



Board of Adjustments Regular Meeting Minutes

January 17, 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 J. Giffin Chumley. Staff: Assistant Director of Planning & Transportation Allison McGillis, Planner I Nick Lewis, Planning Technician Aaron Hull, and Recording Secretary Mary Bush.

(1) Call to Order

Chairman Jason Johnson called the meeting to order at 4:59 p.m.

(2) Consent Agenda

Chairman Johnson explained that a question had been raised before the beginning of the meeting, asking whether or not the Board would consider placing two matters listed on the meeting's agenda, that were reconsiderations of previously approved variances, on the consent agenda if there would not be any objection from the Board or members of the public. Based on Chairman Johnson's discussion with City Attorney Chumley before the start of the meeting and the Board being a quasi-judicial board, Chairman Johnson expressed that it was important to at least make a record in the event that anyone present or not for the meeting desires to seek an appeal to the decision of the Board on either matter. Chairman Johnson further expressed that for the purpose of a record, rather than moving to approve the two matters on the consent agenda, he asked City Staff to make their planned presentations and the applicants to make whatever presentations they deemed necessary for the matters.

Approval of Minutes:

Motion made by Cathy Williams, seconded by Tom Sims to approve the December 13, 2022 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

Mr. Clary disclosed that he had received an email in support of the BOA-2022-0024 request from a neighbor of the applicant but he did not respond to the email.

- BOA-2022-0015: Request of Rob Smith with E2 Homes for variance approval from Section 58-68(e)(1), to allow a rear setback of 6-feet in lieu of the required rear setback of 20-feet, in conjunction with the proposed awning as part of overall renovations to the existing outdoor learning center located at 631 N. Knowles Avenue, zoned R-3.

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 showing the existing building for the school located on the lot. He noted that The Winter Park 9 Golf Course and Casa Feliz Historic Home Museum are located to the north of the lot, Park Aire Condominiums are located to the rear of the lot, and existing green fields for the school are on the southern portion of the lot. He also noted that staff received a letter of non-objection with certain conditions from the Park Aire Condominium Association, who had multiple meetings with the applicant and their own public hearing

process regarding the project. Mr. Lewis then presented the survey for the lot showing the existing building at 26 feet from the property line that abuts the Park Aire Condominiums' property. He explained that the applicant requested a 6 foot setback so an outdoor learning space for the school could be created under their proposed 20 foot awning that would shelter students from harsh weather. He further explained that the applicant proposed placing a Podocarpus hedge along the entire lot line, matching the existing hedge along the same lot line, to maintain privacy to the Park Aire Condominiums. Mr. Lewis then presented elevations and site photos for the request, which included views from the green fields and the Park Aire Condominiums' swimming pool deck. He indicated that the swimming pool deck is located above a first floor garage area. He also indicated that the applicant proposed to have the awning meet the elevation of the swimming pool deck to ensure that persons on the deck cannot look down under the awning, and students under the awning cannot look up with a view of the swimming pool deck to maintain privacy for both parties. He then went on to discuss the variance approval criteria as it related to the request.

Staff recommendation was for approval with the following condition:

- The applicant must place 30 gallon Podocarpus hedges along the shared lot line between the school and the Park Aire Condominiums to match the existing Podocarpus hedges between the Park Aire Condominiums and the green fields.

Mr. Clary inquired whether the project was subject to impervious calculations. Mr. Lewis briefly explained why the project was subject to impervious calculations.

The applicant, Rob Smith of 66 Eastwind Lane, Maitland, FL 32751 addressed the Board. Mr. Smith spoke on where the idea for the project came from. He noted that he already had a permit for the hardscape and that the impervious lot coverage was well under the requirement. He also noted that he has been in talks with the Park Aire Condominium Association since May of this year and has tried to incorporate the ideas they expressed they would like to see for the project.

Chairman Johnson asked if the area where the awning would be located was already being used by students of the school and just did not have coverage. The applicant replied that it was being used by the students.

The Board heard public comment from the following resident:

Kim Lopdrup of 640 N. Park Avenue, Winter Park, FL 32789 addressed the Board. Mr. Lopdrup presented photos of the request's existing property and fence line and Park Aire Condominium's pool access area and deck. He expressed concerns regarding the opening at the existing gate to the property, the Condominium's pool being unsecured and without a lifeguard, and the potential view of the school's students to the Condominium's pool deck. He recommended that if the applicant's request was to be approved that the existing fence be replaced, the gate be removed, and the Podocarpus hedge be high enough to block the students' view of the pool deck.

The Board addressed Mr. Lopdrup noting that his concerns with safety would need to be directed to the City's Code Enforcement department, the variance in elevation of the pool deck and the sloped awning would cover the views he was concerned about, and that there would be more privacy from completing the request than there was existing.

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

Mr. Smith addressed the Board and noted that the fence would be repaired and the existing double gate would be removed.

The Board briefly inquired about the Podocarpus hedge being difficult or easy to walk through and which side of the hedge the fence would be located.

The Board then briefly shared their thoughts on the request and were in split favor of the request as presented and with conditions. A few Board members expressed that they wanted to add a condition of approval that the fence would be repaired completely.

Motion made by Jason Johnson, seconded by Tom Sims, for variance approval from Section 58-68(e)(1), to allow a rear setback of 6-feet in lieu of the required rear setback of 20-feet, in conjunction with the proposed awning as part of overall renovations to the existing outdoor learning center located at 631 N. Knowles Avenue, zoned R-3 with a finding that the variance is justified by the criteria outlined in Section 58-92 of the Code of Ordinances of the City of Winter Park; the reasons set forth in the application

justify the granting of the variance; the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and the granting of the variance will be in harmony with the general purpose and intent of the zoning article of the Land Development Code and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Motion failed with a 3-3 vote. (In favor: Cathy Williams, Tom Sims, and Jason Johnson. Opposed: Michael Clary, Ann Higbie, and Charles Steinberg. Robert Trompke was not present for the meeting.)

Motion made by Charles Steinberg, seconded by Ann Higbie, for variance approval from Section 58-68(e)(1), to allow a rear setback of 6-feet in lieu of the required rear setback of 20-feet, in conjunction with the proposed awning as part of overall renovations to the existing outdoor learning center located at 631 N. Knowles Avenue, zoned R-3 with the following conditions:

- That a 30-gallon Podocarpus hedge be installed along the adjacent property line to the Park Aire Condominiums.
- That the entirety of the fence surrounding the property be repaired such that there are no breaks in the fencing.
- That the gate that exists be replaced by a solid fence or by a chain link fence and not an open gate.

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

- BOA-2022-0023: Request of the homeowner, Mary Hartwig, for variance approval from Section 58-66 subsections (f)(5) and (f)(6), to allow a front setback of 21.9-feet and a side setback of 5.9-feet in lieu of the required front setback of 35-feet and required side setback of 9-feet, in conjunction with the construction of a carport located at 2819 Northwood 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 application was a reinstatement request and that it had previously come before the Board at the July 16, 2019 regular meeting but the applicant was not able to begin construction before the variance expired due to issues from the COVID-19 pandemic. He also noted that there had been no code changes and everything with the application was the exact same as was presented in 2019. He added that no new neighbor letters had been received for the request. Mr. Lewis then presented the survey, site plan, and elevations for the property and noted that the applicant wanted to make a single carport into a two bay carport. He went on to review the variance approval criteria as it related to the request. He indicated that the existing home is non-conforming on both the front and side setbacks and the applicant's request, although still non-conforming, alleviates the requirement of a garage and carport to have 20 feet in front of it in order to adequately park a car per code. Mr. Lewis added that at the 2019 meeting, the Board required the conditions that the carport's posts were moved two feet inward and that the roof covering be limited to a single material, which the applicant applied for meeting both conditions.

Staff recommendation was for approval.

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

The Board briefly shared their thoughts on the request and were unanimously in favor of it.

Motion made by Jason Johnson, seconded by Cathy Williams, for variance approval from Section 58-66 subsections (f)(5) and (f)(6), to allow a front setback of 21.9-feet and a side setback of 5.9-feet in lieu of the required front setback of 35-feet and required side setback of 9-feet, in conjunction with the construction of a carport located at 2819 Northwood Boulevard, zoned R-1A as previously conditionally approved by the Board and pursuant to which the applicant has already sought permits and with a finding that the variance is justified by the criteria outlined in Section 58-92 of the Code of Ordinances of the City of Winter Park; the reasons set forth in the application justify the granting of the variance; the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and the granting of the variance will be in harmony with the general purpose and intent of the zoning article of the Land Development Code and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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

- BOA-2022-0025: Request of the homeowner, Chris Mairn, for variance approval from Section 58-66(f)(6), to allow a side setback of 9.58-feet in lieu of the required side setback of 16-feet, in conjunction with the proposed second-story addition to the existing home located at 1219 Via Estrella, zoned R-1AA.

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 application was a reinstatement request and that it had previously come before the Board at the February 16, 2021 regular meeting. He also noted that no new neighbor letters had been received for the request. He then presented the survey, site plan, and elevations for the property showing an existing first floor sunroom and a proposed second floor addition. Mr. Lewis went on to review the variance approval criteria as it related to the request. He indicated that the variance requested was due to the location of the addition being limited to above the existing first floor sunroom because of setback requirements and the existing locations of the pool and backyard tree.

Staff recommendation was for approval.

The applicant, Chris Mairn of 1219 Via Estrella, Winter Park, FL 32789 addressed the Board. Mr. Mairn expressed that the COVID-19 pandemic had hindered his ability to proceed with the project. He added that he had spoken with new neighbors to the west side of his property about his plans and the neighbors were in support of the project.

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

The Board briefly shared their thoughts on the request and were unanimously in favor of it.

Motion made by Jason Johnson, seconded by Tom Sims, for variance approval from Section 58-66(f)(6), to allow a side setback of 9.58-feet in lieu of the required side setback of 16-feet, in conjunction with the proposed second-story addition to the existing home located at 1219 Via Estrella, zoned R-1AA with a finding that the variance is justified by the criteria outlined in Section 58-92 of the Code of Ordinances of the City of Winter Park; the reasons set forth in the application justify the granting of the variance; the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and the granting of the variance will be in harmony with the general purpose and intent of the zoning article of the Land Development Code and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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

- BOA-2022-0024: Request of Carlos Ruiz Huyke with Ziur Contraction for variance approval from Section 58-67(f)(1), to allow a first-floor side setback of 7-feet and a second-story rear setback of 10-feet in lieu of the required first-floor side setback of 10-feet and required second-story rear setback of 25-feet, in conjunction with the proposed home located at 605 Ellen Drive, zoned R-2.

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 lot sits on the 90-degree hip of Ellen Drive creating a very odd kind of angle in the front of the lot with a much deeper north side as opposed to a very shallow south side. He also noted that the lot backs up to O-2 Commercial zoning, which has existing office parcels that were formerly duplexes. He then presented the survey, site plan, and elevations for the project and spoke on the required setbacks. Mr. Lewis went on to review the variance approval criteria as it related to the request noting that three trees on the property had been clear cut eliminating the ability of the applicant to take advantage of a special condition of the Lake Killarney Shores subdivision allowing for setback variances for lots with existing canopy trees. He also noted that the lot is the only one in all of the subdivision lots that is greater than 65-feet, thus it is the only one that requires a greater 10-foot side setback for both first and second floors and a 25-foot second-story rear setback. He added that although the lot is shallow, it is much wider than all other lots in the subdivision, providing adequate room to adhere to the side setback requirements. Mr. Lewis then explained that the required 30-foot front setback and 25-foot rear setback squeeze the second story so that it becomes impossible to build to the required minimum square-footage per the subdivision's Declaration of Conditions, Covenants, and Restrictions. He indicated that staff believed that granting the side setback request could serve as a precedent for other R-2 zoned lots greater than 65-feet in width to request reduced setbacks because the lot is shallow and/or is wider than adjacent properties. He added that five neighbor letters had been received, all of which were in favor of the request.

Staff recommendation was for approval of the variance request regarding the rear setback and for denial of the variance requested regarding the side setback.

The Board briefly inquired about the lot being the only one in the area with a severe cut in from the road into the depth, squeezing of the property outward with the front setback requirement, if the removal of three feet from the right and left side setbacks would cause the home to be below 2,400 square feet, and the current front setback on the northside of the applicant's plans.

The applicant, Carlos Ruiz Hyuke of 603 Ellen Drive, Winter Park, FL 32789 who is the lot owner's builder addressed the Board. Mr. Ruiz Hyuke spoke on the history of the lot and disadvantages for the lot due to its larger dimensions and irregular shape compared to other lots in the subdivision.

The Board briefly discussed with Mr. Ruiz Hyuke the square footage of the home if the Board approved the request following staff's recommendations, the length of the second story, and the possibility of setting precedent for houses not yet built to request the same rear setback.

The Board heard public comment from the following residents in favor of the request:

Tom Lightsey of 640 Kirkman Road, Orlando, FL 32819 addressed the Board. Mr. Lightsey spoke on the right-of-way, setbacks for the applicant's lot, and the proposed garage not being considered living area. He also noted that the trees on the applicant's property were not clear cut but had died over time.

Meiyong Li of 1832 Harmon Avenue, Winter Park, FL 32789 who owns the lot in the request addressed the Board. Ms. Li expressed that her family was very eager to complete the home and explained the reasons why she chose the design of the home and the area.

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

The Board briefly shared their thoughts on the request and were in split favor of all and only part of it. A few Board members expressed that they were not in favor of approving the side setback as they felt there was no hardship for it.

Motion made by Jason Johnson, seconded by Charles Steinberg, for variance approval from Section 58-67(f)(1), to allow a first-floor side setback of 7-feet and a second-story rear setback of 10-feet in lieu of the required first-floor side setback of 10-feet and required second-story rear setback of 25-feet, in conjunction with the proposed home located at 605 Ellen Drive, zoned R-2 with a finding that the variance is justified by the criteria outlined in Section 58-92 of the Code of Ordinances of the City of Winter Park; the reasons set forth in the application justify the granting of the variance; the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and the granting of the variance will be in harmony with the general purpose and intent of the zoning article of the Land Development Code and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Motion approved with a 5-1 vote. (In favor: Cathy Williams, Michael Clary, Tom Sims, Jason Johnson, and Charles Steinberg. Opposed: Ann Higbie. Robert Trompke was not present for the meeting.)

(5) Non-Action Items

No non-action items.

(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 6:30 p.m.

Minutes approved by the Board on February 21, 2023.

/s/ Recording Secretary Mary Bush