

MINUTES
BOARD OF ADJUSTMENT

January 6, 2021

6:00 p.m.

City Commission Conference Room
22 South Beach Street
Ormond Beach, Florida

I. ROLL CALL

Members Present

Stan Driscoll
Frank Ganz (absent)
Roger Strcula
Brian Nave
Dennis McNamara

Staff Present

Steven Spraker, Planning Director
Becky Weedo, Senior Planner
Robin Gawel, Senior Planner
Noel Eaton, Senior Planner
Ann-Margret Emery, Deputy City Attorney
Marcella Miller, Minutes Technician

II. ADMINISTRATIVE ITEMS

A. Election of Chairperson and Vice-Chair

Mr. Strcula nominated Mr. McNamara as Chairperson. Mr. Nave seconded the motion. Vote was called, and the motion was approved (4-0).

Mr. Strcula nominated Mr. Driscoll as Vice-Chair. Mr. Nave seconded the motion. Vote was called, and the motion was approved (4-0).

B. Acceptance of the 2021 Rules of Procedure

Mr. McNamara asked if there were any corrections or comments regarding the 2021 Rules of Procedure. Hearing none, vote was called, and the 2021 Rules of Procedure were unanimously approved.

C. Acceptance of the 2021 Calendar

Mr. McNamara asked if there were any comments regarding the proposed 2021 Calendar. Hearing none, vote was called, and the minutes were unanimously approved.

III. APPROVAL OF THE MINUTES

A. November 04, 2020

Mr. McNamara asked if there were any corrections to the November 04, 2020 minutes. Hearing none, vote was called, and the minutes were unanimously approved.

IV. NEW BUSINESS

A. Case No: 2020-086: 1410 North Beach Street Rear Yard Variance

Ms. Robin Gawel, Senior Planner, explained Case 2020-086 and that it is a request for a rear yard variance submitted by Mr. and Mrs. Frank and Cheryl Salerno, property owners of 1410 North Beach Street. The applicants are requesting a 7-foot variance to the required rear yard setback of 10 feet to construct a swimming pool with a screen enclosure.

Ms. Gawel commented that the property abuts 77 Sycamore Circle which was granted a variance in 2001 to construct a pool with a screen enclosure 3 feet from the rear property line. She continued that the existing home is set back 31 feet from the front property line and approximately 20 feet from the rear property line. Ms. Gawel added that the owners are interested in removing the screen under the screen room roof and would like to incorporate the area into the new pool and screen enclosure area.

Ms. Gawel stated that the proposed improvements are the minimum needed to make reasonable use of the 17 feet available with the existing nonconforming screen room at its current setback. She displayed the interior view of the rear yard showing the existing screen room they are proposing to incorporate into the new pool enclosure and screen room. The screen enclosure of 77 Sycamore Circle is also visible. The following slide displayed facing north and the enclosure from 77 Sycamore Circle that has a 3-foot setback. She noted that the enclosure has existed without negative impacts to the abutting neighbors. The property owner of 77 Sycamore Circle also signed off in support of the variance application.

Ms. Gawel noted that City staff reviewed several alternatives and a pool and screen enclosure would need a variance based on the existing buildings or the screen room would need to be substantially altered to allow a pool and screen enclosure. Based upon the support of the abutting property owners and not requiring the alteration of existing structures, staff believes that the variance meet the criteria to issue a variance. Ms. Gawel commented that Planning staff have not received any objections to the variance and recommended that the Board of Adjustment and Appeals approve the rear yard variance of 7 feet to the required rear yard setback of 10 feet for a setback of 3 feet. Ms. Gawel concluded that if the Board believes that the application has not met the criteria and believes denial is appropriate, it is suggested that criteria 1 and 4 be used to deny the application stating that there are no special conditions and other practical alternatives exist.

Audience Comments

Ms. Cheryl Salerno, 1410 N. Beach Street, explained her husband's health issues with his heart and how the pool will help her husband with his cardio.

Discussion occurred amongst the Board regarding the same variances being granted before in the past, as well as with the neighbor abutting the back of the applicant's property.

Mr. Driscoll moved to approve Case 2020-086: 1410 North Beach Street Rear Yard Variance. Mr. Strcula seconded the motion. Vote was called, and the motion was approved (4-0).

Mr. McNamara stated that the variance was approved, and directed for the homeowners to get with the Building Department after 30 days. The variance will expire in 1 year.

B. Case No: 2021- 016: 430 Andalusia Avenue – Fence Height in Front Yard

Ms. Noel Eaton, stated that Case 2021-016 is a variance request for a 6-foot-high solid fence located in the front yard of 430 Andalusia Avenue. The property is zoned B-5 and there is a 15,240 square foot warehouse building being used for an A/C and heating company. Ms. Eaton continued that the applicant stated since ownership in September, theft has occurred on the property and additional security is desired. Building permit number 21-0379 was approved for a 6-foot-high open style fence in the front yard setback approximately 5-feet from the front property line. The request seeks to permit a 6-foot-high solid fence in the front yard and the Land Development Code (LDC) only allows a maximum fence height of 3 feet solid in the front yard. The applicant is requesting a variance of 3 feet in height to allow for the 6-foot solid fence. Ms. Eaton stated that due to the access in and out of the loading bays, the location of the 6-foot solid fencing is restricted from being in line with the front plain of the building. The applicant is requesting the 6-foot-high solid PVC fence in the current location of the 6-foot-high open style fence. The applicant received signatures in support of the variance request from the abutting properties at 334 Andalusia Avenue, 425 Parque Drive, and from Mr. Josh Hudson at 430 S. Yonge Street. Ms. Eaton explained that Planning staff has received 1 objection to the variance request from Mr. Fred Hudson at 430 S. Yonge Street which was included in the Board packets. Ms. Eaton concluded that it is recommended that the Board of Adjustment and Appeals approve the application for a variance to allow a 6-foot solid PVC fence in the front yard requiring a variance of 3 feet.

Mr. Nave asked if the City generated Exhibit 4. Ms. Eaton replied that it was provided by the applicant. Mr. Nave commented that the code specifies that it can be a solid fence as long as it is inline with the building. Ms. Eaton agreed and added that the yard becomes the front yard at the plain of the building. Mr. Nave inquired how far away from the building it has to stay flush with before it can move. He also asked the reason the fence goes so far over towards the entry, and if there was a requirement that it go all the way over to the side lot line. Mr. Nave also brought attention to it jogging down towards the street. Ms. Eaton commented that the Land Development Code (LDC) allows the 3-foot solid fence in the front yard. Mr. Nave asked if the 6-foot solid fence is not allowable if inline with the building. Ms. Eaton stated that if it is inline with the building or behind the building it can be a 6-foot

solid fence. Mr. Nave asked how far from the building it would have to go or if it would have to be extended to the end of the property. Ms. Eaton confirmed that it would have to be extended to the end of the property and would not be able to jog down towards the street as shown in the exhibit the applicant sent.

Mr. Strcula confirmed that the 6-foot fence was going to be put in the exact location as the picket fence. Ms. Eaton answered that he was correct and that the exhibit shows the turn radius coming out of the loading bays. Mr. Strcula commented that it appears to block the stairwells and asked if staff looked at the exhibit for site distance for the trucks at the driveway. Ms. Eaton answered that the only requirement is the 3-foot setback from the front property line and the fence is currently set back 5 feet.

Mr. Driscoll asked if there was anything in the Land Development Code (LDC) regarding coming out onto a public roadway and there having to be an acceptable site clear view either way. Mr. Spraker, Planning Director, replied that there is no site visibility triangle unless on a corner. The 3-foot setback is designed to provide the site distance. In this instance it is set 5 feet back with additional right-of-way that is not paved. A good distance will be visible looking out of the property. Mr. Driscoll asked how far the fence would be from the public roadway. Mr. Strcula commented approximately 17 feet from the edge of the pavement. Ms. Eaton stated that it would be 25 feet from the center line of the road to the property line and then 5 additional feet according to the survey. Mr. Driscoll then asked what the applicant's objection is to the current allowed open slatted fence. Ms. Eaton commented that she believes that it is from the theft that occurred but would let the applicant address the question.

Mr. McNamara expressed his concern with not being asked about the variance request being that he is an adjoining property owner. He commented that 334 Andalusia Avenue was written down as a supporter and he owns the building and did not approve or disapprove of the fence. Mr. McNamara continued that Mr. Chris Sherman that signed in support is a tenant of his.

Mr. Nave stated that in the exhibit the fence is shown extending from the building crossing into the actual driveway and that the driveway has no indication of trucks running off of the driveway into the dirt. He added that the applicant is trying to say that the fence is going to cut off the ability for the trucks to turn into the property when what they have done is turned in a CAD drawing to create a problem that is not there. Mr. Nave expressed that he would like to ask the applicant why he drew the exhibit that way and why the gate could not be ended at the edge of the concrete driveway. Mr. Nave expressed his concern with number 2 in the special conditions where it says that they do not result from the actions of the applicant. He inquired if the applicant stores tools and material outside, if so, it would be a result of the applicant storing material outside visible when it can be stored inside. Mr. Nave commented it could be granted for something commonly enjoyed by other properties but that there are not other properties in the area that are commonly enjoying it.

Attorney Emery stated that with the Chairman having a conflict he is unable to vote bringing tonight's Board to 3 members. The item may have to wait for a full board to vote on it.

Mr. McNamara added that the building was built by Mr. Fred Hudson and that tractor trailers have been going into the property for years. He continued that on the survey that the applicant provided, it shows the retention pond in the rear filled with asphalt millings. Mr. McNamara stated that he would like information about where all of the dirt came from that is piled up on the 2 lots. He commented that when the retention pond is filled up, it affects the adjoining property owners and those on the street with the water storage. 6 inches of dirt was removed from the front of the building and suspects that pavers are going to be installed. Mr. McNamara concluded that there were grass and trees there at one time.

Following research, Attorney Emery reiterated that only 3 Board members are present to vote and recommended that the case be continued allowing the applicant to come back with the case at a later date being that a member of the Board has to abstain from voting. It is not legal to vote on it at this time.

There was discussion on the process, application, administrative and advertising fees. Following Board discussion regarding letting the case die versus tabling the item, it was determined to allow the applicant to come back and pay for advertising the meeting again. The case will be continued until the applicant requests to revisit the Board of Adjustment and Appeals and go through the process and payment of the fees again.

Mr. Driscoll moved to continue Case 2021-016: 430 Andalusia Avenue – Fence Height in Front Yard, for a future meeting and the applicant will be required to go through the application process again, paying additional advertising fees for the future meeting. Mr. Nave seconded the motion. Vote was called, and the motion was approved (3-0). Mr. McNamara abstained from voting due to conflict of interest.

The applicant arrived at 6:33 p.m. Attorney Emery explained to Mr. Peter Francis that there was a lack of quorum with one of its Board members recusing themselves from the vote due to pecuniary interest in the outcome of the vote. She continued that the Chairman does not have a personal interest in the outcome of the vote, but by law cannot vote on the matter. She noted that the item will get moved to a future Board meeting with the responsibility of the advertising costs from the applicant again. Attorney Emery concluded that the Planning Department will be able to assist further.

C. Case No: 2021-023: 94 Plaza Grande Avenue Side Yard Setback

Ms. Noel Eaton, Senior Planner, stated that Case 2021-023 is a request for a side yard variance submitted by Mr. Gary Allyn, property owner of 94 Plaza Grande Avenue. The property is zoned R-3 and the property owner purchased the home in 2003 and is interested in constructing a hard roof screen room over an existing patio. Ms. Eaton continued that the house is nonconforming with a 5.1-foot side

yard setback on the west side. The applicant is proposing to construct a 16 by 28-foot screen room on the back of the house. Ms. Eaton added that the proposed addition is in line with the west plain of the house. Building the screen room at the required 8-foot setback would place the wall of the structure in front of their bay window. Ms. Eaton stated that the applicant has received signatures in support of the variance request from the abutting property owners. Planning staff has received no objections to the request. Ms. Eaton concluded that it is recommended that the Board of Adjustment and Appeals approve the application for a variance to allow a new hard room screen room to be built with a side yard setback of 5.1 feet requiring a variance of 2.9 feet to the required 8-foot side yard setback.

Mr. McNamara opened the meeting up to the public for any public comments. Hearing none, he opened it back up to the board for any additional questions.

Mr. Nave moved to approve Case 2021-023: 94 Plaza Grande Avenue Side Yard Setback. Mr. Driscoll seconded the motion. Vote was called, and the motion was approved (4-0).

Mr. McNamara stated that the variance was approved, and directed for the homeowners to get with the Building Department after 30 days. The variance will expire in 1 year.

D. Case No: 2021-024: 88 Lincoln Avenue Side Yard Setbacks

Ms. Becky Weedo, Senior Planner, stated that Case 2021-024 is a variance request for 2 side yard variances of 5 feet to the required 8-foot minimum side yard setback in order to build a new home and a detached garage at 88 Lincoln Avenue. The original residence was built in 1910 (per the Volusia County Property Appraiser's records) in the Lincoln Avenue Overlay District and is two-story, approximately 1360 square feet. Ms. Weedo continued that the lot is approximately 41.3 feet wide. In 2019 the historic structure was certified as an unsafe structure and is currently being demolished.

Ms. Weedo displayed the survey showing the position and setbacks of the existing home on the lot with an approximate west side setback of 3.43 feet and a 17.2-foot setback on the east side. There is currently no garage. Ms. Weedo displayed a photo of the existing home with a 3.4-foot setback on the west side in relationship to the home at 96 Lincoln Avenue. The proposed plot plan showed the position of the setbacks of the home with the detached garage. Ms. Weedo continued that the property owner intends to build the home with the detached garaged, in a similar footprint. Due to the chimney bump out, a variance of 5 feet to the required 8-foot minimum setback for the home is being requested and a detached single-car garage is proposed to be constructed in the rear yard at a 3-foot setback on the west side as well in order provide adequate driveway and turning access on the east side. She commented that even with the lot at less than 42 feet wide, the design of the new house and garage will meet all of the setbacks and dimensional standards required in the R-3 zoning district.

Ms. Weedo explained with the structure in the Lincoln Avenue Overlay District, a review by the Historic Landmark Preservation Board (HLPB) is required to ensure the new structures are visually compatible with the existing contributing structures in the district. The item will go before the HLPB on January 25, 2021. Ms. Weedo added that the applicant received verbal support of the variance request from the directly impacted abutting property owner on the west side at 96 Lincoln Avenue. Planning staff has received no objections to the variance. Ms. Weedo concluded that it is recommended that the Board of Adjustment and Appeals approve the variance request of 5 feet on the west side to allow construction of a new home and a detached garage with side setbacks of 3 feet to the required 8-foot side yard setback established in the R-3 zoning district.

Mr. Nave asked if 96 Lincoln Avenue was approved by the Historical Landmark Preservation Board (HLPB). Ms. Weedo replied that it was not and was built before it was a requirement. Mr. Nave asked how the approval process works with the Historical Landmark Preservation Board (HLPB). Ms. Weedo replied that the item will go to the HLPB for a public hearing process following going through this Board. Mr. Nave asked if the same building setback restrictions were in place when 96 Lincoln Avenue was built. Ms. Weedo replied that was correct, but it did not have to go through the HLPB because the Lincoln Overlay District was created following the house being built.

Mr. Driscoll made a comment that it is the same thing as building in a high hazard flood zone and that the footprint is only being approved by the Board. Ms. Weedo concurred and added that because it is in the Lincoln Overlay District it has an additional review process.

Mr. Nave asked if there was a reason that 96 Lincoln Avenue does not have a response to the application.

Audience Comments

Ms. Dorian Burt, 203 Pine Cone Trail, agent for the property owner, stated that she spoke with the owner of 96 Lincoln Avenue and stated that he planned to attend the meeting and had no objections but is now out of town. As soon as the current house is demolished he is planning to have a pool put in his backyard before the new house is built. Ms. Burt continued that the house is being built will be similar to the original at 78 Lincoln Avenue with additional width to it.

Mr. Nave commented that he visited the property and it appears that the current house is in the center of the lot. He asked about the lot line on the west side and if it is further away from 96 Lincoln Avenue. Ms. Burt replied that it is 3.4 feet away. The house being built will go directly back where the current house is. She noted that the houses were built to the westerly side.

Mr. Driscoll asked what the easterly setback for 96 Lincoln Avenue is. Ms. Weedo answered that the existing east setback is 17.2 feet and the proposed setback will be about 15.04'.

Ms. Burt commented that all of the early 1900 era houses on the street were built at the same time. Mr. Nave asked if there was a reason that the garage cannot be put up front. Ms. Burt replied that the width is the determining factor as well as copying what was there prior, recreating the authenticity of the prior home. She continued that the historic look is lost if the roofline and house are raised to put the garage up front. The plan is to mimic 78 Lincoln Avenue and 93 Lincoln Avenue.

There was discussion amongst the Board and Ms. Weedo regarding the garage. Ms. Weedo stated that 'contributing properties' in the Lincoln Avenue Overlay District say that the design needs to be similar to what is there.

Ms. Burt noted that 84, 88, 78 and 93 Lincoln Avenue homes all do not have garages up front.

Mr. Nave asked if there is a minimum requirement to the driveway width. Mr. Strcula stated that the driveway is 10 feet wide. He asked if the driveway was made to the width of 9 feet, the house could be shifted away from the property line. Ms. Burt answered that she met with the contractor and staff and drew the plan up the best way they could. Ms. Weedo replied for a single-car garage that the driveway has a minimum requirement of 10 feet. Mr. Nave asked the limitations of how close to the house and property line the driveway can be. Ms. Weedo answered that it is a 3-foot setback for the driveway in which they meet. All of the setbacks will be met as well as the minimum square footage for a two-story home.

Attorney Emery stated that only certain matters can come before the Board regarding certain garages and carports for a variance. The Board does not have the authority to change the Land Development Code (LDC).

Ms. Weedo commented that looking at the proposed plot plan it is visible that the 3-foot setback is where the chimney bumps out. The remainder of it will be about 5.17 feet from the property line, except for the garage. She stated that it is further away than the existing house is today.

Mr. Nave asked if a house like 96 Lincoln Avenue would be approved in the Overlay District. Ms. Weedo answered that it would have had to go through a review process with the Historic Landmark Preservation Board (HLPB) reviewing the design. Whatever the majority of the Board members vote, they may have to redesign it so that it is more compatible. Attorney Emery added that there is always a right to appeal. Mr. Nave asked if the Overlay District has design affectations other than that it has to fit with the rest of the houses in the area. Ms. Weedo replied that it needs to be similar to the look of the other contributing properties. The Land Development Code (LDC) explains which houses are contributing.

Mr. McNamara opened the meeting up to the public for any public comments.

Audience Comments

Ms. Zoe Hendricks, 75 Lincoln Avenue, stated that she was referenced in the meeting with the garage and in the back of the house. She commented that the

historic district is unique in Ormond and is being referenced with homes that can be rented. In most historic districts, homes are purchased by those who love history and the recent ones being built will not be available for purchase and are rentals with investment opportunities for an LLC. Ms. Hendricks cautioned how to look at how the historic district comes forth. She noted that they are more than a collection of homes and that she is not a newer homeowner there. Some people have been on the street since they were young. Ms. Hendricks commented that there are significant trees there, some of them since 1910 and was under the impression that there is no tree protection in Ormond Beach. She concluded that the variance is going to achieve what an investor wants.

Ms. Dorian Burt stated that the investor is Mr. Bill Jones and that he has preserved numerous buildings on Granada Boulevard. She continued that the LLC is for his children and grandchildren. Ms. Burt commented that she is hoping to live in the newly built 88 Lincoln Avenue home and claims that the house could never be rented for enough money to achieve a return on the investment over the next fifty years. She concluded that Mr. Jones loves history too.

Mr. Nave commented that he looked at the home and thought that 88 Lincoln Avenue was going to be required to put their garage up front in order to stay within the bounds of the code. He was not aware of the historical district at the time. He continued that if the garage were to be put up front it could be built without a variance. Mr. Nave concluded that initially he was against it but now has change his thoughts on it.

Mr. McNamara noted that they are not asking for anything new.

Mr. Strcula commented for a house of its size, with it only being 21 feet wide, a garage in the front would detract from the architectural aesthetics of the house. He noted that he would leave the garage in the back as old historical homes had their garages in the rear of the houses and is a better use of the property, as well as adding the architectural elements to the front façade of the house.

Mr. Driscoll stated that because it is on the existing footprint, that precedent is being set for properties in the Lincoln Overlay District only.

Mr. McNamara asked if it would look better with a wider setback on one side and the next person build closer, and that it may leave a larger space between the houses. Mr. Nave commented that he thought that 96 Lincoln Avenue was on the same side lot and was pushed up against it. He pondered that being close 3 feet to his property line would be troublesome so was hoping to see written approval from the property owner being that he is the most affected.

Mr. Strcula moved to approve Variance #1, Case 2021-024: 88 Lincoln Avenue, West Side Yard Variance New Home, 5 feet from the West Property Line for a Setback of 3 feet. Mr. McNamara seconded the motion. Vote was called, and the motion was approved (4-0).

Mr. Strcula moved to approve Variance #2, Case 2021-024: 88 Lincoln Avenue Side Yard Setback, West Side Variance for the Garage. Mr. McNamara seconded the motion. Vote was called, and the motion was approved (4-0).

Mr. McNamara stated that the variance was approved, and directed for Ms. Burt to get with the Building Department after 30 days. The variance will expire in 1 year.

E. Case No: 2021-025: 746 South Atlantic Avenue Rear and Street Side/Corner Yard Setbacks

Ms. Noel Eaton, Senior Planner, stated that Case 2021-025 is a request for 2 variances to permit 2 storage sheds located behind the building at 746 South Atlantic Avenue. The subject property known as Topsy Taco Cantina is zoned B-7. The Land Development Code (LDC) requires a rear yard setback of 30 feet for nonresidential uses abutting residential zoning districts. Ms. Eaton continued that additionally the Land Development Code (LDC) requires a street side corner yard setback of 20 feet.

Shed 1 is 12 feet by 10 feet storage shed located along the street side/corner yard. The applicant is seeking a variance of 7 feet from the street side/corner property line for a requested setback of 13 feet to the required 20 feet street side/corner yard setback and variance of 8 feet from the rear property line for a requested setback of 22 feet to the required 30 feet rear yard setback.

Shed 2 is 8 feet by 14 feet storage shed located in the rear yard. The applicant is seeking a variance of 27 feet from the rear property line for a requested setback of 3 feet to the required 30 feet rear yard setback.

Ms. Eaton noted that there are 3 unpermitted sheds located on the property currently that were placed there without the required building permits. A complaint was provided to the city code enforcement staff that sought to have the restaurant operator permit the existing sheds. Ms. Eaton displayed an exhibit of the property overhead and specified numbered and highlighted shed locations. Shed 1 is highlighted in yellow. Shed 2 is highlighted in red. Shed 3 is highlighted in blue. She explained that Shed 3 is proposed to be removed from the site and Shed 1 is being moved to the location of where Shed 3 is today. Shed 2 is remaining in its current location. Ms. Eaton stated that after analysis of the location of the sheds, it was determined that the shed locations would require variances. She showed the proposed location of Shed 1, the 10 feet by 12 feet storage shed located along the side corner and rear yard. The applicant is requesting a 13-foot side corner/street setback in line with the north plan of the building for a variance of 7 feet to the required 20-foot setback as well as a 22-foot rear yard setback, requiring a variance of 8 feet to the required 30-foot rear yard setback. Ms. Eaton continued that Shed 2 will remain in its current location and is requesting a setback of 3 feet for a variance of 27 feet to the required 30-foot rear yard setback.

Ms. Eaton stated that the applicant has received signatures in support of the variance requests from the properties at 762 S. Atlantic Avenue, 246 Ponce de Leon

Drive and 730 S. Atlantic Avenue. Planning staff received 1 objection to the variance request from the property owners of 236 Benjamin Drive. The letter was included in the Board packets. Ms. Eaton concluded that it is recommended that the Board of Adjustment and Appeals approve the 2 variances, Shed 1, a variance of 7 feet from the street side property corner line for a requested setback of 13 feet, and a variance of 8 feet from the rear property line for a requested setback of 22 feet; and Shed 2, a variance of 27 feet from the rear property line for a requested setback of 3 feet to the required 30 foot setback.

Mr. Nave asked if there was anything in the code of how far a shed has to be from the building. Ms. Eaton replied that there is not.

Mr. Driscoll elaborated on buffer requirements in the Land Development Code (LDC). He expounded on how there are 2 different uses, a restaurant across the street from residential. He asked if a street counts as a buffer between the two uses. Ms. Eaton replied that required landscape buffers are for new commercial development and that this is an existing site. Mr. Driscoll then asked about a possible code violation on the site with the parking bringing attention to the cars parked on the grass. Attorney Emery stated that the parking is not an issue for this Board and that it can be addressed by code enforcement. Mr. Driscoll commented that the sheds and cars on the grass are illegal and that now the Board is being asked to produce a variance. He continued that on Shed 2, the recommendation is to approve a variance for a shed to be within 3 feet of the public right-of-way across the street from the residential area and commented that the back of restaurants is not aesthetically pleasing.

Mr. Nave commented that he visited the site and explained how the back of the restaurant was a mess with cars parked out in the road and between Shed 1 and the road. He continued that cars were parked in between Shed 2 and the road as well sticking out in the road. Mr. Nave assumed the reason for putting Shed 2 where it is is so that they can get into the door. The door from the restaurant leads out near the door of the shed.

Mr. Driscoll stated that there is no special condition or circumstance. He commented the purpose is because the applicant wants the sheds for storage space, but that the Land Development Code (LDC) does not permit it. The practical alternative is to remove the sheds as it presents problems. The resident across the street objected and commented that there was no police report although the reason there is no street sign on the island is because it is repetitively damaged due to distracted people going in or coming out of the restaurant.

Mr. McNamara invited the applicants up to address the Board.

Mr. Michael Lucas, Tenant, Topsy Taco Cantina, 348 Georgetown Drive, stated that he operates a successful restaurant that is growing and in order to maintain it they had to put storage facilities on the property. This allows them to expand the menu, offer more items to Ormond Beach customers and keep people employed.

Mr. Nave commented that moving Shed 1 out of the way is a good idea but Shed 2 is problematic. He continued that he understands that the door is facing the kitchen and asked why it cannot be flipped around where the portable trailer on the site is. Doing so, he commented that he would not need a variance. Mr. Nave suggested putting parking spots and the trailer there. He suggested looking into alternatives to asking for a variance. Mr. Nave asked why the applicants do not want to do so. Ms. Lena Lux, General Manager, Topsy Taco Cantina, 746 S. Atlantic Avenue, replied that no parking spots can be taken up and that the shed is larger than the trailer. The trailer is in a spot that is next to a handicapped spot. She continued that all of the parking spots are necessary for the business liquor license. Ms. Lux explained that the cars parked on the grass are those of employees. She offered to move the employee parking if need be. She is interested in the business being aesthetically pleasing as well. She continued that being that they are on a small parcel that abuts residential, the same residential that are their customers as well and would like for everyone to be pleased. Ms. Lux stated that they have entertained the idea of putting up a fence but that the problem is that with the setbacks and property lines there is not a lot of room for a fence to go around the property to block in. The dumpster was moved to the other side of the parking lot. She concluded that they are trying to do the best they can with what they have to keep the business operating successfully. Ms. Lux offered to change things to make it all work properly but insisted that the sheds are 100 percent necessary for the operation of the business. Without dry storage and the liquor shed there is nowhere to store it inside and they would be unable to operate.

Mr. Nave commented that the Board wants to see the business to be a success. He asked why Shed 2 cannot be moved over to where the parking spots are and then move the parking spots to the other side of the building where Shed 2 is next to the handicapped spot. He suggested flipping the shed around so that it would not need a variance. Ms. Layne replied that the parking spots were grandfathered in because they are not allowed to have parking that backs up into the road.

Mr. Driscoll noted 4 different external storage facilities on the property consisting of a trailer and 3 sheds and commented how it started as an ice cream shop and with the success now has grown.

Mr. Nave stated that he would like for the company to be able to continue and be permitted what they are asking for legally. Moving Shed 2 up would mean that they would not need a variance. If Shed 2 was flipped out instead so that the door is facing the kitchen door, it would not take up any more parking. Mr. Nave relayed the idea of moving Shed 2 and getting it out of the variance. Ms. Eaton replied that the 30-foot setback may not be met if moved to the proposed location aforementioned and therefore would still require a variance. The corner of the building is set back 10.75 feet from the property line.

Mr. Driscoll explained another idea of building a structure in the corner of the building to square it off to the tenant and general manager.

Mr. McNamara suggested putting a larger trailer in for storage to eliminate Sheds 1 and 2. There were different solutions mentioned and discussed amongst the

Board. It was determined that as long as it is 30 feet away from the rear property line a variance would not be needed.

Ms. Layne advised that she is willing to move Shed 2 over to where the trailer is if it fits. She also reiterated that she can have staff park in a different area other than the grass. Shed 1 will go where Shed 3 is at. Shed 3 will be removed.

Mr. Spraker stated that the solution being proposed will require another variance. There is a 30-foot setback plus the 8-foot width of the shed. There is an access point where the kitchen comes out, the reason for Shed 2 being in the location it is in. He continued that if the Board does not want a 3-foot setback then it can be recalculated to what will work and then have the applicants come back for another variance. Mr. Spraker added that the shed has to be clear of the entrance and exit of the building.

Audience Comments

Ms. Betty Cartwright, 56 Lincoln Avenue, stated that she is a customer of Topsy Taco Cantina and is happy to have a privately-owned restaurant there as opposed to so many chains.

Mr. Nave asked Attorney Emery to save the applicants the trouble of coming back for another variance, if a 15-foot variance could be granted. Attorney Emery answered that it would not be possible.

Mr. McNamara commented that a point of consideration is that in this day and age any restaurant still in business is doing well with COVID.

Mr. Nave moved to approve Variance 1 in Case 2021-025: 746 South Atlantic Avenue Street/ Side Corner setback of 13 feet for a variance of 7 feet and a Rear Yard Setback of 22 feet for a variance of 8 feet for Shed 1. Mr. Driscoll seconded the motion. Vote was called, and the motion was approved (4-0).

Additional discussion occurred regarding other options for shed 2.

Mr. Driscoll clarified that the Land Development Code (LDC) must be followed and read sections aloud regarding special conditions and circumstances, practical existing alternative, and if the variance would increase congestion and be a hazard to the public. He noted that 3 feet from the right-of-way approaching an intersection is a dangerous condition.

Mr. Spraker inquired on a matter of clarification with the advertised variance at 3 feet, and the Board concern of not wanting it any closer than the front edge of the building. If the variance can be conditioned that the shed is no closer than the front edge of the building and in the development order of the action it can be laid out exactly how it would protect the opening in the building to the shed, moving the shed further back. Mr. Spraker remarked that if the Board does not believe that the conditions are met then that is the Board's decision. He suggested that the variance could be a 19-foot variance, specifying that no shed can be closer than 11 feet from

the property line. The final design would be within the development order that staff prepares and has the Board Chairman sign. Mr. Spraker concluded that if the Board denies or tables it the applicants can come back with an exact location at a future date.

Mr. Driscoll asked for clarification of the 11 feet and if it was 11 feet from the public right-of-way rather than the edge of the road. Mr. Spraker answered that the right-of-way is not the edge of the road, with another 10 feet from the property line to the roadway. He explained that the property line is 3 feet from Shed 2, and commented that there is a considerable distance between the edge of the shed and the roadway. Mr. Spraker concluded that the setback from the roadway is 13 feet as proposed today, which is 3 feet plus the 10 feet.

There was discussion amongst the Board and the City Attorney regarding giving the applicants a variance for a certain distance now so they do not have to come back and let them work out where they are going to place the shed. Initially they were seeking a variance of 27 feet and now the idea is to give a variance of 19 feet. Mr. Spraker clarified that the rear yard setback would be variance of 19 feet with a final setback of 11 feet from the property line, which is no further than the edge of the building.

Mr. Strcula made a motion to approve Case 2021-025: a Variance of 19 feet from the rear property line to request a setback of 11 feet from the rear yard setback.

There was additional Board discussion.

Mr. Driscoll moved to amend the motion to change the 11 feet to 14 feet from the rear yard setback. Mr. Nave seconded the motion.

Mr. Strcula withdrew his motion. Mr. Driscoll withdrew his amended motion.

After discussion Mr. Strcula moved to amend the motion to approve Case 2021-025: a Variance of 16 feet from the rear property line for a setback of 14 feet from the required 30-foot rear yard setback at 746 South Atlantic Avenue. Mr. Driscoll seconded the motion. Vote was called, and the amended motion was approved (4-0).

Mr. McNamara stated that the first variance was approved as is, and the second variance was amended. He suggested to get with the Building Department after 30 days. The variances will expire in 1 year.

V. OTHER BUSINESS

Mr. Driscoll commended the Board on evolving and applauded the staff on all they do.

VI. PUBLIC COMMENTS

VII. ADJOURNMENT

The meeting was adjourned at 7:58 p.m.

Respectfully submitted,

Becky Weedo, Senior Planner

ATTEST:

Dennis McNamara, Chairman

Minutes prepared by Marcella Miller.

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.