

**Minutes of Board of Adjustment Meeting  
held Wednesday, September 6, 2017, at 7:00 P.M.,  
in the Council Chambers, 11 North 3<sup>rd</sup> Street,  
Jacksonville Beach, Florida**



**CALL TO ORDER**

Chairman John Moreland called the meeting to order.

**ROLL CALL**

*Chairman:* John Moreland  
*Vice-Chairwoman:* Sylvia Osewalt  
*Board Members:* Thomas Buck Scott Cummings Jeff Truhlar  
*Alternates:* Francis Reddington (*absent*) Chase Sams

**Ex-parte Communications**

Mr. Moreland reported he received ex-parte communications in support of Case No. BOA 17-100025. Mr. Buck stated he received a phone call in support of the same case.

**Approval of Minutes**

There were no minutes to approve.

**Correspondence**

Mr. Moreland reported he received two letters in which he would address during the applicable case.

**OLD BUSINESS:**

**(A) Case Number: BOA 17-100025**

**Name of Applicant:** Richard Withers

**Property Address:** 1198 Beach Boulevard

**City of Jacksonville Beach Land Development Code Section(s):** 34-343(e)(5), for 97% lot coverage, in lieu of 85% maximum; to allow construction of a new commercial building, for property legally described as Part of Castro Y Ferrer Grant, Sec. 38, Township 2S, Range 29E.

**Applicant:** The applicant, Mr. Mack McCuller, 225 Water Street, Jacksonville, stated this was a case heard in July and they were requesting a waiver to be permitted to refile their application without a year delay. He noted this was not a hearing on the merits of the case but just to request the waiver of the one-year requirement. He stated there were three material mistakes of fact in the prior

hearing. First, the lot coverage is 100%, because the lot is already paved. Secondly, Mr. McCuller noted this is a legal non-conforming structure, and they should not need a variance. He added the calculation shows there is 7% pervious land area on the site.

Mr. Mann asked if that was based on the original variance application. Mr. McCuller stated it was. Mr. McCuller stated the third mistake of fact was the explanation of the FDOT right-of-way, which provides approximately 13% of the pervious area.

Mr. Moreland asked if there already exists 7% and there is an additional amount of pervious coverage, why would they need to come back. Mr. McCuller stated they don't meet the 15% on site, as required by Code. He also stated the Code requires four votes in order for them to proceed.

Ms. Osewalt asked about the lot coverage. Mr. McCuller stated they have 100% lot coverage today, by definition, and would be vested in what they have there currently.

**Public Hearing:**

No one wished to come forward and speak on the matter.

**Discussion:**

Mr. Mann asked about the percentage lot coverage, noting it was staff's calculation. He noted they needed to calculate the amount of lot coverage. Mr. Mann stated if it were 7% pervious, they would not need the year's delay to file.

Mr. Richard Withers, the applicant, stated there was a lawsuit pending in Circuit Court. Mr. Mann explained why the applicant was present to ask for a waiver of the year's delay, noting the applicant thought there were material mistakes of facts.

City Attorney, Susan Erdelyi, noted there is litigation pending in this case. She stated if they were allowed to come back before the Board for a vote, it could extend the record on the litigation. A discussion ensued on whether the material mistakes were discussed at the prior hearings and whether they influenced the Board's decision. As explained by Mr. Moreland, an affirmative vote would permit the applicant to refile their application without a year's delay.

**Roll Call Vote:** Ayes – Buck, Cummings, and Moreland.

Nays – Osewalt and Truhlar.

The request for reconsideration of variance application BOA 17-100025 was denied, as four required affirmative votes were not attained.

**(B) Special Magistrate Report and Recommendation Pursuant to Section 70.51, Florida Statutes: Application BOA 16-100187**

City Attorney, Susan Erdelyi, noted that the Board previously had wanted to hear the report at the end of the meeting. Mr. Moreland noted four people wished to speak on this case but agreed to postpone it until the end of the meeting.

## **NEW BUSINESS**

### **(A) Case Number: BOA 17-100124**

The case was withdrawn by the applicant.

### **(B) Case Number: BOA 17-100130**

**Name of Applicant:** Brandon Andrews

**Property Address:** 525 Patricia Lane

**City of Jacksonville Beach Land Development Code Section(s)** 34-336(e)(1)e, for 46.5% lot coverage, in lieu of 35% maximum; 34-336(e)(1)g, for a 2 foot northerly and a 2 foot westerly accessory structure setback, each in lieu of 5 feet required; 34-337(d) for a parking area setback of 2 feet in lieu of 5 feet required; to allow a driveway and detached garage addition to an existing single-family dwelling, for property legally described as Lot 6, Block 6, *Beach Homesite Unit 1*.

**Applicant:** The applicant, Mr. Brandon Andrews, 525 Patricia Lane, stated the lot was substandard in size. He added they were required to have a garage, and at this time they have a carport, but it's a teardown structure. He stated any addition in living space would require set-up where the garage currently located. He noted they would need to put the garage in the back of the property. The addition to the house would not need a variance, but access to the garage would require a variance.

Mr. Mann noted the house is non-conforming in size as well. In response to Mr. Buck, he stated there were no complaints from the neighbors.

#### **Public Hearing:**

No one wished to come forward and speak on the matter.

#### **Discussion:**

Mr. Buck noted both the house and lot were substandard and thought there were legitimate reasons for the request.

Mr. Mann stated any drainage issues would be addressed in project review, noting a reverse crown would be a good design.

**Motion:** It was moved by Mr. Buck, and seconded by Mr. Cummings, to approve the application.

**Roll Call Vote:** Ayes – Cummings, Moreland, Osewalt, Truhlar, and Buck.  
The motion to approve the application was approved unanimously.

**(C) Case Number: BOA 17-100132**

**Name of Applicant:** Robert Twigg

**Property Address:** 517 Patricia Lane

**City of Jacksonville Beach Land Development Code Section(s)** 34-336(e)(1)c.3., for a rear yard setback of 25 feet, in lieu of 30 feet required to allow for a room addition to an existing single-family dwelling unit for property legally described as Lot 2, Block 6, Beach Homesite Unit 1.

**Applicant:** The applicant, Mr. Robert Twigg, 517 Patricia Lane, stated the house footprint is small for the lot and the five feet is not running the entire length of the house.

Mr. Moreland noted the shape of the lot created a problem. Mr. Twigg agreed the lot shape is problematic. Mr. Mann noted it is not a substandard lot, but the geometry of the lot could be a reason for the variance.

**Public Hearing:**

No one wished to come forward and speak on the matter.

**Discussion:**

Mr. Cummings stated because the lot is in a pie shape, the variance was justified.

**Motion:** It was moved by Mr. Cummings, and seconded by Mr. Truhlar, to approve the application as written, stated and presented.

**Roll Call Vote:** Ayes –Osewalt, Truhlar, Buck, Cummings, and Moreland.  
The motion to approve the application was approved unanimously.

**(D) Case Number: BOA 17-100133**

**Name of Applicant:** Robert and Maria Burke

**Property Address:** 1228 North 2<sup>nd</sup> Avenue

**City of Jacksonville Beach Land Development Code Section(s)** 34-336(e)(1)e, for 37.6% lot coverage, in lieu of 35% minimum; 34-336(e)(1)g for an accessory structure setback of 2 feet in lieu of 5 feet required; to allow a detached garage addition in the rear yard of an existing single-family dwelling unit, for property legally described as west ½ of Lot 9, and all of Lot 10, Block 3, Pine Grove Unit One.

**Applicant:** The applicant, Mr. Robert Burke, 1228 2<sup>nd</sup> Avenue North, stated he would like a garage on the property. He stated only one location would work for a garage. Previously, for the last 18 years, they had been parking on the property

behind them. He stated there would be an increase in traffic from the nine condos across the street. He noted the hardships created from locating the garage elsewhere on the property. Mr. Burke stated he talked to his neighbors and they submitted letters in support of the request. He noted the side yard of 2 feet is in effect 5 feet due to the location where the neighbor's fence was built.

Mr. Cummings asked if they could ask him to rescind the variance on the east side to grant this one. Mr. Burke stated he would agree to that.

**Public Hearing:**

Ms. Osewalt read two letters into the record in support of the proposed variance.

**Discussion:**

Mr. Buck noted applicant's neighbor was in favor of it, and the driveway would be permeable. He thought the lot coverage request was minimal.

**Motion:** It was moved by Mr. Truhlar, and seconded by Mr. Cummings, to approve the application, and to rescind the approval of Application BOA #11-100133.

**Roll Call Vote:** Ayes – Buck, Cummings, Moreland, Osewalt, and Truhlar.  
The motion to approve, as amended, passed unanimously.

**(E) Case Number: BOA 17-100135**

**Name of Applicant:** Jamie and Susanna Pearl

**Name of Agent:** Chris Harman

**Property Address:** 115 North 12<sup>th</sup> Avenue

**City of Jacksonville Beach Land Development Code Section(s)** 34-338(e)(1)c.1., for a front yard setback of 0 feet in lieu of 20 feet required; 34-338(e)(1)c.2 for a westerly side yard of 1 foot in lieu of 5 feet required; and side yards totaling 13 feet, in lieu of 15 feet required; and 34-338(e)(1)c.3 for a rear yard setback of 27 feet in lieu of 30 feet required; to allow for substantial improvements to an existing non-conforming single-family structure for property legally described as west 45 feet of Lot 1, Block 132, Replat Part Pablo Beach North.

**Applicant:** The applicant, Mr. Chris Harman, 2174 Featherwood Drive East, Atlantic Beach, noted he was here on behalf of the applicant. He added they are replacing what was damaged by Hurricane Matthew with no change in footprint.

**Public Hearing:**

No one wished to come forward and speak on the matter.

**Discussion:**

Mr. Buck stated because this was pre-existing and the house was built in the 30's and this was being reconstructed from storm damage, he was in approval.

Mr. Mann stated because the improvement exceeded 50% of the costs, they had to get approval for all non-conformities.

**Motion:** It was moved by Mr. Cummings, and seconded by Mr. Truhlar, to approve the application, as written.

**Roll Call Vote:** Ayes – Buck, Cummings, Moreland, Osewalt, and Truhlar.  
The motion to approve the application was approved unanimously.

**(F) Case Number: BOA 17-100136**

**Name of Applicant:** Kenneth Massey

**Property Address:** 792 Holly Drive

**City of Jacksonville Beach Land Development Code Section(s)** 34-336(e)(1)c.1., for a front yard setback of 20 feet, in lieu of 25 feet required; and 34-336(e)(1)e for 44.5% lot coverage in lieu of 35% maximum; to allow construction of a single-family dwelling with pool and accessory building for property legally described as Lot 5, Block 11, Pine Grove Unit 2.

**Applicant:** The applicant, Mr. Kenneth Massey, 792 Holly Drive, stated the lot was non-conforming. He explained he bought the lot from Ms. Stewart on 792 Holly Drive. Mr. Mann stated legally they have to refer to 728. But because they already have it assigned, it's 792.

Mr. Buck asked about the previous variance. Mr. Massey noted Ms. Stewart needed to address her garage situation.

**Public Hearing:**

No one wished to come forward and speak on the matter.

**Discussion:**

Mr. Buck stated the lot was substandard at 7150 square feet. He thought asking for the setback and lot coverage variance was consistent with past requests. Mr. Truhlar asked about line of sight issues. Ms. Osewalt stated the five feet wouldn't make much of a difference.

**Motion:** It was moved by Mr. Cummings and seconded by Mr. Truhlar, to approve the application, as written.

**Roll Call Vote:** Ayes –Osewalt, Truhlar, Buck, and Cummings, and Moreland.  
The motion to approve the application was approved unanimously.

**(G) Case Number: BOA 17-100137**

**Name of Applicant:** Russell Cox

**Property Address:** 605 North 12<sup>th</sup> Avenue

**City of Jacksonville Beach Land Development Code Section(s)** 34-336(e)(1)c.1., for a front yard setback of 20 feet, in lieu of 25 feet required; 34-336(e)(1)c.2 for a westerly side yard setback of 7.5 feet, in lieu of 10 feet required; and 34-336(e)(1)e for 45% lot coverage, in lieu of 35% maximum; to allow for a garage and room addition to an existing dwelling unit for property legally described as Lot 6, Block 5, Beach Homesites, Unit One.

**Applicant:** The applicant, Mr. Russell Cox, 605 12<sup>th</sup> Avenue North, noted the lot size was non-conforming. He stated he was requesting to add an addition and garage to the unit. He said the increase asked for is 2%. He noted the pool and deck are already onsite.

He explained he is requesting 5 feet in the front yard and not the backyard. He said he was building the garage over the old carport.

**Public Hearing:**

No one wished to come forward and speak on the matter.

**Motion:** It was moved by Mr. Buck, and seconded by Mr. Truhlar to approve the application, as shown and discussed.

**Roll Call Vote:** Ayes – Truhlar, Buck, Cummings, Moreland, and Osewalt.  
The motion to approve the application was approved unanimously.

**OLD BUSINESS**

**(A) Report from City Attorney: Special Magistrate Report and Recommendation Pursuant to Section 70.51, Florida Statutes: Application BOA 16-100187**

Ms. Erdelyi stated this was a continuation of consideration of the Special Magistrate's Report for the above-referenced case. She stated on July 18<sup>th</sup>, 2017, the Board heard from the two attorneys and asked to give notice to those who spoke at the original hearing. She then provided the background on the case. She noted the property owner wanted to change from four condominiums to four townhomes and provided the details on the variance request. Ms. Erdelyi noted they could build six condominiums by right. She then reviewed the various site plan submitted by the developer.

Mr. Moreland asked what the options are, saying they can accept the recommendations from the Special Magistrate, ignore them, or accept some modifications.

## **Public Comment**

Ms. Ana Lee, 2653 Isabella Boulevard., Unit #4, stated it was in the best interest of the community to have the least amount of density on that property. Mr. Moreland noted if they went with the Special Magistrate's order, the property owner would give up the right for building the six units on the property.

Mr. Donald Lee, 2653 Isabella Boulevard., Unit #4, expressed his support for the four townhome units rather than the six condominium units. Mr. Mann responded to a question stating it is multi-family and they could put apartments there.

Ms. Wendy Lovett, 2653 Isabella Boulevard., Unit #3, stated if they were permitted to build six condominium units, it would result in more traffic. She thought four townhomes with homeowners was preferable to apartments or condominiums.

Mr. Michael Garbee, 403 St. Augustine Boulevard., stated he did not have a problem with the variance and thought four townhome units was preferable to what could otherwise be developed. Mr. Sams asked if he was at the original hearing. Mr. Garbee stated he did not have a problem with the proposal at the time.

The applicant's attorney, Mr. Sid Ansbacher, 780 N. Ponce de Leon Boulevard., St. Augustine, noted he had previously agreed to additional public input. He reviewed the results of the public input during the Special Magistrate hearing, noting there were four in favor and three opposed. He said the narrow throat of the subject property makes parking and access problematic. He requested they enter an order consistent with the Special Magistrate's recommendation and they would waive the right to build six units. Mr. Mann asked the opinion on the new plan. Mr. Ansbacher stated the point of the statutes is to accommodate, and by having the minimum variance, the new plan is accepted.

## **Discussion:**

Mr. Buck asked if they needed to put the new file number in the motion. Mr. Mann stated was the attorney's number. Ms. Erdelyi stated they should reference the new site plan. She stated the new one would reference the new drawing dated July 6, 2017. Mr. Mann reviewed the original variance request. Ms. Erdelyi reviewed the Special Magistrate's recommendations versus the original request.

**Motion:** It was moved by Mr. Buck and seconded by Mr. Truhlar to approve the Special Magistrate's recommendations dated June 12, 2017, which includes the revised site plan for the 4-unit townhouses dated July 6, 2017.

**Roll Call Vote:** Ayes – Cummings, Moreland, Truhlar and Buck  
Nays – Osewalt.

The motion to approve the Special Magistrate's recommendation was approved 4-1.

**Planning Director's Report**

Mr. Mann addressed legislation on medical marijuana dispensaries. He reported the City currently has a moratorium. He noted the State legislature passed legislation which states you can regulate them like pharmacies, or can prohibit them. He canvassed the Board members on their opinions to add insight as the City moves forward regarding this matter.

**Adjournment**

There being no further business coming before the Board, Ms. Osewalt adjourned the meeting at 8:37 P.M.

Submitted by: Amber Maria Lehman  
Senior Secretary

Approval:

*Sylvia W. Osewalt*  
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Chairman

Date: *11/21/2017*  
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