



Board of Adjustments Regular Meeting Minutes

February 21, 2023 at 5:00 p.m.

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

Present

Present In-Person: Jason Johnson, Charles Steinberg, Michael Clary, Cathy Williams, Tom Sims, and Ann Higbie. Absent: Robert Trompke. Also Present: City Attorney Andrew Mai. Staff: Director of Planning & Zoning Jeff Briggs, Senior Planner/Zoning Official John Harbilas, Planner I Nick Lewis, and Recording Secretary Mary Bush.

(1) Call to Order

Chairman Jason Johnson called the meeting to order at 5:00 p.m.

(2) Consent Agenda

Approval of Minutes:

Motion made by Cathy Williams, seconded by Ann Higbie to approve the January 17, 2023 meeting minutes.

Motion carried unanimously with a 6-0 vote. (Robert Trompke was not present for the meeting.)

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

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

(4) Public Hearings

- BOA-2023-0001: Request of David Rizzo for variance approval from Section 58-65(f)(6), to allow a front setback of 25-feet in lieu of the required front setback of 32-feet, in conjunction with the proposed single-family home located at 1147 Oaks Boulevard, zoned R-1A.

Mr. Lewis provided the Board a brief summary of the request. He presented to the Board an area map and aerial view of the property. He noted that the properties on the right hand side of the street had been torn down and reconstructed under the 2022 version of the land development code. He also noted that no neighbor letters were received for or against the request. Mr. Lewis then presented the survey for the property showing the existing structure on the lot. He also presented the applicant's site plan design which proposed a front setback of 25 feet and a five foot extension into the front setback for a front porch. He explained that the request adhered to all of the 2022 version of the land development code's setback requirements except for the front setback, which would be verified via survey. He then explained how the 2022 land development code regarding front setbacks differs from the 2023 updated code regarding front setbacks. Mr. Lewis indicated that in late October of 2022 during a final reading, the City Commission adopted a single family code revision that had a phase out date of the old code going to the end of the year. He explained that as long as an applicant filed for a 2022 permit number prior to January 1, 2023, whether the plans were complete or incomplete, they would be grandfathered into the 2022 code. He also explained that the applicant had contacted the City in 2022 and received a preliminary front setback of 25 feet, which would have been verified by a survey when the applicant submitted plans for permitting. Mr. Lewis noted that under the new 2023 code, the front setback is determined as either 20% of the lot depth or the existing home setback, whichever is greater. In the case of the applicant, 20% of the lot depth is 25 feet but the existing front setback is 32 feet which is greater and would be the determined setback. He briefly discussed the five foot allowable encroachment of the proposed front porch and the background for the approval of the 2023 updated land development code and phase out of the 2022 code.

Mr. Lewis then went on to discuss the variance approval criteria as it related to the request. He noted that because the applicant will be building a new home, they will still be able to construct a single story home that conforms to the 2023 code, just not as large as a single story home they would have been able to build under the 2022 code. He added that the applicant's original contact with the City early on in 2022 when they were provided a preliminary front setback of 25 feet was prior to the City beginning discussions about revisions to the 2022 code. He further added that the applicant did not reach back out to the City until the 2023 code went into effect, following the phase out period and public meetings, therefore, the requirement to apply for a permit that would have been grandfathered under the 2022 code was not met. Mr. Lewis then pointed out that granting the request could potentially open the door for other applicants who started plans in 2022 but did not apply for permitting during the phase out period to be able to treat the variance process as a workaround to gain eligibility for a code that is no longer into effect.

Staff recommendation was for denial.

Vice-Chair Steinberg inquired if any documentation existed verifying that the applicant had contacted the City in 2022 and was provided a preliminary front setback of 25 feet. He also inquired as to when and how the City notified the public regarding the updated 2023 code and the phase out period. Brief discussion ensued amongst the Board, staff, and City Attorney Mai. City Attorney Mai explained that the phase out period was considered a courtesy for people that in 2022 had already put in their applications and were formally in the process, to avoid a potential estoppel issue of some sort and allow the applications to be processed under the 2022 code. He further explained that when determining whether or not the applicant had constructed knowledge of the change in the ordinance or could rely on staff's discussion, in this case constructive knowledge would be the publishing of the ordinance and as indicated by staff, the number of times that the new ordinance was put in front of the public would be considered.

Mr. Clary inquired as to whether or not the new setback requirements under the 2023 code have any impact on whether a building is single-story or two-story and any impact on the width of the lot to which Mr. Lewis explained that there would be no impact on either.

The applicant, David Rizzo of 1571 Oneco Avenue, Winter Park, FL 32789 addressed the Board. Mr. Rizzo spoke on concerns with how the 2023 code and phase out period was noticed to the public and felt that a notice should have been mailed to him. He also spoke on the purpose and how long he had planned for the project as well as the setbacks for the property.

Vice-Chair Steinberg inquired with Mr. Rizzo on how and when he initially contacted the City to discuss his project. He also asked Mr. Rizzo when exactly he had become aware of the new 2023 ordinance.

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

The Board then briefly shared their thoughts on the request and overall felt that approving the request would create a special privilege to the applicant, the applicant's claimed hardship was self-made, the City properly noticed the ordinance change as well as the courtesy phase out period, and the request did not meet any of the four variance approval criteria.

Motion made by Jason Johnson, seconded by Charles Steinberg, for variance approval from Section 58-65(f)(6), to allow a front setback of 25-feet in lieu of the required front setback of 32-feet, in conjunction with the proposed single-family home located at 1147 Oaks Boulevard, zoned R-1A.

Motion unanimously denied with a 0-6 vote. (Robert Trompke was not present for the meeting.)

(5) Non-Action Items

Mr. Lewis briefly discussed the potential extension of variance approval expiration. He noted that staff had recently conducted a study of expiration dates for multiple requests, particularly pertaining to Planning & Zoning requests. Staff determined that there are often circumstances that require applicants that have been granted a variance or conditional use to come back after one or two years, respectively, needing to request an extension upon the expiration of their variance or conditional use approval. Mr. Lewis indicated that staff recommended extending the expiration dates to a five year period for both variance and conditional use requests. Brief discussion ensued with the Board. The Board overall expressed a desire for an extension of the expiration dates to up to two years only.

(6) Staff Updates

No staff updates.

(7) Board Comments

No Board comments.

(8) Upcoming Agenda Items

No discussion ensued on upcoming agenda items.

(9) Adjournment

Meeting adjourned at 5:42 p.m.

Minutes approved by the Board on March 21, 2023.

/s/ Recording Secretary Mary Bush