

## BOARD OF ADJUSTMENT

### MEETING MINUTES

July 2, 2020

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 6, 2020 meeting were unanimously approved upon a motion made by Mr. Smallwood and seconded by Mr. Whitlock.

#### ZONING CODE VARIANCES

1. A public hearing was held on the request of Solera Energy, LLC for a variance from Section 30-403(b), accessory structures and uses, for property at 197 North Lake Drive. Mr. Travis Fischer with Solera Energy, LLC was in attendance to present the application. He explained that the property owner would like to have a solar panel array installed in the rear yard of the property. There are currently three (3) accessory structures on the lot. The total area of all of the accessory structures, including the solar panel array, would be less than 1,500 square feet. Mr. Kelly asked if the solar panel array is permitted by the homeowners association, to which Mr. Fischer responded affirmatively. Mr. Fischer noted that ground-mounted solar panels (such as the proposed array) are more efficient than roof-mounted panels and in this case, it would not require cutting down any trees.

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 approximately 1.35 acres and contains one (1) accessory structure, which has a footprint of 240 square feet. Section 30-403(b) allows a lot of this size to have one (1) accessory structure with a maximum footprint of 1,500 square feet. The property also has two (2) minor accessory structures (120

square feet and 80 square feet), which do not count toward the 1,500 square foot limit. Even if they did, the total footprint area of the accessory structure and the two minor accessory structures is only 440 square feet – less than one-third of the 1,500 square foot limit. This constitutes a unique condition of the subject property.

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

Finding: The applicant wishes to install a set of freestanding solar panels in the rear yard. The footprint of the solar panel installation is 534.97 square feet. This would increase the total footprint area to 974.97 square feet. Even though the subject property would have two (2) accessory structures and two (2) minor accessory structures, the total footprint area of these structures would be less than a single accessory structure having the maximum footprint under the code. Thus, approval of the variance request will not adversely affect the rights of 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: A solar energy system is a permitted accessory use in the R-1 district. The application indicates that the solar panels cannot be attached to the principal structure (the house) because its design and orientation are not conducive to optimal solar production. Therefore, a freestanding solar panel installation is the only option. Denial of the variance will constitute an unnecessary hardship for the property owner because they will not be able to install solar panels due to circumstances beyond their control.

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

Finding: As noted above, the subject property is permitted a solar energy system under the code. If the property did not already have an accessory structure, this variance would not be needed. The fact that the total footprint area of the accessory and minor accessory structures (including the solar panel installation) will still be well below the 1,500 square foot limit in the code means the public will not be adversely affected.

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 roll call 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. Kelley seconded the motion. The motion passed unanimously.

2. A public hearing was held on the request of Dale Gene Maevers for a variance from Section 30-407(b)(2), nonconforming uses, for property at 1318 Sonnet Drive. Mr. Maevers was in attendance to present his application. He explained that he would like to construct a 19 foot by 12 foot addition to an existing accessory structure in order to store a restored antique tractor. Mr. Shrimplin explained that, based on the application, Mr. Maevers' intention is to keep the addition flush with the existing structure, which is 4 feet from the east property line. Mr. Maevers stated that the existing structure was on the property when he and his wife purchased the property two (2) years ago. Chairman Haubold asked if the addition could be constructed out the 6 foot setback rather than flush with the existing structure, to which Mr. Maevers responded affirmatively. Chairman Haubold then asked if the existing structure could be moved out of the setback. Mr. Maevers replied that the structure could probably be moved if there isn't much deterioration underneath it.

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 consists of three (3) tracts: a whole platted lot and two (2) pieces of other platted lots. There is an existing 160 square foot accessory structure on one (1) of the pieces. The accessory structure is nonconforming because it is on a lot (tract) without a principal structure (Section 30-403(a) of the Zoning Code requires them to be on the same lot). It is also nonconforming because it encroaches on the side yard setback along the east lot line (the side yard setback for R-1 zoned lots is 6 feet; the accessory structure is 4 feet from the east lot line). Although the neighboring properties to the east have this same general condition, it is nonetheless unique when compared to the neighborhood and the city as a whole.

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

Finding: The neighboring properties to the east also consist of a whole platted lot and at least one (1) piece of another platted lot, and each of them contains an accessory structure that is not on the same lot as the principal structure. The owner of the subject property wishes to expand his accessory structure by constructing an addition, resulting in a total footprint area of approximately 462 square feet. The adjacent property to the east contains an accessory structure that has a footprint of about 358 square feet and is located outside of the setbacks. The properties further east have accessory structures with a lower square footage, but two (2) of them encroach on the side yard setback. Due to this context, approval of the variance request will not adversely affect the rights of 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 result in unnecessary hardship for the property owner because the adjacent neighbor to the east has a nonconforming accessory structure that is much larger than the existing accessory structure on the subject property. Furthermore, the existing accessory structure on the subject property is already in the side yard setback; the property owner wants to make the addition flush with the existing structure to avoid having to offset the addition.

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

Finding: The existing accessory structure is currently not visible from a public street, and the addition will not change that. There are no public utility easements in the location of the addition. The accessory structure has been, and will continue to be, used for typical residential storage. Therefore, 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. Kelley and seconded by Mr. Whitlock to approve the variance request with the condition that the addition be constructed out the 6 foot setback and, if feasible, the existing structure moved out of the setback. The motion passed by a roll call 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. Caldwell made a motion to adopt, and Mr. Kelley seconded the motion. The motion passed unanimously.

#### OTHER ITEMS AND COMMUNICATION

3. The Commission reviewed the request of Centenary United Methodist Church for an extension of a variance granted on February 6, 2020 from Section 30-403(a) of the Zoning Code to allow an accessory structure on a lot without a principal structure at 321 North Ellis Street. Ms. Cherie Henson, representing Centenary United Methodist Church, explained that due to the COVID-19 pandemic and the length of time it took to get the property surveyed and a site plan prepared, there may not be enough time to obtain the building permit and begin work before the variance expires on August 5, 2020. A motion was made by Mr. Smallwood and seconded by Mr. Kelley to approve a 180-day extension of the

variance. The motion passed by a roll call vote of 5 in favor, 0 in opposition, and 0 abstaining. (*Aye: Caldwell, Haubold, Kelley, Smallwood, Whitlock*).

#### Election of Officers

The Board held its annual election of officers. A motion was made by Mr. Smallwood and seconded by Mr. Caldwell to re-elect Mr. Haubold as Chairman, Mr. Smallwood as Vice Chairman, and Mr. Whitlock as Secretary. The motion passed unanimously.

#### Board Communication

There were no communication items from the Board.

#### Staff Communication

Mr. Shrimplin informed the Board that a public hearing on the Cape Vision 2040 Comprehensive Plan will be held at the Planning & Zoning Commission meeting on July 8, 2020. He encouraged the Board members to view the plan online at [www.capevision2040.com](http://www.capevision2040.com).

Mr. Shrimplin also informed the Board that as requested, Section 30-403 of the Zoning Code was recently amended to increase the maximum footprint for an accessory structure on a lot less than one-half (1/2) acre in a residential district.

#### Adjournment

There being no further business, the meeting was unanimously adjourned at 7:40 p.m.

Respectfully submitted by:

  
William Whitlock, Secretary