

**BOARD OF ADJUSTMENT**

**MEETING MINUTES**

April 4, 2019

City Hall – Council Chambers

Regular Members Present: Larry Caldwell, Charles Haubold, Tim Kelley, Skip Smallwood, William Whitlock

Regular Members Absent: None

Alternate Members Present: None

Alternate Members Absent: Ray Buhs, Ed Hart, David Hinton

Staff Present: Carol Peters, Ryan Shrimplin

Call to Order

Chairman Haubold called the meeting to order at 7:00 p.m.

Approval of Minutes

The minutes of the February 7, 2019 Board of Adjustment meeting were unanimously approved upon motion made by Mr. Smallwood and seconded by Mr. Whitlock.

ZONING CODE VARIANCES

1. A public hearing was held on the request of Freddy Spurgeon for a variance from Section 30-322(e)(5)a, R-1 (Single-Family Suburban Residential District) front yard setback requirements, for property at 1730 Oakley Drive. Mr. Freddy Spurgeon, applicant, stated that he is requesting the variance in order to construct a two-car garage addition at the south end of his house. He explained that the existing house encroaches on the front yard setback and since he would like the garage to be flush with the house, the garage would encroach on the setback as well.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: The subject property is a 0.61 acre lot with relatively flat terrain and sparsely spaced trees. The shallowest portion of the lot is 189.81 feet deep. There are no features of this lot that could be considered a unique condition for the purposes of this review.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: Staff researched the surrounding properties and found that with a few exceptions, the houses on this portion of Oakley Drive are more than 30 feet from the front lot line. The houses that are closer than 30 feet are nonconforming and cannot be expanded within the setback. Thus, approval of the variance request will confer a special privilege upon the subject property that is not afforded to other properties and will thus adversely affect the rights of adjacent property owners and tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: Because there are no site constraints, it is possible to provide a garage without encroaching on any setbacks. The garage addition could be offset to the east, or a separate garage constructed and, if desired, connected to the house via a covered breezeway. Because the applicant has reasonable alternatives, denial of the variance request will not constitute an unnecessary hardship.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: Approval of the variance request will adversely affect the public because it will adversely affect the rights of adjacent property owners and tenants.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: Approval of the variance request is not consistent with the general spirit and intent of the Zoning Code because the request does not meet the required criteria.

Based on the above findings, staff recommended denial of the variance request.

Chairman Haubold opened the public hearing. Mr. Caldwell asked for clarification on the amount of the encroachment. Mr. Shrimplin stated that the application is in error because it indicates that the encroachment would only be 3 feet, but the site plan provided by the applicant shows the existing house encroaching on the setback by 6.8 feet. The garage addition would encroach even more, by an additional 1 to 2 feet. The staff report was based on a proposed encroachment of 8 feet. Mr. Smallwood asked Mr. Spurgeon if he had considered the alternatives mentioned in the staff report. Mr. Spurgeon replied that he had not considered the alternatives because he wants the garage to be flush with the existing house for aesthetic and financial reasons.

Mr. Roger Austin, 121 LaSalle Street, stated that he currently owns the subject property. He explained that a building permit application was submitted for the garage, which was placed on hold because the building would cross a lot line (the property consisted of two lots at the time). A subdivision plat was then submitted to combine the lots. As part of the approval process for the plat, staff requested that the standard R-1 building setbacks be shown, including the 30 foot front yard setback. He continued by stating that the setback before the plat was 20 feet but staff had it changed to 30 feet, which created the encroachment. Mr. Shrimplin explained that Oakley Drive was originally narrower but became wider after a 10

foot strip of land across the front of the lots along the east side of the street was added. This shortened the lots and consequently moved the 30 foot front setbacks inward. Mr. Shrimplin continued by stating that there is plenty of room on the lot to move the garage addition back or build a detached garage. Mr. Kelley asked why the garage addition could not be moved back. Mr. Austin explained that doing so would result in three different roof lines on the front of the house, which would not look visually appealing.

Ms. Florence Asher, 1747 Oakley Drive, asked if the street or the property lines would be affected if the variance were to be approved. Mr. Shrimplin explained that neither would be affected, and he showed Ms. Asher the site plan.

Mr. Kelley stated that when he built his home, he had to move the garage back in order to stay behind the front yard setback.

Seeing no other appearances to speak, Chairman Haubold closed the public hearing. A motion was made by Mr. Smallwood and seconded by Mr. Caldwell to approve the variance request. In response to a question from Mr. Smallwood, Mr. Shrimplin stated that if the variance were to be denied, the plat could be amended to show a variance for a reduced front yard setback (from 30 feet to 20 feet) in order to eliminate the encroachment. He explained that the criteria for a variance requested as part of a subdivision plat are less stringent than those for a stand-alone variance. The motion failed by a vote of 2 in favor, 3 in opposition, and 0 abstaining (*Aye: Caldwell, Whitlock; Nay: Haubold, Kelley, Smallwood*). Chairman Haubold called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Smallwood made a motion to adopt, and Mr. Whitlock seconded the motion. The motion passed by a unanimous vote.

2. A public hearing was held on the request of Danny Rees for a variance from Section 30-325(e)(5)(b)2, R-4 (Medium Density Multifamily Residential District) rear yard setback requirements, for property at 107 South Lorimier Street. Mr. Danny Rees, applicant, stated that he is requesting the variance in order to construct a detached garage on the subject property, which would be connected to the house via a breezeway. He stated that the house sits further back than any other house on the street and that there are other neighbors with buildings which are right on the property line. In addition, he owns some of the adjacent properties.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

*Criterion #1:* The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

*Finding:* The subject property is a narrow, deep lot containing a house that is situated near the center of the lot. The property owner wishes to construct a garage in the rear yard, to be attached to the house via a covered breezeway. Due to the position of the house on the lot and the required rear yard setback, there is not adequate room for the proposed garage and breezeway. This constitutes a unique condition that is not self-imposed.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: Staff researched the surrounding properties and found several that contain structures encroaching on the rear yard setback. Most of these structures appear to have been constructed many years ago, prior to the establishment of the current setback requirements. Some of these structures are closer to the rear lot line than the proposed garage. Thus, it does not appear that approval of the variance request will adversely affect the adjacent property owners or tenants.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: Denial of the variance request will force the property owner to substantially shorten the garage, or alter/remove the rear two-level porch in order to move the garage closer to the house, or abandon the project. Given the unique condition of the subject property and the fact that so many surrounding properties have structures encroaching on the rear yard setback, this would seem to impose an unnecessary hardship upon the utilization of the property.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: The proposed garage encroachment will not create any hazards or other problems affecting the neighborhood or the public at large. Thus, approval of the variance request will not adversely affect the public.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: The unique condition of the subject property, the unnecessary hardship that will result if the request is denied, and the lack of an adverse effect on the adjacent property owners, tenants, and the public form the basis for approving the variance request in keeping with the general spirit and intent of the Zoning Code.

Based on the above findings, staff recommended approval of the variance request.

Chairman Haubold opened the public hearing. Seeing no appearances to speak, he closed the public hearing. A motion was made by Mr. Smallwood and seconded by Mr. Kelley to approve the variance request. The motion passed by a vote of 5 in favor, 0 in opposition, and 0 abstaining (*Aye: Caldwell, Haubold, Kelley, Smallwood, Whitlock*). Chairman Haubold called for a motion to adopt the staff report as the Board's Findings of Fact and Conclusions of Law. Mr. Smallwood made a motion to adopt, and Mr. Whitlock seconded the motion. The motion passed by a unanimous vote.

3. A public hearing was held on the request of Ryan and Allison Davis for a variance from Section 30-403(b)(3)c, swimming pool fence requirements, for property at 625 Camp Davis Lane. Mr. Ryan Davis, applicant, distributed a map of the subject property and the surrounding properties. He stated that he is requesting the variance in order to install an

automatic swimming pool cover in lieu of a 4 foot fence around the pool. He explained that the subject property is over 13 acres and is surrounded on three sides by his brother's property, which is over 60 acres, so the closest neighbors are a few hundred feet away. In addition, the subject property has a perimeter fence and a gated entrance. He continued by stating that an automatic pool cover would completely eliminate the risk of drowning whereas if an outside child or animal made it over the required 4 foot fence, they would be able to access the pool.

Mr. Shrimplin explained that the code adopted by the City pertaining to pools and spas does allow an automatic swimming pool cover, but Section 30-403(b)(3)c of the Zoning Code does not. Staff discussed the discrepancy and decided to amend the pool and spa regulations by removing the automatic swimming pool cover as an option. Staff's primary concern is that an automatic swimming pool cover only provides protection when it is in the closed position. The cover is operated via a manual switch; if someone fails to switch it to the closed position, then there is no protection. Mr. Davis stated that a fence gate also depends on human control to provide protection. If the gate is left open, then there is no protection.

A staff report was submitted to the Board, containing the following findings of fact in reference to the variance request:

Criterion #1: The variance request arises from a condition which is unique to the property in question and which is not ordinarily found, and is not created by an action or actions of the property owner or the applicant.

Finding: There is no unique condition of the subject property that would preclude the installation of the required fence. It is reasonably possible to install a fence around the perimeter of the pool.

Criterion #2: Approval of the variance request will not adversely affect the rights of adjacent property owners or tenants.

Finding: Because the variance request is not based on a unique condition of the subject property, approval of the request would confer upon the subject property owner a special privilege that is not afforded to other residential property owners and thus would adversely affect their rights.

Criterion #3: The strict application of the provisions of the Zoning Code from which the variance is requested will constitute unnecessary hardship upon the utilization of the property.

Finding: Denial of the variance request will not constitute an unnecessary hardship because it is reasonably possible to install a fence around the perimeter of the pool.

Criterion #4: Approval of the variance request will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Finding: Approval of the variance request will adversely affect the public because it will adversely affect the rights of other residential property owners.

Criterion #5: Approval of the variance request is consistent with the general spirit and intent of the Zoning Code.

Finding: Approval of the variance request is not consistent with the general spirit and intent of the Zoning Code because the request does not meet the required criteria.

Based on the above findings, staff recommended denial of the variance request.

Chairman Haubold opened the public hearing. Seeing no appearances to speak, he closed the public hearing. A motion was made by Mr. Smallwood and seconded by Mr. Whitlock to approve the variance request. Mr. Davis questioned why a fence is not required around the five acre pond on the subject property. Mr. Shrimplin explained that Section 30-403(b)(3)c applies to swimming pools and water features installed for landscaping purposes. The pond is considered a natural water feature rather than a landscaping feature. Mr. Davis stated that he and his wife removed the fence around the swimming pool at their previous residence, which was in the city limits, and replaced it with an automatic swimming pool cover, which was in place for fifteen years. He added that a variance was not required for it. Chairman Haubold stated that the City may not have been aware of this change. Mr. Shrimplin informed the Board that an argument could be made that the size of the subject property and the perimeter fence present a low risk of outside children and animals entering the pool and drowning. If the Board were to approve the variance on that basis, however, it would not be able to adopt the staff report as its Findings of Fact and Conclusions of Law. Mr. Smallwood asked if it would be beneficial to table this agenda item in order to allow Mr. Davis to discuss the issue further with staff. Mr. Davis stated that he would be agreeable to tabling but would prefer that the Board approve his request at this meeting. A motion was made by Mr. Smallwood and seconded by Mr. Kelley to amend the previous motion by changing it from a motion to approve to a motion to table. The motion passed by a vote of 5 in favor, 0 in opposition, and 0 abstaining (*Aye: Caldwell, Haubold, Kelley, Smallwood, Whitlock*).

#### OTHER ITEMS AND COMMUNICATION

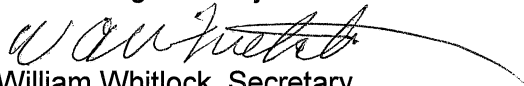
##### Election of Officers

A motion was made by Mr. Whitlock and seconded by Mr. Kelley to re-elect Mr. Haubold as Chairman, Mr. Smallwood as Vice-Chairman, and Mr. Whitlock as Secretary. The motion passed unanimously.

Comprehensive Plan Update – Mr. Shrimplin informed the Board that he will be giving a presentation on the Cape Vision 2040 Comprehensive Plan at the Planning and Zoning Commission meeting on April 10, 2019. He explained that the plan is still in process, but he wanted to update the Commission on its status. He invited the Board members to attend the presentation.

##### Adjournment

Upon motion made by Mr. Kelley and seconded by Mr. Caldwell, the meeting was adjourned unanimously at 7:55 p.m.

  
Respectfully submitted by: William Whitlock, Secretary