



The CITY OF DAYTONA BEACH BOARD OF ADJUSTMENTS MEETING MINUTES

City Hall
Commission Chambers
Regular Meeting

301 South Ridgewood Avenue
Thursday, August 20, 2020
1:00 PM

Pursuant to Section 286.0105, Florida Statutes, if any person decides to appeal any decision made by this Board at this public meeting, such person will need a record of the proceedings and, for that purpose, such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The City does not prepare or provide such a record.

	For special accommodations, please notify the City Clerk's Office at least 72 hours in advance. (386) 671-8020		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the City Clerk's Office.
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Board members present were as follows:

Mr. Trey Harshaw, Chair
Ms. Sharlene Barhoo
Ms. Maja Sander Bowler
Mr. Patrick Connors
Mr. Eddie Gentle

Board members absent:

Mr. Roger Stine, Vice Chair
Mr. Gary Libby

Staff members present were as follows:

Ms. Angela Doyle, Senior Development Review Technician
Mr. Ben Gross, Deputy City Attorney
Mr. Bo Snowden, Deputy Building Official
Ms. Becky Groom, Board Secretary

Call to Order

Mr. Harshaw called the August 20, 2020 Board of Adjustment Meeting to order at 1 :05 p.m.

Roll Call

Ms. Groom called the roll and noted members present as indicated above.

Introduction of City Staff

Mr. Harshaw introduced staff members in attendance, as listed above.

Approval of Minutes - June 18, 2020

Board Action:

A motion was made by Ms. Barhoo, seconded by Ms. Bowler, to approve the minutes of the June 18, 2020 meeting, as presented. The motion carried (5-0).

New Cases:

Case A - BOA2020-006 - Variance from Article 6, Section 6.2.E.A of the Land Development Code

A request by Mark Dowst, with Mark Dowst & Associates, Inc., on behalf of property owner Ahmed Alharbi for a variance from Article 6 (Off-Street Parking and Loading), Section 6.2.E.4 (Minimum Stacking Lane Distance for Parking Lot Entrance Driveways) of the LDC. The LDC requires a minimum of 25 feet stacking distance for a parking lot entrance that accommodates up to 49 parking spaces. Mr. Dowst is requesting a variance to waive the minimum stacking lane distance requirement for a parking lot entrance. This variance request originated as a result of a Development Review Application (DEV2020-006) that was submitted to the City for a Minor Site Plan for the proposed development of Reva Village, a mixed-use project consisting of multi-family dwellings and retail space. The property is located at 851 Orange Avenue, just west of Reva Street. The zoning on the property is Redevelopment Midtown Neighborhood Transition Mixed Use (RDM-5), and the Future Land Use (FLU) on the property is Commercial Transitional. In addition, the property is in the Midtown Redevelopment Overlay District.

Applicant Presentation

Mark Dowst, 536 N. Halifax, Daytona Beach, Florida spoke representing the applicant. Mr. Dowst stated the request is for a variance from the required stacking distance of 25 feet to 8 feet in order to save a 38 inch tree that is in the same vicinity. Mr. Dowst distributed a hand out to the Board that illustrates the request. Mr. Dowst stated the stacking distance as required by the Land Development Code is in place to prevent traffic tie ups. Mr. Dowst stated this development is on a side street and not a major thoroughfare and there should be no traffic issues. Mr. Dowst stated the variance is requested so a large tree will not have to be removed.

Board Comments

Mr. Connors asked about Item 7 in the application regarding health and safety.

Mr. Dowst stated if someone is backing out of a parking space while someone is trying to turn into the project there could be a conflict. Mr. Dowst stated this is a very low traffic area. Mr. Dowst stated typically, employees would be assigned to park in that location in order minimize the use of those spaces. Mr. Dowst stated this is a mixed use project in the Redevelopment Area. Mr. Dowst stated retail units will be on the first floor with six residential units on the second floor.

Public Comments

Tamara McIntyre, 314 Reva, Daytona Beach, Florida stated her house is next door to this development but she would like a boundary between her house and this building. Ms. McIntyre stated people will be able to see into her house from the proposed building. Ms. McIntyre stated she is also concerned about dust going onto her property during construction.

Mr. Dowst stated there is a landscape buffer but a 6 foot high white vinyl fence could be installed to address Ms. McIntyre's concerns. Mr. Dowst stated he is willing to stipulate the fencing as part of the variance.

Board Action

A motion was made by Mr. Connors, seconded by Ms. Barhoo, to approve BOA2020-006 - Variance from Article 6, Section 6.2.E.A of the Land Development Code, in accordance with the staff report as presented, including a condition that a 6 foot white vinyl fence to be placed along the residential side of the project. The motion carried (5-0).

Case 8 - BOA2020-005 - Variance from Article 4, Section 4.2.8.3 of the Land Development Code

A request by property owner, Miller Bell Jr., for a variance from Article 4 (Zoning Districts), Section 4.2.B.3 (Intensity and Dimensional Standards) of the LDC to reduce the minimum rear yard setback from 25 feet to 13.2 feet to allow an enclosed patio that was constructed without permits. The property is located at 1107 Barbara Drive, just north of 3rd Street and east of Jimmy Ann Drive. The zoning on the property is Single-Family Residential-5 (SFR-5), and the Future Land Use (FLU) on the property is Level-1 Residential.

Applicant Presentation

Miller Bell, 1107 Barbara Drive, Daytona Beach, Florida, stated he thought the contractor got the permit; but when he asked the contractor when the structure would be inspected by the City, the contractor said he said he would have to go apply for the permit. Mr. Bell stated at that time, the contractor was finished with the project. Mr. Bell stated the contractor then told him he would have to apply for a variance.

Mr. Harshaw asked Ms. Doyle for a history of this application.

Ms. Doyle stated in October 16, 2018, a permit was applied for to construct a screen enclosure. The permit was denied because it did not meet the setbacks. Ms. Doyle stated a response was not received from the contractor to the denial and the permit expired. Ms. Doyle stated she received a telephone call from Mr. Bell in June, 2020, who stated that the contractor had gone ahead and built the structure without the permit and he would like to apply for the variance.

Ms. Bowler stated for clarification, Mr. Bell came forward on his own to request the variance.

Ms. Doyle stated yes.

Ms. Bowler asked who is notified when a permit is denied.

Ms. Doyle stated the applicant is notified, and in this case it was the contractor, not the home owner.

Ms. Doyle stated it is up to the contractor to relay that information to the property owner.

Mr. Harshaw asked if the structure was built before the permit was applied for.

Ms. Doyle stated Google Earth shows there are walls and asked if Mr. Bell had a patio.

Mr. Bell stated there was a patio with short walls.

Ms. Doyle stated there were no permits for the slab or walls.

Mr. Connors asked if the contractor was licensed.

Ms. Doyle stated she verified the contractor's license when he applied for the permit.

Ms. Barhoo stated the only way we knew about this was because Mr. Bell came forward.

Mr. Harshaw asked Mr. Bell why he came forward about the permit now.

Mr. Bell stated he has been trying to get a permit since 2018 and previously talked with Hannah Ward.

Ms. Doyle stated the permit that was applied for was for a 16 foot setback but the current survey shows a 13.2 foot setback. Ms. Doyle stated if the applicant had constructed a screened roof, there would be no need for a variance; however, a solid roof requires the same setback as the principal structure.

Mr. Harshaw asked if any paperwork was submitted to the property owner notifying him that the permit had been declined.

Ms. Doyle stated staff only communicates with the applicant.

Ms. Bowler asked what will happen if the variance is not approved.

Ms. Doyle stated the applicant would either have to remove the structure, reduce the size of the structure, or replace the roof with a screened roof.

Ms. Doyle stated the current survey indicates an aluminum shed is placed along the rear property line that was constructed without permits. Ms. Doyle stated part of that shed is encroaching onto his neighbor's yard. Ms. Doyle stated the shed is too close to the addition and noted a 5 foot separation is required between the addition and the shed. Ms. Doyle stated she discussed the shed with Mr. Bell and he agreed to remove the shed if the variance is approved.

Mr. Bell stated the shed has been taken down but he has to have the floor removed.

Ms. Barhoo stated many of the homes in the area have similar structures.

Public Comments

There were no public comments.

Board Action

A motion was made by Ms. Barhoo, seconded by Ms. Bowler, to approve BOA2020-005 - Variance from Article 4, Section 4.2.8.3 of the Land Development Code, in accordance with the staff report as presented, subject to the shed and flooring being removed. The motion carried (5-0).

7. Case C - BOA2020-007 - Variance from Article 4, Section 4.3.8.3, Article 8, Section 8.3.C: Article 6, Section 6.3.G.6.b.ii.c of the Land Development Code

A request by Stanley Hoelle, Architect, on behalf of property owner Carolina Wagner for variances from the Land Development Code (LDC) Article 4 (Zoning Districts), Section 4.3.8.3 (Intensity and Dimensional Standards) to reduce the minimum front yard setback; reduce the minimum interior side yard setback; Article 8, Section 8.3.C allow the enlargement and alteration of a nonconforming structure. The applicant is requesting these variances in order to acquire building permits for an addition that was constructed without permits. The unpermitted addition is located on the second floor of the building fronting North Ridgewood Ave.

In addition, the applicant is also requesting variances from Article 4, Section 4.3.B.3 to reduce the minimum spacing between buildings for a multi-family complex; reduce the minimum lot width for a multi-family development with five (5) or more units; reduce the minimum lot frontage on an improved street for a multifamily complex; Article 6 (Development Standards), Section 6.3.G.6.b.ii.c reduce the minimum one-way driveway entrance width. These variances are being requested in order to legally establish an existing multi-family complex use consisting of six (6) dwelling units on the property.

The property is located at 542 North Ridgewood Avenue. The zoning on the property is Business/Professional (BP), and the Future Land Use (FLU) on the property is Level 2 Residential. In addition, the property is in the North Ridgewood Overlay District.

Staff Comments

Ben Gross, Deputy City Attorney, stated the Land Development Code authorizes single family detached dwellings as a type of use. The LDC also authorizes multi-family dwellings, duplexes, and townhomes as use. Mr. Gross stated multi-family complexes are groups of any of those on a single lot.

Ms. Doyle stated a multifamily dwelling would be three or more units in one building and a multi-family complex would be multiple structures.

Mr. Harshaw requested a historic overview of the property.

Ms. Doyle stated this property has an open Code case for failure to obtain a building permit for the front structure facing North Ridgewood noting an addition was added to the structure without obtaining building permits. Ms. Doyle stated the Code case also includes violations of maintenance standards and failure to obtain rental licenses. Ms. Doyle stated it appears that starting in 2012, a lot of work was done on all of the buildings. Ms. Doyle stated there was an approved site plan for the front building which was an office that was used as a chiropractic office and there was a residential unit upstairs. Ms. Doyle stated a site plan was approved for access to the property from North Ridgewood, exiting onto Taylor. Ms. Doyle stated since that time, multiple units have been added in the structure facing North Ridgewood as well as the other single family home that fronts Taylor. Ms. Doyle stated a garage structure was also converted into another dwelling unit. Ms. Doyle stated staff has conducted a few site visits in order to assist the property owner in determining what needs to be done to bring the property into compliance so the Code case can be closed. Ms. Doyle stated there is currently a \$20,000 lien on the property for the Code violations. Ms. Doyle stated the owner is unable to obtain building permits since the addition is not in compliance with the setbacks. Ms. Doyle stated in order to obtain rental licenses, there are non-conformities that would have to be addressed since a change of use was done without the City's permission.

Ms. Bowler asked if the history of the violations has been under the same owner.

Ms. Doyle stated yes noting Mrs. Wagner is the current property owner. Ms. Doyle stated Carolina Wagner was married to John Wagner who previously owned the property and used the property for his chiropractic office which was legally permitted. Ms. Doyle stated the Wagner's divorced and Carolina Wagner acquired the property and that is when a lot of the changes were made. Ms. Doyle referred to

the photos in the packet regarding Code cases from 2012 to 2020 noting the photos from 2012 reflect when Mr. Wagner still had part ownership in the property. Ms. Doyle stated since that time, roofs have been added as well as other work. Ms. Doyle stated the Code case did not start until 2019 and the owner was not cited for all of the work that had been done and as a result the violations have escalated. Ms. Doyle stated there have been modifications to the interior.

Ms. Barhoo asked if the property is being used for personal family use or is the property rented to others.

Ms. Doyle stated Carolina Wagner lives in one of the upstairs units and the other units are rented.

Applicant Presentation

Stanley Hoelle, 1114 Mistletoe Drive, Daytona Beach, Florida spoke representing the applicant. Mr. Hoelle stated he started the project when Dr. John Wagner was still in practice and Carolina Wagner acquired the property when they divorced. Mr. Hoelle stated he has submitted colored renderings to the City. Mr. Hoelle stated the existing house has always been within the property lines. Mr. Hoelle stated he would like to fix up the property and noted Ms. Wagner has added a lot of landscaping and stated a Landscape Architect has been hired to develop a plan for the property along both streets. Mr. Hoelle stated he has a complete set of plans to do the work, subject to the variance being accepted. Mr. Hoelle stated the single family house is nice and has a lot of landscaping. Mr. Hoelle stated there is a fence along the house and he would like to secure it better. Mr. Hoelle stated fencing plans are not included in this proposal but Ms. Wagner would like to fence the property along Taylor to deter vagrants from accessing the property.

Mr. Harshaw stated in his opinion the property is one of the worst on U.S. 1. Mr. Harshaw stated he is concerned that all of the work has been done illegally, using unlicensed contractors. Mr. Harshaw stated he feels the property looks like overcrowded tenement housing. Mr. Harshaw asked if enough information has been provided in order to make a decision on the property.

Ms. Bowler stated she shares Mr. Harshaw's concerns. Ms. Bowler stated she has a hard time believing the same owner would approve adding plywood to a structure and having someone live inside it and then provide professional drawings indicating their plans to improve the property. Ms. Bowler stated she is reluctant to believe that the same individual would change their standards and come into compliance.

Mr. Gross stated the board could impose conditions if a variance is granted which could include that the owner must comply with the plans as presented and adding a timeline for completion.

Mr. Connors stated he does not believe the rental income will be sufficient to fund the project and noted there are also fees for the architect. Mr. Connors expressed concern about the ability to fund the project and sees the property as a hazard no matter what happens.

Ms Doyle stated there are Building Code as well as Zoning Code issues that will have to be rectified within the structure. Ms. Doyle stated Bo Snowden, Deputy Building Official, is in attendance and has visited the site and may provide the Board with more information.

Bo Snowden, Deputy Building Official, stated the properties have been combined without obtaining permits. Mr. Snowden stated the building fronting on North Ridgewood was the former chiropractic office and now houses 4 or 5 rental units. Mr. Snowden stated the house on Taylor was a single family home that has been divided without obtaining building permits. Mr. Snowden stated the applicant has tried to move forward with plans but each time what is presented to staff does not meet setbacks. Mr. Snowden stated once the setback issue is addressed, Mr. Hoelle could work from that requirement.

Ms. Doyle stated the density would be a maximum of six units but there are currently more units on the property. Ms. Doyle stated the applicant has agreed to reduce the density to the required six units while obtaining the property building permits. Ms. Doyle stated parking would be limited for six units.

Mr. Snowden stated he also is concerned about funding for the project and is not aware of how much Ms. Wagner is willing to fund. Mr. Snowden stated he cannot ask Mr. Hoelle for a set of plans for a parcel that does not meet the setback requirements. Mr. Snowden stated the applicant has stated she does not want to remove the addition on the North Ridgewood structure. Mr. Snowden stated the work was done by unlicensed contractors or the tenants which is a concern to staff. Mr. Snowden stated the number of units would have to be reduced to six but there is concern as to what the city staff may find once inside the structures. Mr. Snowden stated the application is stalled because of the setback and permitting issues. Mr. Snowden stated staff has worked on this project for quite a while; and if the variance is denied, then the property will have to return to how it previously looked and the addition will have to be removed.

Ms. Doyle stated many of the issues relate to the change of use on the property.

Mr. Snowden asked Mr. Hoelle if he has done a cost estimate to complete the work as proposed.

Ms. Barhoo asked how many units are in place at this time.

Mr. Snowden stated nine, possibly ten noting there are rooms without bathrooms.

Mr. Hoelle stated the proposed plans include 4 units which meet all standards. Mr. Hoelle stated he has told the applicant the project will cost between \$40,000 to \$50,000.

Mr. Harshaw stated it will take hundreds of thousands of dollars to complete the work proposed.

Mr. Connors asked if the variance is denied, will the applicant have to return the structure to the original setbacks.

Ms. Doyle stated Part A is only for the addition, so if that variance is denied, the addition will have to be removed. Ms. Doyle stated if Part B is denied, the property will have to convert to what was approved in 2012 which was an office downstairs, a residential unit upstairs, the garage will have to be converted to a garage/storage use, and the single family home could be rented but it would have to be one unit.

Ms. Bowler asked if the applicant could resubmit with another option with something not so expensive.

Mr. Gross stated in accordance with the Land Development Code, if an application is denied, a similar application cannot be resubmitted for 180 days.

Mr. Snowden stated staff has reviewed the application and 6 units will work; however, the issue is the setbacks. Mr. Snowden stated the front house where there are 6 units could be reduced to four and the house on Taylor could be converted back to single family and there could be a unit in the garage. Mr. Snowden stated a permit would have to be issued for each individual structure

Ms. Doyle stated the plans submitted for the building on Ridgewood show four units that meet the minimum living area and the other units do as well.

Ms. Bowler asked about the survey that combined the properties.

Mr. Hoelle stated a new survey was done last fall to show the combined properties.

Ms. Doyle stated there were conditions placed on the site plan that was approved by former staff members in 2012 to require ingress from Ridgewood and egress to Taylor so in order to comply with that condition, the lots had to be combined. Ms. Doyle stated that had not been done prior to last year and the staff required that the lots be combined based on the previous approval.

Mr. Harshaw asked Mr. Hoelle if he is willing to proceed with the proposed plan or is he willing to come back with another plan.

Mr. Hoelle stated he did not see any merit in preparing new plans.

Mr. Harshaw asked Ms. Doyle if staff is comfortable with an approval.

Ms. Doyle stated the plans look great on paper, but questioned whether the improvements can be made. Ms. Doyle stated there is a density issue noting the Police Department does have issues in that area with high density. Ms. Doyle stated if the Board approves Part B, the applicant would have one year to utilize the property and would have one year to establish the use.

Mr. Gross stated the Board can add conditions that must be complied with in the one-year period, such as obtaining a rental license and a Certificate of Occupancy.

Ms. Doyle noted for the record that an anonymous complaint had been received in the City Clerk's Office regarding the subject property. Ms. Doyle stated a copy of the email was included as part of the packet.

Carolina Wagner, 542 N. Ridgewood Avenue, Daytona Beach, Florida stated she owns the properties at 542 N. Ridgewood and Taylor and those properties have been combined. Ms. Wagner stated she has done everything her previous contractor told her to do but she has been robbed by other contractors. Ms. Wagner stated she personally enclosed the front of the property to deter vagrants from accessing her property. Ms. Wagner stated much of the work that has been done was completed by her ex-husband.

Mr. Snowden asked Ms. Wagner if she is saying that she did not do the additions.

Ms. Wagner stated she is willing to remove the additions and will work with the city.

Ms. Bowler stated she hates to impede development but the property definitely has to change but she is not comfortable with what is proposed.

Mr. Snowden stated if the variance is denied, the property will have to be converted to its previous use and he does not think retail would be viable at that location. Mr. Snowden stated multi-family would work if the units are reduced to a legal number. Mr. Snowden stated he feels there are structures there that cannot be repaired; but Ms. Wagner would have to decide if it costs more to repair a structure as opposed to taking it down.

Mr. Connors asked about the existing units that do not have bathrooms.

Mr. Snowden stated what Mr. Hoelle has proposed does meet the requirements and each unit includes a bathroom.

Ms. Bowler asked what happens to the \$20,000 fine if the variance is approved.

Mr. Snowden stated the applicant can apply to have the Code fine reduced but that cannot be done until the property is in compliance.

Ms. Barhoo asked if the tenants will be permitted to stay on site during reconstruction.

Mr. Hoelle stated the tenants can be moved around during construction.

Ms. Wagner stated family members are living there and there would not be a problem moving them around.

Mr. Harshaw asked if Mr. Snowden feels that what is proposed would be the best plan.

Mr. Snowden stated he does not see retail being part of the project but the six units could be there. Mr. Snowden stated the applicant would have to obtain a rental license from the State of Florida.

Mr. Harshaw asked what a reasonable amount of time would be to have building permits issued.

Mr. Snowden stated if the structure is not allowed to remain in the setbacks, Mr. Hoelle would have to redraw some of the plans. Mr. Snowden stated normally permits could be issued in 30 to 60 days.

Mr. Harshaw stated conditions for approving the variance would be that the permits must be issued within 60 days, convert the facility to 6 units which would fall under State guidelines and obtain a Certificate of Occupancy within one year.

Mr. Snowden stated that every passing inspection on the property would extend the permit for another six months but he feels completion in one year would be cutting it close.

Mr. Hoelle stated the work would start immediately if the permit is issued. Mr. Hoelle stated from the start of construction to the end should take no more than 6 or 7 months.

Ms. Wagner agreed.

Mr. Harshaw stated he would like conditions of the variance approval to be that permits will be issued within three months and the Certificate of Occupancy issued within one year.

Ms. Bowler asked about the shed.

Mr. Hoelle stated that will be removed.

Mr. Hoelle stated Part A will be rebuilt with new windows.

Mr. Gross asked if the proposed plan provides for the building to have stucco.

Mr. Hoelle stated probably. Mr. Hoelle stated the building will be wood frame.

Ms. Doyle stated the plans say the exterior is cement/plaster.

Mr. Snowden stated the plans indicate the exterior will be plaster and asked if Mr. Hoelle and Ms. Wagner have agreed on that.

Ms. Wagner stated she has agreed to everything.

Mr. Snowden asked if the end project will look like the picture presented by Mr. Hoelle.

Ms. Wagner stated it will look like the plans.

Ms. Doyle stated building inspections will determine if the property is constructed in accordance with the plans presented.

Mr. Gross asked if a site plan would typically be required for review by the Planning Board.

Ms. Doyle stated she met with Jim Morris, Deputy City Manager, and Dennis Mrozek, Planning Director, and it was decided that making the applicant go through the site plan process would be expensive and may hinder the process. Ms. Doyle stated the Planning Division will still review this during the permitting stage and it will be a staff approval and will not be presented to the Planning Board.

Mr. Snowden asked that additional conditions be that the structure be finished with stucco and include the change to the roof line and removal of the porch.

Mr. Harshaw stated the conditions would be the elevation of the porch, subject to the plans as drawn, stuccoed completely, building permits issued within three months, and Certificate of Occupancy issued within one year for A and B.

Mr. Snowden stated so the applicant will be permitted to build in the setback as a requirement to make it look like what is proposed.

Mr. Hoelle stated the conditions would not be a problem.

Mr. Connors stated he would like to receive an update by staff on the status of the project.

Ms. Doyle stated she will update the Board on the progress and if the permits have been issued in three months.

Mr. Snowden stated Ms. Wagner had previously hired a contractor who basically came in and took Ms. Wagner's money with no progress and that is why she is currently faced with a \$20,000 fine.

The Board members thanked Mr. Snowden for his input.

Mr. Gross commended Ms. Doyle for her efforts in preparation for this case.

Public Comments

There were no public comments.

Board Action

A motion was made by Mr. Connors, seconded by Ms. Barhoo, to approve BOA2020-007 - Variance from Article 4, Section 4.3.B.3, Article 8, Section 8.3.C; Article 6, Section 6.3.G.6.b.ii.c of the Land Development Code, in accordance with the staff report as presented for structures A and B, and the conditions that the elevation of the porch be adjusted, subject to the plans as drawn, structures completely stuccoed, building permits issued within three months, Certificate of Occupancy issued within one year, Part A will be rebuilt, and the variance will expire in three months if the building permits have not been issued.

Review of Cases

Case A - BOA2020-006
Case B - BOA2020-005
Case C - BOA2020-007

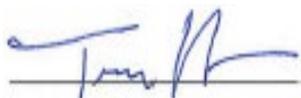
Approved 5-0
Approved 5-0
Approved 5-0

New Business

There was no new business.

10. Adjournment

There being no further business, the meeting was adjourned.

A handwritten signature in blue ink, appearing to read "Trey Harshaw", written over a horizontal line.

Trey Harshaw, Chair

A handwritten signature in blue ink, appearing to read "Becky Groom", written over a horizontal line.

Becky Groom, Board Secretary