



Board of Adjustments Regular Meeting Minutes

May 17, 2022 at 5:00 p.m.

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

Present

Present In-Person: Robert Trompke, Michael Clary, Cathy Sawruk, Ann Higbie, Charles Steinberg, Tom Sims, and Jason Johnson. Also Present: City Attorney J. Giffin Chumley. Staff: Director of Planning and Transportation Jeff Briggs, Assistant Director of Planning and Transportation Allison McGillis, Planner I Nicholas Lewis, Planning Technician Aaron Hull, Building and Permitting Manager Renata Minoga, and Recording Secretary Mary Bush.

(1) Call to Order

Chairman Robert Trompke called the meeting to order at 4:59 p.m.

(2) Consent Agenda

Motion made by Cathy Sawruk, seconded by Michael Clary to approve the April 19, 2022 meeting minutes.

Motion carried unanimously with a 6-0 vote. (Charles Steinberg was not present for approval of the minutes.)

Chairman Trompke explained the rules of procedure for variance cases and opened the floor for any disclosures, public comments, or questions.

Chairman Trompke disclosed that he had spoken to Kristopher Kest, the applicant for request #BOA-2022-0006, about three weeks prior to the meeting.

(3) Staff Updates

Mr. Lewis noted to the Board that the City's former Senior Planner, Allison McGillis has recently come back as the Assistant Director of the Planning and Transportation Department and will be a great asset to both the department and Board.

Mr. Lewis also noted to the Board that on June 23, 2022 the City will have a Board Appreciation Night and the Board should have already received an invitation.

(4) Public Comments (for items not on Agenda)

No one from the public wished to speak. The public hearing was closed.

(5) Non-Action Items

No non-action items.

(6) Action Items

No action items.

(6) Public Hearings

- BOA-2022-0005. Request of Davila Custom Homes for variance approval from Section 58-71(i)(2)(a) to allow the existing nonconforming accessory building already converted to living quarters to be extended to encompass the existing front porch into habitable living space with a side and rear setback of 5-feet in lieu of the required rear setback of 25-feet and side setback of 14-feet.

Mr. Lewis provided the Board a brief summary of the request. He presented to the Board an area map and proposed site plan of the property. He noted that the lot is oddly large and deep and is the only one that faces the front on Sharon Road. He also noted that there is a home currently being built on the lot, which the applicant had previously received an approved construction permit for, with an existing accessory structure remaining in the back of the lot. Mr. Lewis then reviewed a survey of the lot, noting the accessory structure's current setbacks, existing living space, and covered enclosed patio. He explained that the applicant wanted to cover the screened enclosure of the patio with brick walls to turn it into gross square footage of living space. He added that the structure was built in the 1960's under Orange County codes well before it was annexed into the City of Winter Park. Mr. Lewis then elaborated on the proposed interior modifications and elevations of the accessory structure and the site plan of the home currently being constructed. He also spoke about the breakdown of the FAR and lot area for the project, pointing out that the plans are well within the setback standards for the project's increased FAR. He went on to briefly review the applicant's application with the Board since it had not been included in the Board packet for the meeting.

Mr. Lewis then reviewed the variance approval criteria as it related to the request, noting that the request was not exacerbating either of the nonconforming use or setbacks, and granting the request would not confer on to the applicant any rights they did not already hold as well as any rights to utilize the structure as a short-term or long-term rental. Mr. Lewis advised the Board that eight neighbor letters in opposition of the request had been received and then he briefly discussed and addressed the main concerns presented in the letters.

Staff recommendation was for approval.

The Board inquired about the following:

- why the City's standard for not allowing kitchens in adjacent structures was not applied at some point during the annexation of the property or its resale,
- being provided a map showing the neighboring properties for perspective,
- whether or not the City allows concrete to be installed up to the property line as shown on the project's site plan,
- the rationale behind staff's literal interpretation of the provisions of the zoning code for the request,
- and clarification on the City's analysis of the Land Development Code Section 58-64(c)(1) regarding altering a nonconforming structure.

The applicant, Thiago Davila of 2211 West Washington Street, Orlando, FL 32805 addressed the Board. Mr. Davila spoke about the project, noting that there was no intention of his client, for whom the project was being built for, to rent out the accessory structure and that the sole purpose to renovate it was to create a gym facing the pool.

Mr. Johnson asked the applicant to explain the hardship of the request to which the applicant was not able to respond with a specific hardship.

The Board heard public comment from the following citizen:

Chris Peterson of 2150 Via Tuscany, Winter Park, FL 32789 addressed the Board. Mr. Peterson spoke in opposition to the request. He noted that he owned the lot at 2148 Via Tuscany, which backs up to the applicant's lot. He also expressed that he felt the structure on the applicant's lot does not conform to what is currently allowed in the City and that there is no hardship to the applicant. He asked the Board to deny the request.

Vice-Chair Clary inquired with Mr. Peterson as to why he felt in opposition if there is no impact to the neighboring properties due to the request. Mr. Peterson expressed that he does not see a hardship for the applicant and there are rules, regulations, and zoning guidelines regarding hardships that currently exist which should be followed.

No one else from the public wished to speak. The public hearing was closed.

The Board briefly shared their thoughts on the request. Several Board members were opposed to the request. They expressed that they did not see any hardship and that the rules and regulations should apply regardless of whether or not the modifications can be seen by the neighbors.

One Board member was in favor of the request and expressed that there seemed to be other reasons for the opposition from the neighbors than what had been expressed in the letters, since the request was not changing any setbacks, use, or footprint and any improvement would be facing toward the house and not visible to any neighbor.

Motion made by Ann Higbie, seconded by Cathy Sawruk, for variance approval from Section 58-71(i)(2)(a) to allow the existing nonconforming accessory building already converted to living quarters to be extended to encompass the existing front porch into habitable living space with a side and rear setback of 5-feet in lieu of the required rear setback of 25-feet and side setback of 14-feet.

Motion denied with a 1-6 vote. (In Favor: Michael Clary. Opposed: Robert Trompke, Cathy Sawruk, Ann Higbie, Tom Sims, Charles Steinberg, and Jason Johnson.)

- BOA-2022-0006. Request of the homeowners Kristopher and Brooke Kest for variance approval from Section 58-71(j)(1) to allow an interior side setback of 8.6 feet to the swimming pool in lieu of the required interior side setback of 10 feet for the construction of the pool for their home at 2101 Banchory Road, zoned R-1A.

Mr. Lewis provided the Board a brief summary of the request. He presented to the Board an area map and proposed site plan of the property. He also presented ten neighbor letters that were received in approval of the request. Mr. Lewis provided some background on the request noting that the Land Development code requires a minimum pool side setback of ten feet to the water and five feet to the deck, but the applicant's contractor measured incorrectly using the structure itself rather than the property line. This resulted in the actual side setback of the pool encroaching the ten foot setback requirement by a foot and a half. Mr. Lewis then reviewed the variance approval criteria as it related to the request, noting that there are no administrative variances for error greater than six inches so the request could not be resolved by City staff and there is no right making the City responsible for contractor error. He also noted that granting the request could open the door for all contractor errors greater than six inches to be followed by a request for variance approval.

Staff recommendation was for denial.

The Board inquired about and briefly discussed if there had been any past similar circumstances where variances have been granted for contractor errors. The Board also inquired about what the cure would be if the request was denied and recommended adding a formwork inspection to the building process to avoid these types of errors.

The applicants, Kristopher and Brooke Kest at 2101 Banchory Road, Winter Park, FL 32789 addressed the Board. Mr. Kest expressed that the request was for a de minimis setback variance due to a mistake made by the pool contractor. He also spoke about the 11 neighbor letters he received in support of an approval of his request. Mr. and Mrs. Kest then elaborated on their concerns for what a denial would cause for them, which included landscaping delays, no yard availability for their dog, and delays to the summer plans that had already been made for their children along with several neighbors for the use of the pool.

The Board inquired with the applicant regarding clarification of the hardship, if the pool contractor had indicated how long it would take to correct the issue, and if there would be any financial hardship created for the applicant. Mr. Steinberg commented on the requirement of the applicant to show a hardship and which does not create precedence. Vice-Chair Clary noted that he felt the hardship would be that the applicant was annexed in with a new rule greater than all of their neighbors who have significantly lesser pool setbacks.

No one from the public wished to speak. The public hearing was closed.

The Board briefly expressed their thoughts on the request. Several Board members were in favor of the request. They expressed that the variance was minimal and the hardship included the length of time that would be necessary to correct the contractor's mistake and the uniqueness of the matter. Mr. Sims suggested that staff educate the City's building department on the issue with the request and then implement some sort of check and balance, such as a formwork inspection, before any excavation is started on future projects.

Two Board members were opposed to the request and expressed that they did not see any hardship and did not want to set precedence for mistakes contractors may make.

Motion made by Jason Johnson, seconded by Tom Sims, for variance approval from Section 58-71(j)(1) to allow an interior side setback of 8.6 feet to the swimming pool in lieu of the required interior side setback of 10 feet for the construction of the pool for their home at 2101 Banchory Road, zoned R-1A.

Motion carried with a 5-2 vote. (In Favor: Robert Trompke, Michael Clary, Cathy Sawruk, Tom Sims, and Jason Johnson. Opposed: Ann Higbie and Charles Steinberg.)

(7) Board Comments

No Board Comments.

(8) Upcoming Agenda Items

Mr. Lewis noted that the election of Chair and Vice-Chair for the new term year will occur at the next Board meeting.

(9) Adjournment

Meeting adjourned at 6:11 p.m.

Minutes approved by the Board on June 21, 2022.

/s/ Recording Secretary Mary Bush