

BOARD OF ADJUSTMENT  
MINUTES OF  
REGULAR MEETING  
August 19, 2021

The regular meeting of the City of Daytona Beach Board of Adjustment was held on Thursday, August 19, 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. John George

Staff members present were as follows:

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

1. **Call to Order**

Mr. Harshaw called the 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.

4. **Approval of the Minutes**

**Board Action:**

A motion was made by Ms. Bowler, seconded by Ms. Barhoo, to approve the minutes of the June 17, 2021, meeting as presented. The motion carried (5-0).

**New Cases:**

**Case A – BOA2021-006 – Variances from Article 4, Section 4.2.C**

A request by David Betz (property owner) for a variance from Article 4 (Development Standards), Section 4.2.C of the Land Development Code (LDC) to reduce the required interior side yard setback from 7.5 feet to 1.5 feet and to reduce the required spacing from principal building from 5 feet to 2 feet, to allow for the enclosure of the approximately 319 s.f. existing carport and breezeway. The property is located at 269 Lexington Drive. The zoning on the property is Multifamily Residential-12 (MFR-12) and the Future Land Use (FLU) on the property is Level 2 Residential.

**Applicant Presentation:**

David Betz, 269 Lexington Drive, Daytona Beach, Florida stated he has lived in the property since 2020. Mr. Betz offered his condolences to the family and colleagues of Off. Jason Raynor who recently passed away. Mr. Betz stated he plans to enclose his existing carport and will add whatever is necessary as required by the Building Department to achieve structural soundness as well as a firewall on the west side of the structure. Mr. Betz stated the structure will allow additional storage as well as the ability to place a vehicle inside the structure. Mr. Betz stated only about 30% of the structure will be in the setback area. Mr. Betz stated if he removed the existing carport and constructed a new garage, a setback variance would still be required. Mr. Betz stated the structure will not reflect negatively on the adjoining properties.

Ms. Bowler asked if the structure will be built in the same location as the existing carport.

Mr. Betz said yes and it will meet the requirements of the Building Department, and may include a firewall.

Ms. Bowler asked if the existing structure ever had a garage.

Mr. Betz stated as far as he knows there was never a garage.

Ms. Bowler thanked Mr. Betz for being so complete in the information he provided.

Mr. Harshaw asked what the structure will look like.

Mr. Betz stated the house is an old adobe/Mediterranean style. Mr. Betz stated the sides will be metal and the front will have sliding doors. Mr. Betz stated the roof will be steel and will be angled toward the back.

Mr. George asked what the height of the structure will be.

Mr. Betz stated the height will remain the same and there will be no living area.

Mr. Harshaw read comments from Anne Fuller, 221 Lexington, and Maurice Morton, 220 Lexington, that were submitted and both were in support of this variance request.

**Public Comments:**

Allen Lootens, 255 Lexington, stated he supports the requested variance.

Florentin Vasiliu, 284 Lexington, stated he supports this variance request.

Stacey Shea, 241 Lexington, spoke in support of this variance request.

Eric Wood, 270 Lexington, spoke in support of this variance request.

Don Cane, 101 University, stated he does not live in the Lexington area but owns 5 properties in the area and stated he supports Mr. Betz's request for the variance to improve his property.

**Board Action:**

A motion was made by Mr. Connors, seconded by Ms. Barhoo, to approve BOA2021-006 – Variances from Article 4, Section 4.2.C, in accordance with the staff report as presented. The motion carried (5-0).

**Case B – BOA2021-007 – Variances from Article 4, Section 4.2.C**

A request by Florentin Vasiliu (property owner) for a variance from Article 4 (Development Standards), Section 4.2.C of the Land Development Code (LDC), to exceed the 200 sq. ft. maximum floor area of an accessory structure, to increase the maximum height of the proposed structure from 20 feet to 22 feet 5.5 inches, to allow maximum rear yard coverage in excess of 30%, to reduce the required rear lot line setback from 7.5 feet to 0.3 feet from the northwest corner of the proposed accessory structure and 1.5 feet to the northeast corner of the proposed structure, to reduce the required side setback from 7.5 feet to 2.8 feet from the northwest corner of the proposed structure and 4.1feet from the southwest corner of the proposed structure, to allow for an approximately 630 s.f. accessory structure to replace the previous accessory structure/boat house located on the property. The property is located at 284 Lexington Drive. The zoning on the property is Multifamily Residential-12 (MFR-12), it is in the Ballough Road Redevelopment Zone, and the Future Land Use (FLU) on the property is Commercial Mixed Use.

**Applicant Presentation:**

Attorney Jay Small, 600 Robinson Street, Orlando, Florida spoke representing the applicant. Mr. Small stated Mr. Vasiliu applied for a building permit in the last quarter of 2020 and there were issues relating to the building permit pertaining to setbacks. Mr. Small stated when he was retained by Mr. Vasiliu, he met with Ben Gross, Deputy City Attorney, Jim Morris, Deputy City Manager, and Kim Flaherty from Permits & Licensing. Mr. Small stated a plan was set to address the zoning issues and the finalization of the building permit. Mr. Small stated there is a pending Code Enforcement action; and he met with Code Enforcement last month to explain that a variance application had been submitted and an attempt is being made to bring the property into compliance. Mr. Small stated the variance requested will permit the reconstruction of a building that was destroyed during Hurricane Irma within the footprint of the non-conforming use. Mr. Small stated the property will not be a rental property so there will be no traffic increase as a result of the construction. Mr. Small stated none of the improvements will encroach into the City right of way. Mr. Small stated the total lot coverage for the structure will be about 26.7%. Mr. Small submitted a letter from his architect, David Leek, which Mr. Harshaw read into the record.

Ms. Phillips asked if it is the intention to increase the height.

Mr. Small stated no and stated the variance application is what is planned.

Mr. Harshaw asked that Ms. Phillips provide a history on the property.

Ms. Phillips stated in 2017 there was a permit issued for the boat house; and in 2020, Code Enforcement cited the owner for working without a permit. Ms. Phillips stated Mr. Vasiliu believed he was working under the permit issued in 2017; however, that permit had expired. Ms. Phillips stated Mr. Vasiliu submitted a permit application for the reconstruction and the permit was approved to reconstruct the boat house in the same footprint. Ms. Phillips stated Mr. Vasiliu was stopped by Code Enforcement because an attempt was being made to put a second story on the structure. Ms. Phillips stated multiple revisions were submitted but were denied because they were expanding and increasing the structure. Ms. Phillips stated a stop work order was issued.

Mr. Small stated this is not a two story structure.

Mr. Gross stated this is simply an accessory structure which would be allowed. Mr. Gross stated the Land Development Code does not allow boat houses to have side walls. Mr. Gross stated this should be treated as a generic accessory structure and not a boat house.

Ms. Bowler asked if there is an increase in the height.

Mr. Small stated the pilings will raise the height but will help secure the structure.

Mr. Harshaw stated the zoning is MF-12 and the unit could be rented.

Ms. Phillips stated the original agreement was that this would not be rented as a multi-family unit. Ms. Phillips stated this was proposed as an accessory structure and will have to be built in compliance with the Florida Building Code; however, with accessory structures, per the Land Development Code, they are not habitable units.

Mr. Small stated this will not be a rental property but will be used as an accessory structure for storage.

**Public Comments:**

David Betz, 269 Lexington, Daytona Beach, Florida stated he supports the variance requested.

Eric Wood, 270 Lexington, Daytona Beach, Florida stated what is being constructed is built very well and he supports this request.

Allen Lootens, 255 Lexington, stated what is being done is a vast improvement and feels it is a great step forward.

Mr. Harshaw asked Mr. Lootens how he feels about the proposed height.

Mr. Lootens stated he supports what is permitted within the regulations but the height will not affect him since his property is at the other end of the canal.

Don Cane, 101 University, Daytona Beach, Florida stated what is being done is an improvement and he supports the variance requested.

Dean Maxwell, 720 Palm Circle Drive, Port Orange, Florida stated he represents the contractor that is doing the structure. Mr. Maxwell stated the project has always been planned as an accessory structure and not a boat house. Mr. Maxwell stated the building is being designed so that it will withstand a hurricane.

Randy Kiefer, 274 Lexington, stated he is happy with what is being done on the property.

Elan Scerachet, 600 Ballough Road, stated he supports the variance being requested.

Stacey Shea, 241 Lexington, stated she loves the building that is being constructed.

Ms. Bowler stated she was pleased to learn the history of the project and to know that a permit was issued and Mr. Vasiliu believed he was working under a permit and that makes a difference to her.

Mr. Harshaw stated he was pleased to see so many adjacent property owners support the variance request.

**Board Action:**

A motion was made by Mr. George, seconded by Ms. Bowler, to approve BOA2021-007 – Variances from Article 4, Section 4.2.C, in accordance with the staff report as presented. The motion carried (5-0).

**Case CB – BOA2021-008 – Variance from Article 4, Section 4.2.BC**

A request by Ann B. Hendrix (property owner), for a variance from Article 4 (Development standards), Section 4.2.B of the Land Development Code (LDC), to reduce the required interior side yard setback from 10 feet to 5 feet, to allow for construction of a 600 s.f. detached garage. The property is located at 6Elizabeth Lane. 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:**

Pete Zahn, 150 S. Palmetto, Suite 200, Daytona Beach, Florida spoke representing the applicant. Mr. Zahn stated the property owner approached him about building a garage but what was proposed did not meet the setbacks. Mr. Zahn stated there is a platted street which is Elizabeth Lane that runs in front of the house and extends north. Mr. Zahn stated the elevation of the street is 13.4' and the elevation at the gate to the property is 12'. Mr. Zahn stated the elevation of the property where the garage would be located is 10.3' and 30 feet beyond the garage is 9.2'. Mr. Zahn stated the property to the south has an elevation of 4.8' so the property drops off significantly. Mr. Zahn stated the property owner does not have sufficient property to back her car out onto Elizabeth so there is a need for the garage to help in turning the car.

Mr. Harshaw asked if there is anywhere else on the property where the garage could be constructed.

Mr. Zahn stated there is no place for it on the south side of the house. Mr. Zahn stated behind the house there are 3 – 18" oaks and there are 4 trees and a shed to the west. Mr. Zahn stated the biggest issue is the grade of the property. Mr. Zahn stated the proposed location is best due to parking and turning movements.

Mr. George asked if the 10' setback is maintained, what would the grade be.

Mr. Zahn stated it would be approximately the same. Mr. Zahn stated there is a 4.8' grade point off the corner of the proposed garage. Mr. Zahn stated to maintain the setback would move the garage further to the south and the grade would be about 9.2' and would drop to 4.8'.

Ms. Bowler stated she feels the situation was created by the homeowner and there was not a strong argument presented in the application.

Mr. Zahn stated the housing and grades were existing when the property owner purchased the property. Mr. Zahn stated the greatest hardship is the 5' grade drop.

Mr. Connors asked why the garage has to be detached.

Mr. Zahn stated because of the turning radius. Mr. Zahn referred to the sketch that is on Page 2 of the staff report and stated there is a two story deck adjacent to the residence and there is only a 7' clearance between the elevation of the brick drive and driving underneath the wood deck. Mr. Zahn stated if the owner pulls in and their truck is parked there, there is not sufficient room to pull straight forward. Mr. Zahn stated the proposed garage is 20' x 30'.

Mr. Harshaw asked if the garage could be 20' x 25' and closer to the house.

Mr. Zahn stated if the garage is shifted to the east, there is a shed that would have to be removed and there are also two 22' and 18' oak trees. Mr. Zahn stated if moved, there will not be a view.

Mr. Harshaw asked if there are stairs.

Mr. Zahn stated there is a loft above so there are stairs for access to the loft. Mr. Zahn stated a typical garage is 10 feet high and then there will be a loft on top with a walkway around it.

Mr. Harshaw asked if a viewing area on top of the garage is proposed.

Mr. Zahn stated there is a use proposed since the property owner is a painter and would like a view from the top of the garage.

**Public Comments:**

Thomas Baldwin, 7 Elizabeth Lane, Daytona Beach, Florida stated his property is directly to the north of the subject property and stated the proposed location of the garage is right outside his front door and master bedroom. Mr. Baldwin stated this setback would influence the character of the neighborhood, his privacy, and potentially the value and desirability of the lot. Mr. Baldwin stated this is a \$1,000,000 property on the riverfront with a half acre of land and he does

not feel this variance request is the applicant's only option. Mr. Baldwin stated there was a garage when the applicant purchased the home but it has been converted to another bedroom and bathroom. Mr. Baldwin stated placing the garage into the setback will affect the appearance of his property. Mr. Baldwin stated the concerns are engineering challenges, not hardships. Mr. Baldwin stated two of the neighbors, Todd Angel and Mark Palazzolo were notified of the hearing but were unable to attend but have sent emails objecting to the variance request. Mr. Baldwin stated he was unaware of any plans to make the structure two story with a loft and viewing deck. Mr. Baldwin stated he is concerned construction may damage the roots of an existing tree on his property.

Mr. Harshaw read the emails from Todd Angel and Mark Palazzolo into the record.

**Board Action:**

A motion was made by Mr. Connors, seconded by Ms. Barhoo, to approve BOA2021-008 – Variance from Article 4, Section 4.2.BC, in accordance with the staff report as presented. The motion failed 1-4 with Ms. Bowler, Mr. George, Mr. Connors, and Mr. Harshaw voting nay.

**Case D – BOA2021-009 – Variance from Article 4, Section 4.7.Z**

A request by Thomas A. Huger and Linda G. Huger (property owners) for a variance from Article 4 (Development Standards), Section 4.7.Z of the Land Development Code (LDC) to reduce the required rear yard setback from 25 feet to 15 feet, to allow for an approximately 1,092 s.f. addition to the rear of the existing structure. The property is located at 928 Sycamore Street. The zoning on the property is Redevelopment Midtown – Residential Preservation (RDM-6), and the Future Land Use (FLU) on the property is Level 2 Residential.

**Applicant Presentation:**

Thomas Huger, property owner, stated he built the house in 1985 and he did not take the setbacks into consideration at that time. Mr. Huger stated his mother-in-law has moved in with his family and he also has an active 16 year old son and they have outgrown the house.

Mr. Harshaw stated there is a block wall with a screen room on the house.

Mr. Huger stated that has already been permitted and will be enclosed.

Mr. Harshaw stated there are some very old trusses on the property.

Mr. Huger stated they will go to the dump.

Mr. Harshaw asked about the shed on the property.

Mr. Huger stated that was permitted and it will stay. Mr. Harshaw stated he spoke to his neighbor and he does not object to the variance request. Mr. Huger stated he will be replacing the fence between his and the neighbor's property. Mr. Huger stated the house is 2400 s.f. and he proposes to expand to 3500 s.f. Mr. Huger stated the home will still be within the 35% required lot coverage. Mr. Huger stated the square footage will allow him to have the recreational uses he needs, such as a tread mill and weight station.

Ms. Bowler stated the subject property is one of the nicest in the neighborhood.

**Public Comments:**

There were no public comments.

**Board Action:**

A motion was made by Ms. Bowler, seconded by Ms. Barhoo, to approve BOA2021-009 – Variance from Article 4, Section 4.7.Z, in accordance with the staff report as presented. The motion carried (4-1) with Mr. George voting nay

**6. Review Cases**

Case A	-	Approved 5-0
Case B	-	Approved 5-0
Case C	-	Denied 1-4
Case D	-	Approved 4-1

**7. New Business**

Mr. Harshaw stated the Board needs to elect a Vice Chair.

**Board Action:**

A motion was made by Ms. Barhoo, seconded by Mr. George, to appoint Ms. Bowler to serve as Vice Chair. The motion carried (5-0).

Mr. Gross stated the ordinance regarding the quorum for the Board of Adjustment will be presented for second reading at the next City Commission meeting.

Ms. Phillips stated Mr. Gentle has indicated he will be resigning but she has not received his written resignation as yet.

Ms. Bowler stated she would like staff to encourage the applicants to provide more information on their variance applications.

Ms. Phillips stated a pre-application is held with the applicant and she can encourage the applicants to be more thorough in the information they provide.

**8. Adjournment**

There being no further business to come before the Board, the meeting was adjourned.



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Trey Harshaw, Chair



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Becky Groom, Board Secretary