

BOARD OF ADJUSTMENT
MINUTES OF
REGULAR MEETING
May 20, 2021

The regular meeting of the City of Daytona Beach Board of Adjustment was held on Thursday, May 20, 2021 at 1:00 p.m. in City Commission Chambers, Daytona Beach City Hall, 301 S. Ridgewood Avenue, Daytona Beach, Florida.

Board members present were as follows:

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

Staff members present were as follows:

Ms. Lauren Davis, Planner
Mr. Ben Gross, Deputy City Attorney
Ms. Melissa Phillips, Senior Development Review Technician
Ms. Becky Groom, Board Secretary

1. Call to Order

Mr. Harshaw called the May 20, 2021 Board of Adjustment Meeting to order at 1:00 p.m.

2. Roll Call

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

3. Introduction of City Staff

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

Mr. Connors asked the status of the discussion held at the last meeting regarding quorum requirements for the Board of Adjustment.

Ms. Davis stated a text amendment was presented to the Planning Board and was approved 5-1. Ms. Davis stated the text amendment will be presented to the City Commission in June.

Mr. Gross stated the amendment will allow the quorum to consist of the majority of members that are in attendance; for example, if five members are in attendance, the quorum would be 3.

4. **Approval of the Minutes:** March 18, 2021 and April 5, 2021

Board Action:

A motion was made by Ms Barhoo, seconded by Ms. Bowler, to approve the minutes of the meeting of March 18, 2021, as presented. The motion carried (6-0).

A motion was made by Ms. Barhoo, seconded by Ms. Bowler, to approve the minutes of the April 5, 2021 meeting as presented. The motion carried (6-0).

New Cases:

5. **Case A – BOA2021-002 – Variances from Article 4, Section 4.2.E.3**

A request by Bryce Risher, DNA Workshop, on behalf of Daytona Beach Housing Development corporation (property owner), for variances from Article 4 (Development Standards), Section 4.2.E.3 of the Land Development Code (LDC) to reduce the required street side building setback from 82' to 16', to allow for the addition of a community room. The property is located at 600 S. Beach Street. The zoning on the property is Multifamily Residential-40 (MFR-40) in the Downtown redevelopment zone, and the Future Land Use (FLU) on the property is Level 3 Residential.

Applicant Presentation:

Andrew Peterson, Bowman Consulting Group, 4450 W. Eau Gallie Blvd., Suite 144, Melbourne, Florida, stated he is the local civil engineer for the project and would be speaking to represent the applicant, the Daytona Beach Housing Authority.

Mr. Gross stated the application documents state Daytona Beach Housing Development Corporation is the applicant and asked if Mr. Peterson represents the Daytona Beach Housing Authority.

Ms. Davis stated the property owner is the Daytona Beach Housing Authority.

Mr. Peterson stated improvements will be done on both the Maley Apartments and the Windsor Apartments; but an addition is proposed on the Maley Apartments for a one-story multi-purpose room which will be placed in the location of the existing shuffle board courts. Mr. Peterson stated the buildings were constructed prior to the existing Land Development Code being adopted so the existing structures do not meet the setback requirements based on their height.

Mr. Gentle asked the proposed use of the new addition and if any apartments will be eliminated.

Mr. Peterson stated the new addition will be a multi-purpose room and the apartment count will not be reduced.

Mr. Gentle stated the Housing Authority has a building across the street that is not being utilized, which is to the left of the Windsor Apartments on Cedar Street.

Mr. Peterson stated it is his understanding that the proposed addition would be to assist the residents of Maley Apartments so they do not have to leave the structure to go to another location.

Ms. Bowler asked how the project will be funded.

Mr. Gross stated the City has been asked to approve an environmental procedure in association with the Housing Authority's receipt of Federal funds for this project. Mr. Gross stated the Housing Authority is also having Federal bonds issued, which the City had to approve under the Internal Revenue Code.

Ms. Bowler stated, as Mr. Gentle noted, there is a community center across the street from Windsor Apartments and she has never seen it utilized, except for voting. Ms. Bowler stated the structures need a lot of improvements and questioned why funds would be used to increase a non-conformity when they could be used to improve the existing structures. Ms. Bowler stated she is not in favor of the application that is being presented.

Ms. Barhoo stated the residents of Maley are handicapped or have disabilities and they are unable to leave the apartments.

Mr. Harshaw stated for clarification that the existing building is 16.7 feet from the property line and the addition will be 27.8 feet.

Ms. Davis stated that is correct.

Mr. Gross stated the existing building was constructed prior to the current setback requirements being adopted so the building is considered a Legal Non-conforming Structure, which means it was permitted when the prior rules applied and the new requirements do not require the removal of the building; however, the building cannot be expanded to increase the non-conformity and the encroachment into the setback could not be increased.

Ms. Davis stated the height of the building dictates the setback.

Mr. Peterson stated there is no place on the property to build the structure and meet the current setback requirements.

Mr. Harshaw asked what the setback would be for constructing a one-story structure, noting the applicant must meet the setback based on the height of the existing building.

Ms. Davis stated the setback requirement for this zoning district is 25' plus 6" per foot of height over 35 feet.

Ms. Bowler expressed concern for a government owned property to be asking for a variance request. Ms. Bowler stated she feels government properties should meet the highest standards. Ms. Bowler stated she does not feel the applicant should be asking to increase the non-conformity on a building that is not very well maintained.

Mr. Peterson stated this is a portion of a major renovation, including an internal and external renovation. Mr. Peterson stated improvements are planned to upgrade the electrical, heating, and air conditioning systems and some of the apartments and common spaces as they can.

Kara Lennard, Director of Development for the Daytona Beach Housing Authority, spoke and stated improvements are planned to improve the quality of the space for the residents. Ms. Lennard stated the building is HUD approved and improvements will be made to the apartments to bring them up to current standards. Ms. Lennard stated all of the windows will be replaced and all elevators will be overhauled; and an additional elevator will be added.

Mr. Harshaw asked if there is currently a community room in the structure.

Ms. Lennard stated there is a very small community room and there are 150 apartments so the existing community room is not adequate. Ms. Lennard stated when there are emergency situations, such as a hurricane,

the residents need to be staged in a safe area so they can be evacuated to a safe place.

Ms. Bowler asked how often the community room across the street is used.

Ms. Lennard stated she did not have that information since she is not in the building on a regular basis. Ms. Lennard stated the Windsor is for elderly only and the Maley building is for elderly with disabilities. Ms. Lennard stated the small building across the street is used for office space and a computer lab for the residents.

Mr. Connors asked if the building is certified by HUD.

Ms. Lennard stated the building was constructed in 1972 through HUD funding and the renovations are funded through HUD and RAD. Ms. Lennard stated HUD will review the proposed plans to make sure it meets all of their requirements.

Mr. Connors asked if HUD requires a gathering space within the building to support all of the residents.

Ms. Lennard stated she did not know.

Mr. Harshaw stated he visited the site and the parking lot is huge and there were only 4 cars in the parking lot.

Ms. Lennard stated a lot of the residents do not have cars.

Mr. George asked if the variance request is to only change the setback on the street side or for the entire perimeter.

Ms. Davis stated the applicant is asking for the building to become conforming.

Mr. Gross stated Mr. George is asking if the applicant will be allowed to encroach on the entire width. Mr. Gross stated the motion could state the variance would be for the existing footprint plus the proposed addition. Mr. Gross stated the variance will not bring the building into compliance.

Ms. Davis stated since the building is non-conforming, the applicant cannot be permitted to further build into the setback. Ms. Davis stated if the variance is granted at 16 feet, then the building is conforming because they have been allowed the setback variance. Ms. Davis stated if the Board just wants the variance to apply for the addition, the motion could

state a 27' variance for the purpose of the proposed addition and that would not apply to any future expansions of the building.

Mr. Gross stated it is up to the Board of Adjustment to decide if the variance is for the entire property, the proposed extension, or future extensions.

Mr. Gross stated if the variance request is denied, the addition could be built but a walkway would have to separate the addition from the existing structure.

Mr. Connors stated he sees an uncovered walkway as a challenge for the residents.

Mr. Gross stated the applicant could also pursue the variance through the Land Development Code based on physical hardships of the residents and that request would be a hearing before the Special Magistrate. Mr. Gross stated since this is a publically-owned building, the applicant could also apply for a Public Use Permit, which is granted by the City Commission and is for the purpose to allow public entities to vary from the provisions of the Land Development Code based on public interest.

Ms. Bowler stated it doesn't seem to matter what the Board does because it can be done anyway.

Ms. Barhoo asked how many parking spaces are required.

Ms. Davis stated two parking spaces are required per unit.

Mr. Gross stated if the addition was planned for the south side of the structure in an area designated as parking, the variance would be from the parking requirements as well as a setback variance and the Board could grant that.

Ms. Davis stated the variance will stay with the land, regardless of who owns the property in the future.

Mr. George asked if there is any other new construction planned.

Ms. Lennard stated she is only aware of the addition of an elevator.

Ms. Bowler asked what the total cost for the renovations will be.

Ms. Lennard stated she did not have that information with her.

Ms. Bowler asked if the applicant has looked at other places that may be more appropriate for these two buildings.

Ms. Lennard stated no.

Mr. Harshaw asked the square footage of the proposed addition.

Ms. Davis stated it is 1,493 s.f.

Mr. Harshaw stated he is concerned about doing a 16' setback on the entire side of the property for future expansion. Mr. Harshaw stated he would like the setback to be limited to the proposed addition and any future plans would require another application to be submitted for Board of Adjustment consideration.

Mr. Gross stated he incorrectly answered a previous question. Mr. Gross stated the question was if the variance would grant conforming status to the building in its entirety. Mr. Gross stated if the building was damaged by a hurricane, and more than 50% of its value would be spent on improvements or repairs, the Land Development Code would apply and all of the new setbacks would have to be met.

Mr. Harshaw stated the Board needs to determine if the entire property will have the 16' setback or just the proposed addition.

Mr. Peterson stated the cost would be more than 50%. Mr. Peterson stated he would like to request the existing building be considered for the setback requirements and the addition be included in the setbacks as well.

Ms. Bowler stated she could compromise if the request was just to apply to the addition.

Mr. Gross stated the Board does have options. Mr. Gross stated Board has the authority to limit the variance so that it applies to just the addition; allow the variance to provide for a new 16' setback on the northern boundary of the property all along its width; or it could just apply for the new addition and the rest of the existing footprint of the building as it faces north. Mr. Gross stated the Board could also state that the variance would apply to a one-story addition.

Ms. Davis stated the motion could be to allow the addition as proposed and limit the setback to 27.8' side yard setback.

Mr. Gross stated that would not legitimize the rest of the building as conforming. Mr. Gross stated the Board could allow the variance as

shown on Page 2 of the staff report with the notation that the addition be limited to one story.

Mr. Peterson asked if the variance is limited to only the addition, the existing building would be non-conforming, will the Building Department state the existing building is non-conforming and require another variance.

Mr. Gross stated that the Building Department would say since the improvements trigger the threshold of 50%, you have to bring the building into conformity with the Land Development Code including with regard to the setbacks.

Mr. Peterson stated he is requesting to approve the variances to allow the existing footprint should a substantial modification occur as well as the proposed addition.

Ms. Bowler stated to grant that, she would like to see a site plan to know what those improvements are.

Mr. Gross stated the Board could continue the case to get that information.

Ms. Bowler stated she does not need to continue the case if it is limited to the variance requested.

Mr. Harshaw stated he does not need additional information as long as the applicant is requesting the variance for the single story addition.

Mr. Gross stated if you look at the Board of Adjustment agenda packet, the application is not just for the addition but to allow the existing building to fall into compliance.

Ms. Davis noted regarding the cost of the upgrades, the 50% amount would only apply if the repairs were being done due to damage. Ms. Davis read from the Land Development Code and stated if remodeling the interior and exterior of the structure and the cost exceeds between 25% but less than 75% of the structure value, shall require non-conforming site features identified in Section 8.6.b.1 to be upgraded in compliance with the standards of the Land Development Code. Ms. Davis stated this is a voluntary renovation of the interior and exterior. Ms. Davis stated the Code also states that a non-conforming structure shall not be enlarged or structurally altered in any way that increases non-conformity. Ms. Davis stated that is the issue and that is why they were not permitted to build the community room but we can grant the approval of the variance needed just to add the proposed community room.

Mr. Gross stated we are talking about two types of restrictions on non-conformities. Mr. Gross stated if due to damage, they wouldn't be able to spend a certain amount of money and that doesn't apply here; however, Ms. Davis talked about the non-conforming site features and that applies if you are going to spend a certain amount of money regardless of whether you are spending it due to damage or not. Mr. Gross stated if the applicant wants to spend a certain amount of money to do discretionary improvements, and that exceeds 25%, a permit could not be issued under the current Land Development Code because of the parking or landscaping, for example, since that is a site feature.

Ms. Davis stated staff has not evaluated that because the application falls within the limitations.

Mr. George asked if the variance is granted for the additional structure, will that allow the applicant to continue with the improvements, such as the additional elevator.

Mr. Peterson stated all of the improvements are internal and there will be no external elevator shaft added.

Public Comments:

There were no public comments.

Board Action:

A motion was made by Ms. Barhoo, seconded by Mr. Connors, to approve Case A – BOA2-21-002 – Variances from Article 4, Section 4.2.E.3, for the variance requested only to the extent needed to construct the one-story addition as shown on the site plan. The motion carried unanimously (6-0).

6. Review Cases

Case A was approved unanimously (6-0).

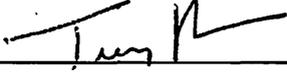
7. New Business

Mr. Harshaw stated staff is working to process the quorum issue through a Land Development Code text amendment.

Mr. Gentle stated he has a new telephone number which he provided to staff.

8. Adjournment

A motion was made by Mr. Gentle, seconded by Ms. Barhoo, to adjourn the meeting. The motion carried unanimously (6-0).



Trey Harshaw, Chair



Becky Groem, Board Secretary

May Meeting Minutes Suggested Revisions

Page No. 3 in conjunction with Paragraph No. 9: Bowler asked whether the community room across the street could be used by Maley residents as well. It was stated that it could not be because Maley residents had disabilities and could not cross the street.

Page No. 3 in conjunction with Paragraph No. 2, 3, and No. 4: Bowler asked whether the planned office space and computer lab across the street would be used by Maley residents as well requiring them to cross the street. Ms. Lennard stated it would be.

Page No. 7 in conjunction with Paragraph No. 9: Bowler stated that she did not clearly see how the request met the requirements for granting a variance. Bowler stated that, as commented earlier by another party, if the hardship was that there was no safe place for residents to seek shelter in the event of a storm event, then...(existing language) [she] could compromise if the variance request would solely apply to the addition.

Board Action: Make clear that it is the board's intent that, other than the current community room request, no additional variance is granted (for other parts of the building or future modifications to the community room) and that no part of this board action should be construed to grant conforming status to any parts of the building other than as specifically required by the current community room request.

Maja Bowler