

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING AND VARIANCE HEARING
Wednesday, May 16, 2007 9:30 a.m. – City Hall Conference Room

1. Call to Order, Roll Call – Chair Bill Danaher called the meeting to order at 9:30 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: 1
2. Approval of Minutes: Regular Meeting and Variance Hearing February 21, 2007
Variance Criteria Workshop with Commission February 21, 2007
Public Hearing on Variance Criteria April 18, 2007

Approved as written.

3. Discussion

City Clerk administered the oath to all witnesses in all matters to be heard on this date. Chair Danaher stated his employer was the insurance agent for these properties and asked if he needed to recuse himself. Attorney Wright stated that he should recuse himself if he felt that his business relationship would have any influence on the decisions he would make. Chair Danaher stated it would have no effect and would therefore participate.

A. Variance Request – 320 East Ocean Drive

Disclosure of Ex Parte Communication - Committee Members

Variance Request – Front Setback, Lot 46E, Block 3, Key Colony Beach Subdivision,
320 E. Ocean Drive, Milo & Sheri Hennemann, Owner

Applicant was present. Building Official Edward Borysiewicz stated that 320 East Ocean was a stilted half duplex with a carport and that the owner wanted to convert the carport to a garage. The project was permitted, but at first inspection it was noted that what was being built did not conform to the plans as permitted. The street side wall of the garage had been moved to allow the owner's car to fit. This change resulted in an encroachment into the front setback. The owner was asking for a variance of 2.5 feet to encroach into the front setback. East Ocean Drive is at an angle and the houses along it were built at an angle. Only about 12 feet of the street side wall of the proposed garage would encroach.

Committee and Building Official discussed that there would be one garage door, the encroachment is under an existing balcony, and owner of the other side of the duplex has no objections.

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: The 25' set back precludes having a usable garage that would fit auto.

Comment: Most roads in the city are straight, East Ocean is at an angle that may be a special circumstance for this variance. Building Official stated that citywide angled streets are unusual, but compared to other structures on East Ocean this structure is not unique. The other way to enlarge the garage without encroachment would be to knock down a cement block wall and move plumbing and electrical conduits. This would be expensive and not cost effective.

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

Variance Request – 320 East Ocean Drive - continued

2. That the special conditions and circumstances do not result from the actions of the applicant.
Response: Set back was in place when home was purchased. The angle of the road in front causes a problem as part of the garage would be within the set back and part of it is not.
Comment: Attorney Wright stated the majority voted that special circumstances exist, so the question is whether the irregularly shaped lot resulted from actions of the applicant.
Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - no **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: No.
Comment: There are irregularly shaped lots in Coury subdivision where architectural designs were developed to work within the setbacks. The city has never approved a front setback variance. Attorney Wright advised the committee to not consider other cases, but look at this case only. Building Official Borysiewicz stated the front setback for a wall is 25 feet, but the balcony is allowed to overhang and is setback 21 feet.
Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - no **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: Would like auto to fit in garage – especially during hurricane season and to be aesthetically pleasing with the existing home.
Comment: None
Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - no **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: In order to fit auto in garage only 2 ½ ft. variance from set back is needed on half of the garage. The other half meets the 25’ set back.
Comment: None
Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - no **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: The garage would follow outline of the balcony which is angled and be under the balcony. The road is at an angle and the finished garage would not be noticeable by not meeting the entire set back.
Comment: If this variance is approved what about our houses in the city that have similar overhangs and balconies? The conditions are unique to this house and the neighbors do not object. Building Official stated on West Ocean may of the houses already have garages, but this particular house was designed without a garage.
Vote: Rea - yes, Glassman - yes, Foster – yes, Flood – yes, Danaher - no **Vote: Yes**

Attorney Wright reminded the committee that restrictions or conditions may be placed as part of granting this request. Parking problems on the Causeway resulting from owners enclosing garages were discussed. The Attorney advised that once the variance is granted, the owner may convert the space. The variance is for the encroachment, not the use. This owner or a future owner may legally convert the space to some other use.

Variance Request – 320 East Ocean Drive - continued

Motion - Moved by Bob Glassman, seconded by Ron Foster, to recommend approval of this variance request to encroach 2.5 feet into the front setback with the condition that it permanently remain a garage at 320 East Ocean Drive, Milo & Sheri Hennemann, Owners. Roll Call Vote: Yes-Rea, Glassman, Foster, Flood No-Danaher. Motion is approved 4-1.

The city commission will hear this matter on June 28, 2007 at 9:30 a.m.

B. Variance Request – 750 9th Street

Disclosure of Ex Parte Communication - Committee Members

Variance Request – Side Setback, Lot 34N, Block 9, Key Colony Beach Subdivision 1st Addition, 750 9th Street, Roger Kegerreis, Owner

Applicant is not present. Building Official Borysiewicz stated that Mr. Kegerreis would like to add a carport to his home. The proposed carport would simple square-off his home and meet the previous side setback resulting in a straight roof line. This requires a 3-foot variance to encroach into the side setback. This request is similar to many others where a structure has been squared-off and encroaches into the side setback.

Attorney Wright advised that once a variance is approved, the owner may do whatever they want, such as enclose the area for living space. If the committee has any concerns, they should include a restriction in their recommendation to the commission.

There was discussion of the age of the structure, habitable space and conversions, different engineering standards for carports and living space. Attorney Wright stated the variance goes with the land and future owners could convert the space by requesting a building permit. If the variance is approved with a condition that it remain a carport, the owner would have to ask for a change in the variance prior to converting it to any other use.

In response to the Attorney’s question, city clerk stated the applicant had been notified of the hearing date and time and asked that it proceed in his absence.

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: The setback code has changed since the existing roof was placed. We would like the new posts for the open carport to match the existing side of the storage room.

Comment: There was discussion about the other half of this duplex and other properties along 9th Street.

Vote: Rea - no, Glassman - no, 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: I am seeking this variance due to code changes.

Comment: None

Vote: Rea - yes, Glassman - no, 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: The store room is already set at the setbacks in force at that time. This variance would only allow for an open extension in line with the existing structure.

Variance Request – 750 9th Street - continued

Comment: None

Vote: Rea - yes, Glassman - no, 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: Approval of this variance will allow the construction of an open carport – in line with the existing structure for a more uniform and pleasing look of the open carport.

Comment: None

Vote: Rea - yes, Glassman - no, Foster – yes, Flood – yes, Danaher – no **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: If granted the variance would allow the new carport posts to be set in line with the existing structure for a balanced look.

Comment: None

Vote: Rea - yes, Glassman - no, Foster – yes, Flood – yes, Danaher – no **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: The intent is to provide an open carport in line with the existing structure. An offset of an additional 3’ feet will look ‘out of balance’ with the existing structure.

Comment: Applicant is correct. Historically, many side setback variances have been granted.

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

Attorney Wright recommended a section be added to the worksheet reminding the committee that conditions or restrictions may be included in their recommendation to the commission. He advised the committee to consider whether they would recommend approval is this was a request for additional living space rather than a carport. If restrictions are placed on approval of the variance, before converting the carport to living area the owner would have to come back to get another variance or to have this one modified.

Committee discussed that many side setback variances have been granted, especially when they are squaring off an existing structure.

Motion – Moved by Kathryn Rea, seconded by Marie Flood, to recommend approval of the variance request to encroach 3 feet into the side setback at 750 9th Street, Roger Kegerreis, Owner. Roll Call Vote: Yes-Rea, Danaher, Foster, Flood No-Glassman. Motion is approved 4-1.

This variance request will be heard by the city commission on June 28, 2007.

4. Any Other Business - None

There being no further business, the meeting adjourned at 10:15 a.m.

Vickie L. Bollinger, City Clerk