

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING AND VARIANCE HEARING
Wednesday, February 21, 2007 9:30 a.m. – City Hall Conference Room

1. Call to Order, Roll Call – Chair Bill Danaher called the meeting to order at 9:40 a.m. Present were: Bill Danaher, Kathryn McCullough Rea, Bob Glassman, Ron Foster and Marie Flood. Excused: Ron Anderson. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz, and City Clerk Vickie Bollinger. Public: 2
2. Approval of Minutes: Regular Meeting and Variance Hearing January 24, 2007
Approved as written.
3. Discussion
City Clerk administered the oath to all witnesses in all matters to be heard on this date.

- A. Variance Request – 321 3rd Street (*taken after agenda item 3b*)
Disclosure of Ex Parte Communication - Committee Members
Variance Request – Floor Area, Lot 12, Block 3, Key Colony Beach Subdivision,
321 3rd Street, James M. Williamson, Owner

Building Official Edward Borysiewicz stated the applicant wanted the committee to proceed in his absence. Attorney Wright stated that in a duplex zoning district, single family homes or duplex are permitted. Building Official Borysiewicz stated the residence was built in the 1970s as a two-story structure with a downstairs kitchen, living area, bedroom and bathroom. This was legal at the time it was built, but regulations changed and the residence was grandfathered for having two kitchens in a single-family home. He stated the applicant wants to rent the upstairs and live in the downstairs. To meet current code the applicant would have to install an interior stairway and remove the downstairs kitchen or convert the structure to a duplex. However, current code requires a dwelling unit to be a minimum of 800 square feet and this downstairs is only 476 square feet. In response to questions, the Building Official stated the applicant would have to pay impact and sewer fees, and then would be able to sell the two units separately. Committee and staff discussed utility hook-ups and rental license issues.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Response: Although this residence built in 1974 was built with two sections (up down duplex) it was referred to as single family. Actually has been in use as a duplex over the years.

Comment: Applicant's answer may be an admission of a code violation. Although there are other similar housing units in the city, can't see giving a variance to a sub-size unit; a unit that could then be sold as a duplex. Granting the variance would cause more problems. The difference between other units and this one is that the others were existing duplexes, this is a single-family unit. The applicant has room to expand the existing downstairs to legal size. Attorney Wright stated there is nothing unusual about the lot or the structure to allow granting of a variance.

Vote: Rea - no, Glassman - yes, Foster – no, Flood – no, Danaher - no **Vote:** No

Variance Request – 321 3rd Street - continued

2. That the special conditions and circumstances do not result from the actions of the applicant.
Response: I purchased the property in 2004.
Comment: This residence may have been used in violation of city code. Attorney Wright stated the committee found in criteria 1 that no special circumstances exist; so if it doesn't exist, how can it be determined if the applicant did it.
Vote: Rea - no, Glassman - yes, Foster – no, Flood – yes, Danaher - no **Vote: No**

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.
Response: Because this is a home existing prior to rules this is not true.
Comment: Attorney Wright stated that this property is zoned duplex and the owner wants to convert it to a duplex, so this criteria is met.
Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
Response: Other property on 3rd St indeed next door are single story duplex with less than 800 sq ft.
Comment: Other properties were built as duplexes before the 800 square foot minimum. Attorney Wright stated the committee needed to consider whether it is fair to make the applicant comply with the current code.
Vote: Rea - no, Glassman - yes, Foster – no, Flood – no, Danaher - no **Vote: No**

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
Response: This will allow vacation rental of both upper and lower levels, a plus for everyone.
Comment: Attorney Wright stated the committee could consider a lesser variance, but this was an all-or-nothing situation. Applicant told the Building Official only the upper would be a rental unit, but has responded that both units would be rentals. The committee considered adding a condition that the lower unit not become a rental. Attorney Wright advised the committee to make their decisions based on the responses in the application, not on what the applicant said. He stated the committee must determine if the variance will make reasonable use of the structure. Applicant has not offered a middle ground.
Vote: Rea - no, Glassman - yes, Foster – no, Flood – no, Danaher - no **Vote: No**

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
Response: This variance will make a more uniform use of property on 3rd Street.
Comment: Attorney Wright stated city code prohibits granting a variance for “use.” A duplex is allowed; the issue is the undersized unit.
Vote: Rea - no, Glassman - no, Foster – no, Flood – no, Danaher - no **Vote: No**

Motion - Moved by Marie Flood, seconded by Kathryn Rea, to recommend disapproval of this variance request at 321 3rd Street, James Williamson, Owner to allow the unit to become a duplex since it is less than the minimum square footage. Roll Call Vote: Yes-Rea, Danaher, Foster, Flood No-Glassman. Motion is approved 4-1.

B. Variance Request – 13100 Overseas Highway

Disclosure of Ex Parte Communication - Committee Members

Variance Request – Front and Side Setback, Lot 1-4, Botel Subdivision,
13100 Overseas Highway, Circle K, Owner

Bob Webster and Frank Tagliaceri were present to represent Circle K.

Building Official Borysiewicz stated the basic store structure would be the same after all the alterations and improvements. A generator and dumpster area would be added adjacent to the store. In addition, the applicant wants to install gasoline pumps and a canopy that would encroach into the front setback. The canopy would encroach 12 feet and the column support for the canopy would encroach 1 foot into the setback.

There was discussion about placement of the generator and the possibility of needing another variance for encroachment. Alternate placement of the generator would eliminate the need for a variance. Applicant will move the generator.

Applicant stated the proposed canopy would line up with the existing canopy across Coral Lane and can't be moved back because it would interfere with cars entering and leaving parking spaces in front of the store. Also there must be enough maneuvering room for the gas truck. Applicant stated FDOT requires the drive onto US 1 be no more than 36 feet wide, so some of the area along the highway will be landscaped. He stated the interior designs are not completed.

Committee, staff and applicant discussed the landscaping plans, number of parking spaces, amount of encroachment, small piece of right of way along Coral Lane, the facility will be open 24 hours, and canopy will meet hurricane building code. In response to a question, Building Official Borysiewicz stated the staff recommendation would be to approve this variance request.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Response: This is a small parcel that has the city entrance feature on one side and a large Overseas Hwy. ROW on the front side

Comment: Building Official Borysiewicz stated this does effect DOT right of way. Attorney Wright stated this is the only parcel in the city with these circumstances.

Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

2. That the special conditions and circumstances do not result from the actions of the applicant.

Response: These areas are part of the road ROW setbacks. The canopy still remains 57' from the pavement

Comment: Attorney Wright stated the applicant is not seeking relief from a situation they created. It was confirmed most gas suppliers now require a canopy over all pumps.

Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

Response: Canopy will be in line with the canopy of the service station next door

Comment: This is a small zoning district with only 2 parcels. There would be no unfair advantage.

Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

Variance Request – 13100 Overseas Highway - continued

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

Response: The canopy cannot be moved closer to the C-store due to a backing out conflict again it relates to the extreme Overseas Hwy right-of-way

Comment: FDOT has a large right-of-way and the canopy is needed to sell gas. Building Official Borysiewicz confirmed that if the variance is not granted, there will be no fueling facility.

Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Response: We have kept the placement of the canopy to industry standards

Comment: Attorney Wright advised the committee to consider whether it would be appropriate to grant a lesser variance. It was confirmed the canopy cannot be moved closer to the building because it would interfere with parking and traffic flow.

Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Response: We are placing the canopy so that patrons backing out of parking will be able to do so safely and with minimum risk to the patrons at the fuel pumps.

Comment: The generator back-up is an advantage for the city and convenient for city residents.

Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

Motion – Moved by Kathryn Rea, seconded by Marie Flood, to recommend approval of the variance request to encroach into the front setback at 13100 Overseas Highway, Circle K, Owner. Roll Call Vote: Unanimous approval.

This variance request will be heard by the city commission on April 12, 2007 at 9:30 a.m.

4. Any Other Business

Chair Danaher stated that committee member Frank Catchpole had resigned and thanked him for his service to our city. Ron Foster has agreed to become a full member of the committee.

Revised Variance Application, Evaluation Forms and Process (continued from 8:30 a.m. workshop, if needed) (*Note: It was agreed that another workshop would be held.*)

The city clerk stated a joint public hearing would be held with the city commission to discuss the revised comprehensive plan on March 8, 2007 at 1:30 p.m. The city’s consultant will be here to explain and discuss the revisions. This is not mandatory for the committee, but it is hoped they would attend.

Any Other Business - continued

Building Official Borysiewicz requested discussion about flood elevation in a general case. He gave the example of an existing two-story residence built prior to flood elevation rules. He asked if the residence were made into a legal duplex, would it have to meet flood regulations. The committee discussed the issues and agreed that the structure is grandfathered (whether it is used as a single-family residence or duplex is not relevant) and would not need to meet current flood regulations as long as any improvements were less than 50% of the assessed value.

There being no further business, the meeting adjourned at 10:50 a.m.

Vickie L. Bollinger, City Clerk

Note: A mechanical recording has been made of the meeting of which these minutes are a part, and a copy is on file in the office of the City Clerk, as a public record.