

MINUTES

BOARD OF ADJUSTMENT

June 2, 2010

7:00 p.m.

City Commission Chambers
22 South Beach Street
Ormond Beach, Florida

I. ROLL CALL

Members Present

Jean Jenner
Norman Lane
Dennis McNamara
Tony Perricelli
Ron Walker

Staff Present

Steven Spraker, AICP, Senior Planner
Ann Margret Emery, Deputy City Attorney
Chris Jarrell, Minutes Technician

II. APPROVAL OF MINUTES

The Board members voted to approve the minutes of the April 7, 2010 meeting, as presented.

III. OLD BUSINESS

There was no old business to be discussed.

IV. NEW BUSINESS

A. Case No. 10V-103: 175A Cardinal Drive

Mr. Spraker stated that the subject property is located within the Ocean Village Villas, a development of rental cottages constructed in 1948 ±. He recalled that in 1989, the units were converted to single-family duplexes, triplexes and fourplexes. He added that the 1989 resolution did not address the setbacks of the applied zoning district, and did not accurately reflect what was there.

Mr. Spraker referenced the correspondence in the Board packet and advised that in 1992, the city urged the Ocean Village Villas Homeowners' Association (HOA) to negotiate their setbacks and amend their development order. He said that in 2000, the then-planning director stated that staff would support a seven-foot side yard setback and a 15' front yard setback for the homes in the development.

Mr. Spraker pointed out the large area behind the subject property at 175 Cardinal, as well as the 10-foot utility easement located to the rear of the lot. He noted that the depth of the subject lot is greater than most of the other lots in the immediate area. He said that the application sought to add about 805 square feet of living area and a 259 square-foot garage. He explained that the living area addition met all the required setbacks, but that a variance was needed to allow the construction of the garage addition. He advised the Board that the city's Land Development Code (LDC) requires a 20-foot side yard setback for all garages; the applicant was requesting an 8-foot side yard setback.

The adjacent property owner, whose property already encroached about three (3) feet into the side yard setback, had no objection to the request before the Board, Mr. Spraker said, and had signed a letter to that effect. He pointed out the existing concrete pad, which had been utilized for a carport in the past.

Mr. Spraker said that planning staff had reviewed the request and believed it met the LDC variance criteria. He explained that staff would, however, prefer that the HOA amend the development order to preclude the need for the Ocean Village Villas homeowners from having to go through the variance process on an individual basis. He said that the cost of amending the development order to rezone to a planned development (including advertising fees) would be about \$2,400. He thought the cost might be prohibitive for the HOA, and also noted that that some associations preferred the variance process, which requires the noticing of adjoining property owners, giving them the opportunity to speak for or against each application.

It was an issue of how the City wanted to deal with the numerous nonconforming structures, Mr. Spraker said, and advised that since 1999, the residents had been encouraged to redevelop and reinvest in order to prevent such areas from becoming blighted. He said that although the LDC required garages and carports for all residential structures, the subject did not currently have one, and the variance would bring it into compliance for the garage. He pointed out that the additional living area would also bring the property into compliance for square footage, since it was currently below the required minimum.

Mr. Spraker said that staff was recommending approval of the variance and advised the Board that the applicant, out of the country, had authorized the project designer, Mr. Jones, to speak on his behalf. He confirmed for Mr. Perricelli that the only variance needed was for the garage, since the living area addition met the 20-foot setback.

Mr. Lane stated that most of the houses in the development did not have garages.

Mr. Spraker agreed that most had carports and said that the city had no prohibition against garages in the area. He advised that he had also confirmed

with one of the members of the HOA's architectural control committee that they had no known prohibition against garages. He said that the applicant would also be required to obtain approval from his homeowners association. He confirmed for Mr. Lane that a carport would also require a variance because of the structure and hard roof.

Mr. Perricelli noted that the location of the existing carport slab was about eight feet from the property line.

Mr. Spraker replied that it might have been a bit closer, but said he was not sure of the exact configuration.

Mr. Lane compared the cost of amending the development order with the cost of the individual applications and remarked that if a few homeowners were denied variances that perhaps they would force to HOA to take action. He felt that the result of upgrading by individual effort would not produce as good a result and would cost more in terms of time and money.

Mr. Spraker agreed and recalled that the applicant originally considered initiating the process to amend the development order, but said that it would require a vote of the entire homeowners' association; he realized that one applicant could not control the actions of the entire HOA. He said it was unfortunate that they had been required to use the variance process since 1992, but said that the city did not want to punish individual property owners, this discouraging them from doing improvements and making investments. He stated that he did not believe that a 20-foot setback in a duplex infill area was appropriate and said it was a standard that would probably not be required by the city.

Mr. Terrence Jones, 1641 Joiner Drive, Deltona, FL, said that he was the designer representing Mr. Ortona, the property owner. He said that Mr. Ortona had poured over \$100,000 and his time into the proposed additions because he loved the community. He said the owner was hoping that if approved, they could encourage the HOA to amend the development order for the benefit of the other residents. He said he was not sure that the residents were aware that many of their homes encroached into the setbacks and might not be able to rebuild on the same footprint if their homes were to be destroyed. He acknowledged that the property owner could easily get more for his money by buying elsewhere, but that he and other family members were tied to the community and might want to expand their structures, as well, given that many of the units were only about 600 square feet. He confirmed for Mr. Lane that if not approved for the garage, they would have to simply utilize the driveway for parking. He said that Mr. Ortona's goal was to eventually retire to the area and that he wanted to have a secure place in which to park his car while out of the country.

Chair McNamara surmised that if approved, more such requests would follow, since the beachside was tough on cars. He thought it was a great idea.

Chair McNamara open the hearing to public comment.

Ms. Audrey Durrue, 180 Cardinal, said that she had been surprised that she was not notified of the meeting. She stated that she was on the ARC [the HOA's architectural committee].

Mr. Spraker explained that only abutting property owners were notified by mail.

Ms. Durrue advised the Board that the existing slab on the subject property was originally part of a masonry carport that had collapsed during the hurricanes [in 1994]. She responded to Chair McNamara that she could have neither a garage nor a carport because she did not have room on her property.

Mr. Spraker confirmed for Ms. Durrue that the rear building addition did not require a variance, since they had 26 feet from the edge of the expansion to the property line; he also confirmed that the addition would not encroach into the easement.

Mr. Jenner made a motion to approve the variance, as stated.

Mr. Walker seconded the motion, which was approved by unanimous vote of the Board.

Chair McNamara advised the applicant's representative that the approval would expire after one year.

B. Case No. 10V-104: 175B Cardinal Drive

Mr. Spraker said the application was for the unit adjoining the variance just heard. He said that 175B had a little more room in the side yard; the applicant was requesting a variance of 7.17 feet for a garage addition, resulting in a side setback of 12.83 feet. He pointed out the footprint of the proposed living area expansion, 26.79 feet from the rear property line, and stated that the variance request was for the garage addition only.

Mr. Spraker stated that staff had reviewed the criteria and recommended approval.

There were no additional comments from the applicant's representative or the public.

Mr. Spraker confirmed for Mr. Walker that the additions on both properties would take place at the same time.

Mr. Perricelli made a motion to approve the variance request.

Mr. Lane seconded the motion, which was approved by unanimous vote of the Board.

Chair McNamara reiterated that the approval would expire in one year.

IV. DISCUSSION

Mr. Jenner questioned why the City could not administratively change the zoning.

Mr. Spraker explained that the issue was the development agreement, not the R-4 zoning classification. He said that it would require a new zoning category and a subsequent rezoning and would require notification of every one of the 100 or more property owners. He said it would be a substantial undertaking that would cost much more than simply amending the existing development agreement, which was a two-way agreement between the city and the developer at the time, allowing certain development rights and requiring certain improvements. He explained that both parties were needed to amend the development agreement. He informed the Board that staff was exploring a possible option of waiving the staff review fee, which would save the HOA about \$1,000 (although they would still have to pay for the cost to advertise). He said that staff was aware that amending the development agreement would result in saving staff time in processing variances, but pointed out that ultimately, the HOA would need at least a majority of the homeowners to approve the action.

Mr. Lane felt it that the amendment would be preferable to piecemeal variances.

Chair McNamara agreed and opined that potential buyers would know their properties could be rebuilt if destroyed by a natural disaster.

Mr. Walker questioned whether the HOA would be required to initiate the change to the development agreement.

Mr. Spraker replied that they would be required to sign the request. He said that beginning in 1992, city staff began sending correspondence that communicated a willingness to work on the setbacks, but he reported that there had not been much contact during the last 10 years. He thought that staff could re-initiate contact with the homeowners' association.

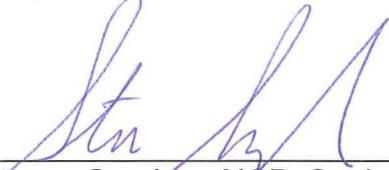
Mr. Jenner commented that if some of the homeowners knew that they might not be able to rebuild [in the event of a disaster] that they would be pressing their HOA for the amendment.

Mr. Spraker added that the alternative would be the cost of the variance and at least 60 days to obtain an approval to do so.

ADJOURNMENT

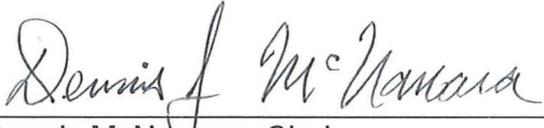
As there was no other business, the meeting was adjourned at 7:25 p.m.

Respectfully submitted,



Steven Spraker, AICP, Senior Planner

ATTEST:



Dennis McNamara, Chair

Minutes prepared by Betty Ruger.

Pursuant to section 286-0105, Florida Statutes, if any person decides to appeal any decision made by the board of adjustment with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

All persons appealing to the board of adjustment must be present, or represented at the public hearing scheduled for the consideration of his request. Failure to be present or to be represented, results in the automatic refusal by this board to grant permission for any variance. In order to allow the meeting to proceed in an orderly fashion, the board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for city staff, the designated representative of the applicant and the designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the board.

Persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance and who wish to attend city commission meetings or any other board of committee meeting may contact the city clerk in writing, or may call 677-0311 for information regarding available aids and services.