

# MINUTES

## BOARD OF ADJUSTMENT

June 2, 2009

7:00 p.m.

**City Hall Training Room**  
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, Senior Planner  
Ann Margret Emery, Deputy City Attorney  
Chris Jarrell, Minutes Technician

### II. APPROVAL OF MINUTES

The minutes of the March 11, 2009 meeting were unanimously approved as presented.

### III. OLD BUSINESS

There was no old business to be discussed.

### IV. NEW BUSINESS

#### A. Case No. V09-2800002: 5 Creeksbridge Court

#### REQUEST:

The application was for four (4) separate variances, one on each side of the property.

Front Yard Variance Request: Mr. Spraker explained that the development order for Tymber Creek required a 20-foot front setback and that the house already encroached into that setback. He said the applicant was requesting that the Board rule the setback to be legal and to allow the further encroachment of a portion of the proposed expansion.

South Side Variance Request: Mr. Spraker stated that the current setback of 13.32 feet conformed to the 7.5-foot setback mandated in the development order and that the applicant was requesting to encroach into that setback to a point just beyond the location of the former deck supports. He said that the applicant felt that the adjacent 15-foot vegetated common screen the adjoining property owner.

Rear Yard Variance Request: Mr. Spraker stated that the applicant was requesting to be allowed to build to within 10 feet of the rear property line, within the required 20-foot setback. He reported that the existing structure was currently conforming, set back from the rear property line a distance of 28 feet. He explained that there was a common area of approximately 170 feet to the rear of the subject property, which included some wetlands and a canal. He said the applicant wanted to construct an 18-foot addition, continuing the existing building line. Mr. Spraker noted that the adjacent property owner at 4 Creeksbridge had an existing Florida room structure similar to that sought by the applicant and within the setback area.

North Side Variance Request: The existing structure, Mr. Spraker reported, was 0.59 feet from the property line and that the applicant was requesting that the building line for the proposed addition be allowed to continue an additional 18 feet along that same (zero) lot line.

Mr. Spraker explained that there were various alternatives listed in the staff report for each variance requested and that the Board could approve the variances as requested, or perhaps some combination thereof.

#### BACKGROUND INFORMATION:

Mr. Spraker stated that the subject property is located in the Tymber Creek subdivision, which annexed into the City in 1996 from Volusia County. He added that it was first developed in 1974. He said that the subject property had common area surrounding it and said that there was common area between the lots.

Mr. Spraker explained that the established setbacks were included in the development order at the time the subdivision was annexed and unfortunately did not match what was actually constructed. He displayed a survey provided by the applicant that showed the existing houses throughout the cul-de-sac as being zero-lot-line homes, and pointed out that while the development order conditions called for 7.5 foot setbacks on each side, a conflict existed between the development order and the actual built setbacks.

Mr. Spraker recalled that City staff had, on several occasions, asked the Tymber Creek Homeowners' Association to consider revising the development order, but reported that they would rather that any adjustments be made on a case-by-case basis. He said that they did not necessarily object to the common areas being utilized as setbacks; however, he said that they had expressed concern with

1) unintended consequences if they were to establish zero setbacks for all the homes and 2) wanted adjoining property owners to have an opportunity to object if there was something with a particular proposal to which they were opposed.

STAFF POSITION:

Mr. Spraker stated that when reviewing the requests, staff looked at the common areas (conditions peculiar to the lot), which typically have been used to allow building expansions to be located within the setbacks. He said that staff acknowledged that the setbacks for the area in which the subject is located do not match the existing development.

Mr. Spraker stated that Staff recommended approval of the variances and believed it met the conditions of the Land Development Code.

APPLICANT POSITION:

Judith Ann Symionof, 5 Creeksbridge Court, said that she was one of the earliest homeowners in the development, having been there for over 31 years. She stated that during the years her health had deteriorated and that she had a personal hardship in that she now found it difficult to maneuver around her house. She referenced a list of her problems in the Board packet as the reasons she was requesting the variances. She informed the Board that the residents were never told that there would ever be problems if they wanted to build on their own land, either at the time of purchase or at the time that they, as a subdivision, were asked if they wanted to be annexed into Ormond Beach.

Ms. Symionof said that it had become difficult for her to drag laundry to the garage or to be able to reach into the closets. She said that she was currently utilizing an office chair on wheels, but that was not working well and she therefore needed a scooter, which would require additional maneuvering room. She said the extra building area would provide that for her and assured the Board that she did not seek to build outside her property boundaries. She pointed out the large vegetated area at the rear of her property and asked for the Board's understanding, since it would be a hardship for her to move to a new house. She said she was only asking that she be allowed to remain independent and to do that, would need to make changes to her home.

In response to Mr. Perricelli, Mrs. Symionof stated that she needed a custom-made, walk-in closet to allow her full access. She acknowledged the entirety of the 18' x 36' addition was not to be only a walk-in closet, but would also include a laundry room over the area formerly occupied by the deck, which she no longer needed. Ms. Symionof further explained to Mr. Perricelli and the Board members why she needed an additional handicapped-accessible bathroom and storage area accessible to the outside.

### BOARD DISCUSSION:

Mr. Jenner questioned the hardship.

Mr. Spraker said that the subject was an existing nonconforming structure and explained that there were two (2) sets of criteria within the Land Development Code (LDC): one set for conforming lots of record, requiring demonstration of a hardship; the other for nonconforming structures (under which the subject request was reviewed), did not necessarily require proof of a hardship. He said that in the case of the subject, the hardship was that the development order did not accurately reflect what had been built.

Mr. Spraker stated that the development was built as zero-lot-line, which maximized the buildings on the lots and utilized the common areas as the setbacks. He said the development order was inaccurate for the entire subdivision, but that the City could not dictate to Tymber Creek what setbacks to use, even though Staff believed it would eliminate a lot of confusion (and the number of variances). He added that staff also believed that it would be unreasonable to not allow the use of the common areas as the development order (and the development) originally planned. He reminded the Board, however, that they made the ultimate determination, whether as presented, or as tweaked.

Mr. Jenner agreed that the hardship was that the property was nonconforming and said that he was willing to accept that, but questioned whether there wasn't an alternative to increasing that nonconformity.

Mr. Spraker acknowledged that the additional square footage would increase the level of nonconformity and agreed that they could create a less intense alternative. He referenced the staff report, wherein it reported that the Board did not have to agree to allow the applicant the 18-foot addition. He said that they could allow only 10 feet, but asked what the Board would be accomplishing by doing so, since the area at the rear was common area.

Mr. Jenner stated that his point regarding the hardship was that they were requesting to increase the level of nonconformity.

Mr. Spraker responded by noting that the application did not have to prove a hardship. He said that there were six (6) criteria in the staff report under which the requests were reviewed and pointed out that hardship was not one of them.

Mr. Walker asked whether the applicant would have needed any of the requested variances if the houses in that particular community had been built per the zero-lot-line requirements.

Mr. Spraker said that it would depend upon how the development order was established, but that typical zero-lot-line setbacks were zero on one side, and 15 or 20 feet on the other. He said that the subject's front setbacks were unusual in

that they were so close to the cul-de-sac; the development had also used some of the common areas as parking. He said he did not think that the city would approve a 5-foot front yard setback, because it would not allow enough room to park a car. He noted that it had been Volusia County's first planned development and that it had worked, but was not the way a zero-lot-line subdivision would be developed today.

Mr. Perricelli stated that without a set of plans, the Board was unable to establish a lesser, yet viable encroachment. He said that knowing only that the proposed addition was 18' x 36' gave the Board nothing with which to work and that it would also be helpful to know the proposed use for the additions.

Mr. Spraker recalled that the basic premise that it was unreasonable to make applicants present costly building plans without knowing the very footprint for which they would be designing. He assured the Board that the additions would be consistent with the existing architecture of the house; he said that the HOA Architectural Committee would require a similar type of construction. He said that the Board could continue the item if they wanted additional information.

Mr. Perricelli pointed out that the Board would not have any way of knowing whether the applicant could accomplish what they needed with a smaller space [due to a lesser encroachment].

Ms. Symionof stated that the Board was seeing the request as non-handicapped persons, rather than one who was going to have to maneuver within that space.

Mr. Jenner explained that they had such an issue before the Board in the past and explained they were not charged with considering a person's ability or special circumstances. He said that he disagreed with Staff and believed that according to the rules as confirmed by City Attorney Randy Hayes, a hardship had to be demonstrated as part of the criteria for approval of a variance for a nonconforming structure.

Mr. Spraker disagreed, saying that under the Nonconforming section of the LDC, a nonconforming structure must meet the six criteria, which did not include demonstration of a hardship. He said that the nonconforming structure was the hardship and that whether or not the Board allowed the applicant to expand that nonconformity was entirely within the scope of the Board.

Mr. Jenner disagreed and stated that he would like that point clarified by Legal at some point.

Deputy City Attorney Emery added that the use of the proposed addition was not relevant and not a part of the criteria. She advised the Board to focus solely on those things that had been brought forth in the report as things that fit within those criteria.

Mr. Jenner agreed, but explained that if the Board were to consider a lesser variance, they had to know what they were dealing with, so as not to e.g., cut a bathtub in half.

Chair McNamara summarized that it would be helpful if the applicant included the information, but that it was not required.

Mr. Spraker agreed and said that if there was concern with one or more of the requested variances, the Board needed to first determine whether the development was a zero-lot-line or a typical development.

Mr. Lane thought that using the common areas made sense, but cautioned that everyone could then pretend that the common area was a part of their property as far as setbacks were concerned.

Mr. Spraker reiterated that to have been the concept with the development order and said that it was not unusual at that time. He recalled that Staff had historically treated the situation that way, but that not every common area should be used to calculate setback. He said staff felt, however, that it was a reasonable request for the application before the Board.

Mr. Lane agreed with Mr. Spraker and commented that he had already seen three such requests from Tymber Creek during his short tenure. He wanted to make sure the Board was consistent in its application.

Mr. Spraker responded to Mr. Walker that there were hundreds of similar instances in Tymber Creek, but noted that they only became requests for variances as people wanted to add on to their structures. He pointed out that every property in the subject cul-de-sac was nonconforming; none met the setbacks. He said that any addition to those structures would require a hearing before the Board, and that although city staff had advised the Tymber Creek HOA of the issue, they felt that each request should go through the variance process so that adjoining property owners would have an opportunity to be heard.

Mr. Walker asked if the adjoining property (with the Florida room on the rear) had had to go through the variance process. Mr. Spraker replied that it had not. He surmised that the Florida room had been added before the subdivision was annexed into Ormond Beach.

Chair McNamara thought that the side variance could be a problem, since it would leave only about a foot between the structure and the property line, therefore restricting passage between the front and rear of the property unless utilizing the common area, which would result in the property being zero-lot-line on both sides.

Mr. Spraker agreed that the applicant would have to use the common area in order to maintain the structure.

Chair McNamara did not believe that was the right thing to do, remarking that if the common area were to change, the applicant would not be able to access her backyard.

Mr. Spraker did not believe that the HOA would relinquish the common area.

The Board opted to address each variance individually in order to render their decisions.

### **Variance No.1 – Front**

Mr. Spraker reiterated that the required front yard setback was 20 feet and that the request was to allow the garage to encroach approximately five feet (5') into the setback area.

Mr. Lane stated that he thought making the existing nonconformity legal made sense and was reasonable.

Chair McNamara agreed that it would allow the applicant to replace the existing part [of the structure] if it was destroyed.

**Mr. Lane moved to approve the variance to the front of the house. Mr. Walker seconded the motion, which was approved by unanimous vote.**

### **Variance No. 2 – Rear Yard Setback**

Mr. Spraker said that the rear yard setback required by the development order was 20 feet and that the applicant was requesting to encroach 9.71 feet into the setback, leaving a rear yard setback of 10.29 feet. He reminded the Board that there was a common area of approximately 170-180 feet behind the rear yard.

**Mr. Walker moved to approve the rear variance as specified in the staff report and given the common area behind the rear addition. Mr. Lane seconded the motion. The variance was approved by unanimous vote.**

### **Variance No. 3 – North Setback**

Mr. Spraker said that the existing structure (about 31 feet) was built at 0.59 feet from the north line and that the applicant was requesting to extend the addition along the same line for an additional 18 feet. He reported that the development order required 7.5 feet. He confirmed for Chair McNamara that the Board had the option of either approving the addition along the same building line, or requiring that the addition be constructed 7.5 feet in from the north property line in order to meet the required setback. He confirmed for Mr. Walker that the distance to the neighboring structure was approximately 14 feet, mirroring the neighborhood structure for most of the added depth.

**Mr. Lane moved to approve the north setback as requested, given that the rear setback variance had been approved. Mr. Walker seconded the motion. The variance was approved by unanimous vote.**

#### **Variance No. 4 – South Setback**

Mr. Spraker stated that this side adjoined the 15-foot common area. He said that the required setback was 7.5 feet and that the existing setback was 13.3 feet; the applicant was proposing a 12-foot addition, which would result in a setback of 1.32 feet (extending the building to just beyond the existing deck supports). He confirmed for Mr. Walker that the purpose for the side addition was to allow handicapped accessibility and maneuverability.

Mr. Ron Dougherty of Dougherty Construction, 226 N. Nova Road, Suite 171, representing the applicant, said that the applicant wanted to add an additional handicapped bathroom with storage on the side of the house, to allow for easy access from her garage and kitchen. He pointed out that when the houses were built in the 1970's, the bathrooms were smaller and not handicapped accessible. He said that the applicant also wanted to create accessible storage space in the rear addition and was expanding her laundry room, which would give her a larger master bathroom.

Chair McNamara said that a handicapped circle was five feet (5'); he asked if there was any room for adjustment on the side variance request.

Ms. Symionof replied that she needed a whirlpool bath in the new bathroom. Mr. Dougherty added that the handicapped tub reduced the maneuvering room and that in a residential unit, the maneuvering room would be even more restricted because the lavatory would not hang from the wall. He felt the 12-foot width was necessary.

Chair McNamara restated his concern with the minimal area between the proposed structure and the property line, restricting the applicant's access.

Ms. Symionof said she wouldn't be walking out there; Mr. Lane explained that she was not the only person that might live in that house. She said that the common area could be used in order to wash windows.

Mr. Dougherty pointed out the existing pillars that had previously supported a deck and said that they measured from the outside of the house to 8'10".

Ms. Symionof assured the Board that the improvements, including a bay window on the front of the house, would be an enhancement and would improve the look of the street.

Mr. Lane expressed his concern that the common area was intended as a natural buffer zone.

In response to Chair McNamara, Mr. Spraker advised that the applicant could expand a distance of six feet (6') without encroaching into the side setback, noting the applicant's concern that it would not be enough room. He said that the Board could 1) keep the setback at 7.5 feet, 2) allow the requested encroachment, or 3) reduce the encroachment to allow walking room along the side of the property.

Mr. Dougherty referenced the concern with access to the backyard and pointed out that because of the way the subdivision developed, they had to cross common area every day in order to get into the house.

Ms. Symionof commented that the rear consisted of trees, not sod, and recalled that the developers once had a road in the common area that they used for removal of debris. She said that she and her neighbors had always agreed that they wanted to leave the trees in that area.

**Mr. Lane moved to deny the request**, noting that a six foot (6') by 35 foot bathroom could be built without encroaching into the side setback. He said it would be a huge room and could accomplish what the applicant needed to do, while maintaining the zero-lot-line on one side of the property and the 7.5-foot **setback on the other.**

**Mr. Perricelli seconded the motion.**

Mrs. Jarrell called the vote:

Mr. Perricelli	Yes
Ron Walker	No
Mr. Jenner	Yes
Mr. Lane	Yes
Chair McNamara	Yes

**The vote was 4-1 to deny.**

Chair McNamara explained to the applicant that three of the variances had been approved, while the request for the side variance was denied, maintaining the side setback of 7.5 feet. He also noted that the applicant had one year before the variances expired.

Ms. Symionof reiterated that the residents of Tymber Creek were never told they would ever have a problem building on their property when they were asked to annex into the city of Ormond Beach.

Chair McNamara further explained that the Board understood that and had therefore given her quite a bit of help.

## **V. DISCUSSION**

Mr. Jenner asked for clarification of the criteria for nonconforming structures. He said that it was his understanding is that a hardship was required in cases of nonconforming structures. He said that in most cases, applicants did not go before the Board simply to make their nonconforming structures legal; rather, such a request was usually in conjunction with a variance request and should therefore require demonstration of a hardship. He concluded that therefore the demonstration of a hardship was required for a conforming structure, but not for a nonconforming structure (such as for a pool for a nonconforming structure). He felt it made no sense.

Chair McNamara noted that Mr. Spraker had indicated that the applicant's hardship was that the structure was already nonconforming.

Mr. Jenner said he understood, but that it did not make sense that a conforming structure would need to demonstrate a hardship to obtain a variance for a pool, but that a house, already nonconforming, would not.

Mr. Spraker said that staff would review the criteria and bring it back to the Board for discussion. He said that if they did not like the criteria, they could request that the City Commission change the Land Development Code.

Mr. Lane asked if staff would also provide the logic behind the criteria.

Mr. Spraker said Staff could provide the Board with the Code language, but was unsure if they could provide the logic. He said that the Board would at least have the opportunity to review Staff's rationale.

Mr. Perricelli questioned whether or not staff considered line of sight on both sides of a property seeking a variance.

Mr. Spraker said that the first criteria addressed whether or not an expansion conformed to the setbacks and that expanding a nonconforming structure that met setbacks required only a building permit. He said that the expansion of nonconforming structure encroaching the setback would require meeting a number of criteria, including whether or not the expansion would impact other properties.

Mr. Jenner pointed out the Code language that which read, "or does not extend beyond the furthest point of the adjacent building on the site", noting that in the case of the request before the Board, it did.

## ADJOURNMENT

As there was no other business, the meeting was adjourned at 7:55 p.m.

Respectfully submitted,

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Steven Spraker, Senior Planner

ATTEST:

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Dennis McNamara, Chairman

*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.