [values]."

The Building Department is not aware of a right to an exemption under the Americans with Disabilities Act from zoning rules that create general inconvenience or expense.

Further, failing to obtain building inspections and constructing without building permits poses a threat to public health and safety.

The two options under consideration present the following challenges:

1. Allow a parking pad or driveway encroachment of 2 feet into the side setback in lieu of the required setback of 2 feet. The setback between the east sidewall of the former carport has a setback of only 7.7 feet. The required minimum parking space size is 9' by 18'. The required setback to a driveway is 2' from the side lot line. A compliant parking space cannot fit into this area, and creating a driveway to the rear yard will be very difficult. In addition, an existing air conditioning pad is shown on the survey as being located within this same side yard location. In either case, none of these options will likely ever be realistically used.
2. Permit a reduced required front setback to 18 feet. The code required front setback is located at the front wall of the home at 30 feet. Moving the required front setback line 18 feet closer to the street would be an extreme setback encroachment. In addition, it would set a pattern for other applicants to try obtaining a similar front setback variance to enclosing garages or carports for additional living space.

The Building Official stated he received, on Friday, February 14 only two business days before this meeting, an alternate site plan, showing proposed parking on the west side of the lot. Mr. Wiggins proceeded to display the alternate site plan noting that the gravel driveway is not allowed in the City's Right of Way. Per Winter Park's Land Development Code Section 58-92, Mr. Wiggins stated the board could deny rehearing a case, even if it is over three years between requests and that he could not find a hardship.

The City of Winter Park's Assistant Attorney, Rick S. Geller with Fishback Dominic spoke. He said he is present to preserve the City's argument, in case of another appeal. He stated there are two applicable principles at play; 'res judicata' and 'collateral estoppel', both doctrines prevents re-litigating the same issue.

Mr. Geller noted Mr. McCoy's 2015 variance application is on record. He further clarified for the Board that subject to 42 U.S. Code § 12132 Mr. McCoy, as a qualified individual with a disability, should not be denied equivalent facilitation if the accommodation is found reasonable and does not present a fundamental alteration to the City's existing zoning scheme.

A fundamental alteration to the zoning code could include forcing vehicles to park in front of their residence, limiting drive visibility and setting a precedence. Approved variances should be in harmony with their neighborhood and meet the intent of the code. In addition, a required zoning variance should not be self-inflicted. Enclosing an existing carport without a building permit is self-inflicted harm.

Finding may include; 'res judicata' and 'collateral estoppel', no material change, incompatible with intent of code and applicant created situation.

The City Attorney responded to Board member Ms. Wenz, noting the City's Code Enforcement Board handles the fines associated with the work done without permits. This board determines if the reduced minimum setback requests are within the intent of the code. In response to Board member Mr. Steinberg, Mr. Geller stated Mr. McCoy's request would not have been self-inflicted if he had come before the Board of Adjustments prior to enclosing his carport without permits.

The attorney for the applicant, Suzanne Paulus Miller of 1201 S. Orlando Ave, Suite 430 Winter Park, FL, stated Mr. McCoy's hardship is that he working towards a Bachelor's degree in Engineering at the University of Central Florida. She noted Mr. McCoy's home has been in his wife's family for years and is approximately 1,500 square feet. Mr. McCoy has two children ages 5 and 7 years and he needs a place to study.

Ms. Miller stated that under ADA Title II, Mr. McCoy qualifies to receive reasonable accommodations. She requested the Board approve parking in the front of the home or allow parking in the rear of the home. She believes the 9x18 foot parking space shown behind the front the home in the latest option will satisfy the code intent.

Board member Patrice Wenz asked Ms. Miller why her client built without a permit. Ms. Miller asked that this board allow the City's Code Enforcement Board to handle that matter. She hopes this board will consider allowing for a reasonable accommodation.

Winter Park's Assistant Attorney, Rick S. Geller, clarified for Board member Patrice Wenz that the Board of Adjustments can in fact address ADA regulations in regards to approving reasonable accommodations. When Mr. Clary asked if ADA could be considered a hardship, Mr. Steinberg responded that ADA is layer of what is being considered.

The attorney for the applicant, Suzanne Paulus Miller stated the applicant did not have legal representation when his case was heard in 2015. She stated if the purpose of the zoning code is to maintain properties values, the value of the property has not gone down since her client enclosed his carport. Ms. Miller said her client never used his carport for parking. Mr. McCoy confirmed this and said most of his neighbors park in their driveways.

Board member Ann Higbie recalled that the 2015 case was denied because there is room for a small addition in the rear of the home. Ms. Miller said the minutes note one Board member said that ADA was not applicable. Ms. Miller stated there are three options: finding of fact, reasonable accommodation, or why unreasonable. Board member Charles Steinberg replied that Mr. McCoy's attorney's requests are difficult to absorb and questioned if this should have been done before the appeals process. Winter Park's attorney, Mr. Geller responded that the time to appeal expired on the first request.

Mr. Geller clarified that under Winter Park's land development code, section 58-92, the board needs to consider reasonable accommodations. The request could be considered unreasonable if the board determines it is not in harmony, would be injurious, or a fundamental change in the zoning code. Board member Mike Clary noted that in 2015 it was determined that the accommodation could be provided elsewhere on the lot. Ms. Miller responded that Mr. McCoy's son was diagnosed with the same disability.

The Building Official noted the applicant has not picked up his recent requested application for a permit for a garage door installation. Ms. Miller responded that requested scope of work, to install a garage door, does not satisfy Mr. McCoys' ADA request.

One board member pointed out that the email received, in support of the request, did not note approval of the proposed parking spot in the rear.

In closed session, the Board members had issues with the applicant not obtaining a building permit for the work done. They noted the request interferes with the zoning code, the issue was already litigated, it is not reasonable because it interferes with the fundamental scheme, and it is self-inflicted.

Findings

The board members determined the applicants request was not reasonable for the following reasons; the same issues were already decided on, the proposed changes are unreasonable because the long driveway would be injurious and the applicant created the condition.

Action

Based on these findings, Aimee Hitchner made a motion, seconded by Michael Clary to approve the request. The requested variance was denied by a vote of 0-7.

New business

1. Request of Hiren Patel for a variance to allow the construction of building additions located with six-inch setbacks on the easterly and westerly sides of the property.

Located at 963 Orange Ave, Zoned: C-3

George Wiggins Director of Building gave the following summary:

This former office building is being converted into a cigar bar with space for 24 seats at tables and a bar, which is permitted under the general commercial (C-3) zoning district. However, alcohol sales of beer and wine is limited to no more than 25% of the food and retail sales for this use in order to qualify for a beer and wine license.

One of the proposed additions will occupy space currently used for an entry drive to access parking at the rear of the building. However, this property has an existing entry driveway into the parking lot

from Denning Drive, which has been in use for many years. Therefore, the front entry drive is not required. The rear parking lot provides eight parking spaces, which is one more than the minimum required for the proposed 24 seats in this type of business. For a food related establishment on Orange Avenue, the parking requirement is one space for each four seats. The plans show twenty-four seats, which include table and bar seating areas.

The area of the lot is 8,183 square feet with 6,321 square feet of proposed impervious coverage, which is 78% of the lot area. Commercial properties allow up to 85% of impervious coverage.

This proposed building with additions will have a total area of 2,211 square feet with spaces providing storage, a seating and bar area, a humidor and restroom space.

The proposed sidewalls are void of any windows or openings because the building's close proximity to the property line requires providing a fire rated wall with no openings under the Florida Building Code. If the west sidewall is set back 5 feet, then a limited number of windows or other openings is allowable. The original plan received from the applicant showed openings along this side but deleted to comply with the Florida Building Code.

We did not receive any letters of objection.

Jeff Gaither, the designer with Studio 407 at 7680 Universal Blvd, Orlando, noted other nearby buildings exist with the same parameters. He stated the proposed design provides an accessible entry at both the front and rear. In response to Board questions, Mr. Gaither replied that he is open to adding visual interest to the left sidewall.

Findings

The Board members found the hardship was the irregular lot shape and impracticability of vehicle entry off Orange Avenue. These constraints limit the usable area available for a minimal addition that will increase accessible entry into the building.

Action

Based on these findings, Michael Clary made a motion, seconded by Tom Sacha, to approve the request with the addition of decorative banding on the southwest wall continuing around the front and back. Approval of the request, with the condition, passed by a vote of 7-0.

2. Request of Laura Marsh for a variance to allow the construction of a 6-foot (opaque) vinyl fencing to the water's edge of Lake Killarney in lieu of the provision of substantially open fencing within 50 feet of the lake.

Located at 261 Rippling Lane, Zoned: R-1A

George Wiggins Director of Building gave the following summary:

Along the east-side lot line of this lakefront property, there is an existing 6-foot high vinyl fence approximately 50 feet back from the water's edge of Lake Killarney. The remainder of the existing fencing along this lot line consists of green chain link and open wrought iron fencing. The applicant wishes to provide consistent vinyl fencing along this side lot line instead of having three different types of fencing. Currently, this proposed location of new fencing already has a visual barrier consisting of dense landscaping.

The applicant points out that the adjacent home on the east side is built as close as 20 feet to the lakes edge, is elevated substantially and therefore the code reason to require open fencing near the shoreline does not exist in this situation. The adjacent home was built in 1978, prior to annexation into the city, when lakefront setbacks were allowed to be less than 50 feet.

No letters of objection received.

The applicant, Laura Marsh, stated she has resided at 261 Rippling Lane for the past twenty-two years. She hopes to replace the existing 5-foot high chain-link fence that runs from the front of the home to the lake. Ms. Marsh stated the 6-foot high vinyl fence proposed would not compromise that neighbor's views; the neighbor's home is twenty feet from the shoreline, is elevated and their windows are above six feet, above the top of the fence line. Duke Marsh stated wrought iron fencing would remain at the seawall.

In closed session Patrice Wenz noted the proposed vinyl fence material is unattractive.

Findings

The Board could not find a hardship.

Action

Based on these findings, Charles Steinberg made a motion, seconded by Steven Heller to approve the request. The requested variance was denied by a vote of 1-6. Charles Steinberg was the only board member in support of the request.

3. Request of Sheila Cichra, on behalf of Dean Curtis, for a variance to allow the construction of a new roof on an existing boathouse with a deck to top of roof height of 15.75 feet, in lieu of the maximum permitted height of 11 feet and with the existing deck height at one foot above the Ordinary High Water Line.

Located at 975 Greentree Drive, Zoned: R-1AAA

George Wiggins, Director of Building, confirmed that prior to the meeting we received an email from the applicant asking us to table her variance request.

No one from the public spoke concerning this request.

Action

Charles Steinberg made a motion, seconded by Tom Sacha, to table the request for up to 90 days. The request to table passed by a vote of 7-0

4. Request of Winter Park Real Estate for a reinstatement of variances granted September 15, 2015, to allow the construction of a two-story office building to be located 5 feet from the front lot line and 2 feet from the side lot line, in lieu of the required setbacks of 10 feet and 5 feet respectively. In addition, to allow five parking spaces that back into a public right of way, and to allow a parking lot landscape buffer that varies from 0 feet to 8 feet in lieu of 8 feet.

Located at 2161 N. Park Avenue, Zoned: O-1

George Wiggins Director of Building gave the following summary:

Although this request came before the Board in 2015, no major Zoning Code changes have taken place, which will further affect this development or impose any additional or different criteria on this office-zoned property.

The minutes of the September 15, 2015 Board meeting were included for review, along with plans and a summary sheet by the project architect, Randall Slocum. This information recounted the variances, special conditions and circumstances and rights or privileges commonly enjoyed by the adjoining properties as they relate to this request.

No additional letters received concerning this reinstatement request.

Findings

The hardships established previously were determined valid, since no major Zoning Code changes took place since the initial approval. The established hardships are the difficulty of designing a functional office building on this irregular shaped lot and being adjacent to the railroad.

Action

Based on these findings, Charles Steinberg made a motion, seconded by Tom Sacha to approve the reinstatement of the variance for one year. The requested variance was approved by a vote of 6-0. Michael Clary recused himself.

5. Request of Hal Kantor, on behalf of Jeanne Atkinson, for a reinstatement of a variance granted January 15, 2019. The request is to allow the construction of a room addition and a garage conversion into a cabana with a minor addition on a property, which currently has a nonconforming side setback of 9.9 feet, in lieu of the required setback of 13 feet to the south-side lot line.

Located at 900 N. Park Avenue, Zoned: R-1AA

George Wiggins Director of Building gave the following summary:

The applicant is requesting a reinstatement of a variance granted January 15, 2019, which expired after one year. The previously granted request allowed the construction of a room addition and a garage conversion into a cabana with a minor addition, whereas, currently a nonconforming side setback of 9.9 feet exists, and the required setback is 13 feet to the south-side lot line.

The minutes of that meeting were included for the Board's review. No Zoning Code changes occurred in the last year that would affect the request. Typically, in cases such as this, the Board has granted a reinstatement for one year.

No opposition or letters received for this request.

Findings

The hardships established previously were determined valid, since no major Zoning Code changes took place since the initial approval. The Board found this to be a modest request given the small front addition will be within an existing walled area and the rear addition will be under existing roofing.

Action

Based on these findings, Tom Sacha made a motion, seconded by Aimee Hitchner to approve the reinstatement of the variance for one year. The requested variance was approved by a vote of 6-0. Patrice Wenz recused herself.

The meeting adjourned at 7:25 pm.

Theresa Dunkle, Recording Clerk