

**Minutes of Board of Adjustment Meeting
Held Tuesday, July 15, 2008 at 7:00 P.M.,
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida**



Call to Order

The meeting was called to order by Chairperson Moreland.

Roll Call

Josh Corey *Absent*
Keith Hall *Absent*
Bobby Jolley
Joseph Loretta (*Vice Chairperson*)
John Moreland (*Chairperson*)
Tom Buck *Absent*

Also present was Recording Secretary Amber Lehman.

Purpose and Ex-Parte Statement

Mr. Moreland read the following statement into the record:

“These variance applications are before the Board of Adjustment for public hearing and consideration. A variance is an approved deviation from the terms of the LDC that will not be contrary to the public interest when owing to special circumstances or conditions where the literal enforcement of the provisions of the LDC would result in undue and unnecessary hardship.

Under the laws of the State of Florida, a public hearing for a zoning variance application is handled as a “*quasi-judicial*” proceeding. A quasi-judicial proceeding means that the decision-making group is functioning in a manner similar to a court with the voting members sitting as impartial decision makers hearing testimony and questioning presenters, who are to provide substantial and competent evidence to support their side of the issue under consideration. It is the duty of the Board of Adjustment to arrive at sound decisions. This includes receiving citizen input regarding the effect of the variance on the neighborhood, especially where the input is fact-based and not a simple expression of opinion.

It is the applicant’s burden to demonstrate that their application is consistent with the Land Development Code and Comprehensive Plan. If the applicant is successful in showing consistence, then it is up to the Board of Adjustment to produce competent, substantial evidence of record to the contrary, if the application is to be denied. The Board of Adjustment’s decision on a variance application is to be based on the criteria contained in Section 34-286 of the Land Development Code. Each member of the Board of Adjustment has been provided a copy of the criteria. In addition, the Board of Adjustment has received a copy of the application being presented.”

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“Before opening the meeting and requesting a motion on any of the applications before us this evening, beginning with myself, each of the members is requested to indicate for the record both the names of the persons and the substance of any ex-parte communications regarding any of the applications. An ex-parte communication refers to any meeting or discussion with person or citizen who may have an interest in this decision, which occurred outside of public hearing process.”

There were no exparte communications disclosed by any board members.

Approval of Minutes

There were no minutes to approve.

Correspondence

There was no correspondence

OLD BUSINESS:

Case Number: BOA 08-100070

Name of Applicant: Ronald Downs

Property Address: 1312 North 13th Avenue

Motion: It was moved by Mr. Corey, seconded by Mr. Jolley, to approve a request for a rear yard of 17 feet, in lieu of 30 feet required, to allow for improvements to a single-family dwelling.

Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to postpone BOA Case No. 08-100070, to the end of the meeting, due to the applicant being absent.

2nd Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to table the case until the next meeting, when the applicant will be able to attend.

Roll call vote: Ayes – Jolley, Hall, and Moreland; motion unanimously approved.

NEW BUSINESS:

Case Number: BOA 08-100082

Name of Applicant: Gilbert L. Niehaus, Sr.

Property Address: 1826 Ocean Pond Drive

Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for no garage or carport, in lieu of a one-car garage or carport required.

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Applicant, Gilbert Niehaus, 1826 Ocean Pond Drive, stated that he currently is 100% disabled and he has blacked out several times. So he has enclosed garage so that he can not get out. Mr. Niehaus also stated that he was not aware of the LDC requiring a garage. The garage has been enclosed for three years.

Mr. Moreland asked how long the garage has been enclosed.

Mr. Niehaus stated that the garage has been enclosed for three years.

Mr. Jolley asked what the garage is being used for.

Mr. Niehuas replied that the garage is being used as a playroom for his grandchildren and a junk room for storage.

Public Hearing

Mr. Moreland opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

Seeing no one who wished to address the board, Mr. Moreland closed the public hearing.

There followed a brief discussion about the Land Development Code does not allow variances to be granted due to medical hardships.

Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley to approve a request for no garage or carport in lieu of a one-car garage or carport required, based on testimony spoken today and based upon and not including substantial modification into the future.

Roll call vote: Nays – Jolley, Loretta and Moreland; motion for approval was unanimously denied.

Case Number: BOA 08-100083

Name of Applicant: Charles R. Horn

Property Address: 12 Hopson Road

Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for an easterly side yard of five feet, in lieu of ten feet required, 34-336 (e)(1)e, for 39% lot coverage in lieu of 35% maximum; and 34-373 (d), for a parking/vehicular use area setback of three feet, in lieu of five feet minimum, to allow for improvements to a single-family dwelling.

Applicant, Charles Horn, stated that he is currently constructing a single-family home and would like to have a double car garage attached to the home. He explained, due to the shape of the lot, he is unable to do so without encroaching on the side yard setbacks.

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Mr. Loretta asked if the request was the minimum amount necessary for the project.

Mr. Horn replied yes, and advised that this is the best possible plan.

Mr. Moreland asked the applicant what hardship is associated with the property.

Mr. Horn replied that the unusual shape of the lot is the hardship.

Public Hearing

Mr. Moreland opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

Seeing no one who wished to address the board, Mr. Moreland closed the public hearing.

There followed a brief discussion concerning the request and the hardship being the shape of the lot.

Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley to approve a request for an easterly side yard of five feet in lieu of ten feet required, and 34-373 (d), for a parking / vehicular use area setback of three feet in lieu of five feet minimum, to allow for improvements to a single-family dwelling, as submitted and discussed.

Roll call vote: Ayes – Jolley, Loretta and Moreland; motion unanimously approved.

Case Number: BOA 08-100085

Name of Applicant: Joseph & Emily Crozier

Property Address: 1650 South 6th Street

Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for 42% lot coverage, in lieu of 39% maximum to allow for improvements to a single-family dwelling.

Applicant, Joe Crozier, 1650 South 6th Street, stated that he would like to construct a 12 x 24 wooden deck on the rear of his home. Mr. Crozier added that the size of his lot is the hardship for the property.

Mr. Jolley asked the applicant if the home is situated next to a retention pond.

Mr. Crozier replied yes and explained that the closest neighbor is located on the other side of a 12-foot alley, at the rear of the property.

Mr. Loretta asked if the deck would be non-covered.

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Mr. Crozier responded in the affirmative.

Public Hearing

Mr. Moreland opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

Seeing no one who wished to address the board, Mr. Moreland closed the public hearing.

There was a brief discussion about the size and shape of the lot; therefore creating a hardship for the property. It was also noted that the request is minimal and that the deck should not infringe on the surrounding neighbors.

Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for 42% lot coverage, in lieu of 35% maximum to allow for improvements to a single-family dwelling as submitted and discussed.

Roll call vote: Ayes – Jolley, Loretta and Moreland; motion unanimously approved.

Case Number: BOA 08-100089

Name of Applicant: Paul West

Property Address: 455 South 15th Avenue

Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for a front yard of 15 feet, in lieu of 20 feet required; and 34-337 (e)(1)e, for 44% lot coverage, in lieu of 40% maximum, to allow for improvements to a single-family dwelling.

Applicant, Paul West, 455 South 15th Avenue, stated that the reason for the request is for addition of front steps to the structure. Mr. West added that this is an as-built situation.

Mr. Loretta asked the applicant what the square footage is.

Mr. West stated that the square footage is 6,250.

Public Hearing

Mr. Moreland opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

Seeing no one who wished to address the board, Mr. Moreland closed the public hearing.

A discussion ensued about the hardship being the size of the lot.

Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for a front yard of 15 feet, in lieu of 20 feet required and 34-337 (e)(1)e; and

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for 44% lot coverage in lieu of 40% maximum, to allow for improvements to a single-family dwelling that would allow for a wooden-step walkway as shown and submitted.

Roll call vote: Ayes – Jolley, Loretta and Moreland; motion unanimously approved.

Case Number: BOA 08-100090

Name of Applicant: I. Mark Rubin

Property Address: 323, 325, 327, 333, 335, & 337 Jacksonville Drive

Motion: City of Jacksonville Beach Land Development Code Section: 34-373 (d), for zero feet in lieu of five feet minimum; 34-425 (b)(1), for no landscape buffer for parking area along the easterly property line; and 34-377 for nine on-site parking spaces, in lieu of 14 spaces required to allow for a new bank.

The applicant, Mark Rubin, 1649 Atlantic Blvd, Jacksonville, President of Accuville Development stated that the reason for the request is due to a hardship being created by the City of Jacksonville Beach. The hardship is on the corner of Jacksonville Drive and 3rd Street, the City of Jax Beach has asked DOT to move traffic light one block south to eliminate current location and DOT agreed only if the road can be put in the rear of the property - requiring a 40 foot easement - therefore resulting in less space for landscape buffer.

Public Hearing

Mr. Moreland opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

The following persons spoke against the application:

Gene Mackey, 1655 Marshside Drive, Jacksonville Beach.

Joe Crozier, 1650 South 6th Street, Jacksonville Beach

Seeing no one else who wished to address the board, Mr. Moreland closed the public hearing.

Amended Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, for approval of zero feet, in lieu of five feet minimum, 34-425 (b)(1), for no landscape buffer for parking area along the easterly property line; and 34-377 for nine (9) on-site parking spaces in lieu of 14 spaces required, to allow for a new bank, based upon approval of a parking lot easement on the easterly side.

Roll call vote: Ayes – Jolley, Loretta and Moreland; motion unanimously approved.

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Case Number: BOA 08-10092

Name of Applicant: Ben Hakimian

Property Address: 1020 North 3rd Street

Motion: It was moved by Mr. Loretta, seconded by Mr. Jolley, to approve a request for no additional parking in lieu of two (2) spaces required for a 200 square foot restaurant addition (walk-in coolers).

Agent for the applicant, Bob Burk, explained that the request is for no additional parking spaces, to allow Mellow Mushroom an addition for walk-in coolers. Though the addition is required to have additional parking spaces, it will not have any customer involvement; so there is no reasonable need for additional parking spaces.

Public Hearing

Mr. Moreland opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

The following person spoke in favor of the application:

David Valentino, VP of Mellow Mushroom.

Seeing no one else who wished to address the board, Mr. Moreland closed the public hearing.

Mr. Jolley stated, in his opinion, that the restaurant has plenty of parking, and adding the additional square footage would not warrant the need for additional parking spaces.

Roll call vote: Ayes – Jolley, Loretta and Moreland; motion unanimously approved.

Adjournment

There being no further business coming before the Board, Mr. Moreland adjourned the meeting at 8:25 P.M.

Submitted by: Amber Maria Lehman
Recording Secretary

Approval:

/s/John Moreland
Chairperson

Date: December 2, 2008