

**MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
February 14, 2013**

The Lake County Board of Adjustment met on February 14, 2013 in the Commission Chambers on the second floor of the County Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Donald Schreiner, Chairman
Phyllis Luck
Lloyd M. Atkins, Jr.
Craig Covington

Board Members Absent:

Robert Peraza
Marie Wuenschel

Staff Present:

Brian Sheahan, Planning Manager, Planning & Community Design Division
Anita Greiner, Chief Planner, Planning & Community Design Division
Donald P. Simmons, Planner, Planning & Community Design Division
Donna R. Bohrer, Public Hearing Associate, Planning & Community Design Division
Erin Hartigen, Assistant County Attorney

Chairman Schreiner called the meeting to order at 1:16 p.m., after a quorum was present. He confirmed Proof of Publication for the hearing as shown on the screen. He added that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter to finalize their paperwork.

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Opening Remarks

Anita Greiner, Chief Planner, Planning and Community Design Division informed the Board that comments had been received on BOA# 5-13-3, Tim and Sandra Earnest, and requested the case be moved to the regular agenda.

Minutes

MOTION by Lloyd M. Atkins, SECONDED by Phyllis Luck to APPROVE the January 10, 2013 Board of Adjustment Public Hearing Minutes, as submitted.

FOR: Schreiner, Luck, Atkins, Covington
ABSENT: Peraza, Wuenschel
AGAINST: None
MOTION CARRIED: 4-0

Consent Agenda

CASE NO.: BOA # 6-13-2 AGENDA NO.: 2
OWNERS/APPLICANTS: Clermont Motor Sales, LLC./
Patricia Ortiz

There were no comments on the above consent agenda item.

MOTION by Craig Covington, SECONDED by Phyllis Luck, to APPROVE the consent agenda request with conditions as set by staff for BOA # 6-13-2, Clermont Motor Sales, LLC.

FOR: Schreiner, Luck, Atkins, Covington
ABSENT: Peraza, Wuenschel
AGAINST: None
MOTION CARRIED: 4-0

Regular Agenda

CASE NO.

BOA #5-13-3

1

OWNER(S)/APPLICANT(S) Tim and Sandra Earnest

Paul Simmons, Planner, Planning and Community Design Division, presented the case. He noted that the owners are requesting a variance to Land Development Regulations (LDR's) Section 6.02.02.A.2 Shoreline Protection, Development Standards for Shorelines to allow an existing roofed screen porch and concrete walkways to be permitted to remain closer than 50 feet from the jurisdictional wetland line on a canal. He said the property was located in Venetian Park, a subdivision platted in 1957, which was designed with canal/waterfront access from all lots. He said the current owners purchased the home in 2006, and constructed a garage, Florida room, boathouse expansions, concrete walkways and installed a screen porch. He showed a survey of these improvements. In 2011, the owners were cited by Code Enforcement for the construction of the screen porch without a permit. An Order of Enforcement was issued by the Special Master requiring the owners to obtain a zoning clearance and building permit for the porch within ninety (90) days or to return the porch to its original state. All other structures are in compliance.

Mr. Simmons said the property has single-family dwelling units on three sides and the canal on the fourth. The parcel has been fenced and the screen porch is not visible from the adjoining properties, only from the canal. He added that the impervious surface ratio (ISR) limits for this property have not been exceeded. The property owners have agreed to capture the first one-inch of storm water on site to meet the intent of the code. Mrs. Earnest will eventually require wheelchair access, due to her health condition.

Mr. Simmons showed a map overview of the community, depicting which neighbors supported and which opposed this application.

Mr. Simmons noted that this application was found to be consistent with LDR 6.02.02 to protect wetlands and water bodies. He noted that staff has received letters in support and in opposition to this variance. Mr. Simmons said staff was recommending approval of the variance request with the storm water improvements.

In response to a question from Ms. Luck, Mr. Simmons said the storm water retention would meet the standard recommended by the County's Comprehensive Plan and said a follow-up inspection would be made and compliance would be required.

Tim Earnest, the applicant, read a prepared statement. He said they purchased their home 8 years ago and that the screen porch has become a gathering place for family and friends in addition to containing the therapy area for his wife. He described the storm water retention measures they are building, including the replacement of a deteriorated sea wall and said they were careful to preserve the environment on their site. He apologized for the misunderstanding

that led to the code complaint and said they were ready to move forward with the permitting process. He said they were surprised a complaint had arisen so many years after the fact and alluded to dissent within the neighborhood.

Pete Peterson said his parents live across the street and he was speaking on their behalf because they didn't understand all the neighborhood upheaval. He said the Earnests began improving their home immediately after purchasing it. He said Mr. Earnest was very concerned about protecting the water. He thought many homes in the area had been granted similar variances.

Judy McAuley, a neighbor, said they were in opposition to this variance. They purchased their home in 1991. The Earnest's lot is adjacent to their property and is located at the mouth of the canal. She noted that he is a certified general contractor and enumerated work he had done without permits. She said she tried not to get involved until setback violations encroached on their property. She complained to County Code Enforcement and five violations were found, four of which have been resolved. The Special Master Order of Enforcement ordered the Earnest's to get a building permit within ninety (90) days or to restore the property to its original state. She believed other accommodations could be made to provide for Mrs. Earnest's present and future needs. She submitted photos showing the concrete installed on the Earnest's property. Ms. McAuley does not believe that the rock storm water retention areas will be sufficient to prevent runoff into the canal. She noted that concrete circles surrounded mature cypress trees. She provided eight (8) letters of opposition and claimed Mr. Earnest knew permits were required and he chose to not follow the regulations. She said she and her husband remain very concerned about the natural beauty in their neighborhood, and the quality of the water. She said the variance request should be denied, the porch and the concrete should be removed, and shoreline vegetation should be restored.

Don Harrison said he has lived in the community for 30 years and said Mr. Earnest's seawall covered a survey marker; he tore down a fence between their properties and replaced with a six (6) foot high fence, blocking most of his previous view of the river. He agreed with Ms. McCauley adding that Mr. Earnest parks his motor home on site and questioned his having a business vehicle parked on his property.

In response to a question from Mr. Atkins, Mr. Harrison said he lived on the south side of the Earnest's property.

The Chairman asked if anyone else would like to make comment pertinent to the facts of the case. **MOTION by Craig Covington to approve the variance with the special conditions as recommended by staff. The motion failed due to the lack of a second.**

Erin Hartigen, Assistant County Attorney, said a motion is not necessary for Board discussion.

Mr. Adkins asked staff to reiterate the reasons for his recommendation.

Mr. Simmons said the hardship recommendation was based on Ms. Earnest's health, which affected her mobility; the concrete additions help her mobility. He explained footage changes in the storm water runoff calculations, emphasizing that the storm water runoff requirements were being met. He said the owner is close to the maximum amount of the allowable impervious surface ratio (ISR) allowed for the parcel, but has not exceeded the maximum requirements.

Mr. Covington asked about the roof run off. Mr. Simmons said the roof runoff is captured by gutters and downspouts and does not go directly in the water.

Mr. Adkins asked for some clarification about the survey. Mr. Simmons described how the rock filled barrier was depicted on the survey. He explained that each successive owner would be responsible for maintaining these storm water areas.

MOTION by Craig Covington, SECONDED by Phyllis Luck, to APPROVE BOA #5-13-3, Tim and Sandra Earnest, with conditions as set by staff.

FOR: Schreiner, Luck, Atkins, Covington
ABSENT: Peraza, Wuenschel
AGAINST: None
MOTION CARRIED: 4-0

OWNER(S)/APPLICANT(S)

Fred Mummaw & Booth Walshaw

Paul Simmons, Planner, Division of Planning and Community Design, presented the case. He noted that the owners are requesting a variance to Land Development Regulations (LDR's) Section 1.08.04A (1) and (3) Non-conforming Development, Termination of Non-conforming Development to allow the enclosure of an existing carport attached to a nonconforming structure. He said the Code does not allow the expansion of nonconforming structures. This parcel is located in Wisconsin-Michigan Shores, platted in 1970, with lake access by canals at the rear of the homes. He showed a copy of a hand drawn plot plan submitted by the owners.

The owners were cited by the Code Enforcement Division in October 2012, for enclosing the carport without a permit. He said the owners are attempting to resolve the case by obtaining a building permit. He noted that the enclosed area will meet all setbacks. He explained that the intent of the code was to allow nonconforming uses to continue in their current state, but does not allow any expansions or changes, which increases the nonconformity. The code encourages the replacement of non-conforming structures. Single-wide mobile homes cannot be converted into a conforming structure by placing additions on the exterior of the structure, because the Code requires dwelling units to be at least 23 feet 4 inches wide at the narrowest point.

The owner said the Code violated the principle of fairness and created a hardship for them. Staff recommends denial, finding the applicant has not submitted proof of meeting the hardship qualification or meeting the intent of the Code. The applicant provided two letters of support.

Mr. Simmons read into record the letters of support and submitted them for inclusion in the official record.

John and Mary Olivia, neighbors, stated the property had been vacant for some time and had been deteriorating. They said the neighbors are happy with all the work that has been done to improve the property. They would like to see the owners be allowed to keep their enclosure.

Max Shrouder, neighbor, noted that several other properties are nonconforming, and allowing this would make the residence appear more like the neighbor's. It is an improvement to the community and not allowing this will decrease the value of the other single-wide mobile homes.

Ms. Luck noted that the applicant had referenced flooding on their property from the street. Mr. Simmons said he was not aware of runoff from the street, saying the road appeared to be pretty much level with structure. He noted that the property was located on a County-maintained road.

Mr. Covington asked about the width of the structure and Mr. Simmons said exterior rooms do not count towards the width requirement.

The applicant, Fred Mummaw addressed the Board and submitted pictures of his residence. He said when they purchased the property they discussed enclosing the patio with the real estate agent and because nothing was said at that time, they enclosed the remaining two walls. He said the space was used mostly for social activities. He said storm water ran off the road and up to the door, but the new structure had alleviated that problem. He believed this addition makes it more conforming in its appearance and most of the neighbors appreciated the improvements they made.

Mr. Mummaw apologized and said he did not intend to violate any code. He didn't understand why adding two walls under an existing roof made the living area less acceptable. He said the patio had to be enclosed in order to avoid mosquitoes. He noted that the County has lots of single-wide mobile homes that have additions built on them.

Dennis Williams, neighbor, said he wanted to make some constructive comments. He owns several homes in this neighborhood, including one next door to the applicant's home. He agreed that water run off had been a problem, citing the difference in grade from the road to the yard. He said the applicant has made huge improvements in his property. He feels that this Code requirement has made his home inferior. He said he would like to see the Code allow enclosures under existing roof structure. Mr. Williams listed some of the expenses of bringing units up to code, including the costs of new structures. He thought people, including realtors, should be made aware of this portion of the Code. He said he would like to be part of an effort to change this Code. He said the applicant had turned an eyesore into a neighborhood asset. And this Code would make the selling of single-wide mobile homes more difficult.

Chairman Schreiner explained that when regulations were instituted there was advertising and public hearings. He explained the limited function of the Board of Adjustment and suggested Mr. Williams contact his commissioner about reforming this portion of the Code.

Mr. Williams said he would and his recommendation would be to allow no additional roof extensions beyond those that currently exist. He believed most new mobile homes do not have the required roof pitch required by the county Code. He thought the existing Code created a group of second class homeowners that could not improve their homes. He said the Code really pushed people into selling their single-wide mobile homes and replacing them.

Max Showver, who lives close to applicant, explained that he does not think the Code covers this because Mr. Mummaw built an "enclosure" which is not listed in the Code. In addition, Section 108.04 Replacement of Nonconforming Uses, asked if it really was the intent of the Code to replace every single-wide mobile home. He thought that might contribute to a tax problem because the lack of upkeep would diminish property values. He thought purchasers should be notified that single-wide mobile homes cannot be improved, which adversely affects

the value of those homes. He added that double-wide homes can be permitted for additions. He questioned the use of the word “intent.”

Ted Halgerson said he recently moved into the neighborhood. He said the applicant has made great improvements to his property. He bought a single-wide mobile home and did not know he could not add onto his home.

Richard Malsbury said he was a long-time resident of Lake County. He said the applicant’s place had been deteriorating for years before he purchased it and said he has greatly improved his place and the neighborhood.

Mr. Akins asked staff if other homes in this area had been granted variances. Mr. Simmons said staff was not aware of any variances granted in this development.

Mr. Covington asked staff to comment about the language of the code which didn’t include the word enclosure. Mr. Simmons said the “enclosure” is an expansion and change and this was a structural alteration and those changes required a building permit.

Chairman noted that permits were required so that construction was to Code for safety reasons.

Ms. Luck asked if all single-wide mobile homes were prohibited from additions, Mr. Simmons agreed except for rental mobile home parks and said this property was standard straight zoning.

Mr. Covington said other solutions to the road run off were available without enclosing a carport.

Ms. Luck said a complaint should have been addressed to the County’s Public Works Department to alleviate any storm water runoff from the road.

MOTION by Craig Covington, SECONDED by Lloyd M. Atkins to deny BOA #7-13-3, Fred Mummaw& Boothe Walshaw.

FOR: Schreiner, Luck, Atkins, Covington

ABSENT: Peraza, Wuenschel

AGAINST: None

MOTION CARRIED: 4-0

Adjournment

There being no further business, the meeting was adjourned at 2:35 p.m.

Respectfully submitted,



Donna Bohrer
Public Hearing Associate



Donald Schreiner
Chairman