

BOARD OF ADJUSTMENT  
MINUTES OF  
REGULAR MEETING  
February 16, 2023

The regular meeting of the City of Daytona Beach Board of Adjustment was held on Thursday, February 16, 2023, at 2:30 p.m. in the City Commission Chambers, Daytona Beach City Hall, 301 S. Ridgewood Avenue, Daytona Beach, Florida.

Board members present were as follows:

Ms. Maja Sander Bowler, Chair  
Ms. Sharlene Barhoo  
Mr. David Betz  
Mr. Patrick Connors  
Mr. John George  
Mr. Trey Harshaw

Staff members present were as follows:

Ms. Melissa Phillips, Development Review Technician  
Mr. Ben Gross, Deputy City Attorney  
Ms. Becky Groom, Board Secretary

1. **Call to Order**

Ms. Bowler called the February 16, 2023, Board of Adjustment Meeting to order at 1:00 p.m.

2. **Roll Call**

Ms. Groom called the roll and noted members present as indicated above.

3. **Introduction of City Staff**

Ms. Bowler introduced staff members in attendance, as listed above.

4. **Approval of Minutes:** January 19, 2023

**Board Action:**

A motion was made by Mr. Betz, seconded by Ms. Barhoo, to approve the minutes of the January 19, 2023, minutes as presented. The motion carried (6-0).

**5. New Cases:**

**Continued from January 19, 2023, BOA Meeting: Case B – BOA2023-002 – Variance from Article 6, Section 6.8.C.4**

A request by Garret Cavanaugh of D.R. Horton Home Builders on behalf of ADJ Champions Quarters LLC and D.R. Horton Inc. (property owners), for a variance from Article 6 (Development Standards), Section 6.8.C.4.a (Fences, Walls, and Hedges) of the CODB Land Development Code (LDC) to increase the permitted fence height along the rear property boundary from 6 feet to 8 feet. This will allow an 8-foot-high fence to be erected along the rear property boundaries of lots 1-20, which abut an existing single-family neighborhood. The properties are located on Wicker Way, lots 1-20, in the newly developed subdivision Champions Quarters.

**Applicant Presentation:**

Garrett Cavanaugh, D. R. Horton, 10192 Dowden Road, Orlando, Florida, spoke representing the applicant, D. R. Horton Inc. and AJD Champions Quarters LLC. Mr. Cavanaugh stated the request is based on the elevation of the finished floor compared to the rear lot line, and the finished floor elevation on average is about 3 feet above the back lot line. Mr. Cavanaugh stated the request to increase the fence height from 6 feet to 8 feet is to shield the residents from the adjoining neighborhood. Mr. Cavanaugh stated the increased fence height would also be an advantage for the adjoining neighborhood and would help obstruct noise from construction. Mr. Cavanaugh stated if a 6 foot fence is installed, the D. R. Horton residents would be able to see over the fence into the adjoining neighborhood.

Ms. Bowler asked if the fence is proposed to be at the bottom of the existing swale.

Mr. Cavanaugh stated the fence would be placed in the bottom of the swale since that is the lot line.

Mr. Betz stated it appears the existing properties drain into the swale.

Mr. Cavanaugh stated he had not look at the plans for the drainage for that neighborhood.

Mr. Betz stated there is a lot of vegetation along the property line and asked what adjustments would be made.

Mr. Cavanaugh stated the fence would run as close to the property line around the trees as could be permitted.

Mr. Betz asked if the applicant had considered installing a 6 foot fence which would be permitted closer to the top of the swale. Mr. Betz stated it would not have to be a continuous 6 foot fence and could be broken to screen only where there are windows and patios on the adjacent units.

Mr. Cavanaugh stated that was considered; but to place the fence on top of the swale would reduce the lot size by about 10 to 15 feet.

Mr. Betz stated nothing could be placed in the swale so the residents could not use the swale property.

Mr. Betz asked if this is a rental community.

Mr. Cavanaugh stated it is a build to rent community.

Mr. Betz stated he did not like the proposal due to the length of the fence and did not like the division of the neighborhoods.

Ms. Bowler asked if there is an easement between the neighborhoods.

Mr. Cavanaugh stated the rear property line is the lot line.

Mr. Gross asked if the swale was constructed by D. R. Horton and is in the subdivision property.

Mr. Cavanaugh stated yes.

Mr. Gross asked if D. R. Horton constructed the swale as part of the stormwater system for this subdivision.

Mr. Cavanaugh stated yes.

Mr. Gross stated he did not have the plat for the subdivision with him; but if the City required the swale as part of the stormwater system, there may be a stormwater easement; but if it is not draining city property, it would not be a public easement. Mr. Gross stated that the Land Development Code does require that subdivisions be developed in accordance with the Stormwater Management Plan which has to be enforced. Mr. Gross stated he did not know if construction of the fence could interfere with the drainage which could be an issue.

Ms. Barhoo stated she visited the area and there is a lot of water accumulating since construction has started.

Mr. Gross stated there is nothing in the Land Development Code that prohibits a fence in a swale, easement, or ditch; but there is a requirement in the Land Development Code that a subdivision be built in accordance with the Stormwater Management Plan. Mr. Gross stated he feels someone from Public Works or the City's engineering staff should review this request to see if there is a drainage issue.

Mr. Connors stated he feels a natural barrier could meet the request for screening as opposed to installing a fence.

Mr. Betz stated he would like to see some fencing with tree barriers installed and could all be placed out of the swale.

Ms. Bowler asked if there were other reasons the applicant wanted a fence installed instead of using other options. Ms. Bowler also stated since it is a rental community, couldn't each property be able to choose their own type of barrier.

Mr. Cavanaugh stated the renters would be permitted to place a fence along the side property line. Mr. Cavanaugh stated the reason the fencing is proposed is due to the unattractiveness of the neighboring back yards.

Mr. Harshaw stated the long fences seem to be a trend, but he does not think they are very attractive. Mr. Harshaw stated storms may damage the fence sending debris throughout the area. Mr. Harshaw asked who would maintain the fence if it is damaged. Mr. Harshaw stated he had concerns about placing a fence in a stormwater drainage area.

Mr. Cavanaugh stated the homeowners association would be responsible for repairing the fence.

Ms. Phillips stated the Land Development Code allows fences to be placed in stormwater easements.

Mr. Harshaw asked if there is a setback requirement for a fence for a subdivision.

Mr. Gross stated fences can be placed on the lot lines. Mr. Gross stated there is no Planned Development Agreement for this subdivision so it could be hard to condition a variance based on a maintenance issue for the fence. Mr. Gross questioned the units being rental homes and how there could be a HOA if there is a single property owner.

Mr. Cavanaugh stated he would have to look into that.

Ms. Bowler stated they could put up a 6 foot fence without the Board's approval. Ms. Bowler asked if the Board could approve the 8 foot fence with conditions.

Mr. Gross stated if the variance is approved and there is a stormwater issue, the applicant could not get a permit for the fence.

Mr. Betz asked what is the cost for the fence.

Mr. Cavanaugh stated about \$70,000 and it would be about 2,000 feet long.

Mr. Harshaw stated he likes the idea of a metal fence instead of PVC and likes Mr. Betz's idea of fencing with some natural vegetation.

Ms. Bowler stated she dislikes the white fences and agrees with Mr. Harshaw.

Ms. Bowler asked about the drainage swale.

Mr. Cavanaugh stated he does not have the plans with him to address the drainage concerns; but the swale is there to catch water coming off the roof of the homes as well as drainage water.

Mr. Betz stated he feels there are alternative designs that could be done that would divide the properties and meet Code and would look a lot nicer.

Mr. Connors asked if the property is in a flood plain.

Mr. Cavanaugh stated he would have to check but typically nothing is built within in a flood plain.

Mr. Gross stated there is not an easement shown on the plat at the rear of these lots.

Ms. Phillips stated she does not believe it is in a flood plain.

Mr. Gross stated stormwater management is not something the Board is being asked to review and would be addressed with the Building Department.

Mr. Betz stated there is an alternative for screening without the Board having to grant a variance.

Mr. Harshaw stated he feels the fence will create a maintenance issue.

Mr. Cavanaugh stated the area is sodded and he has not seen standing water after there have been storms.

Ms. Bowler stated no one will go behind the fence to maintain it.

Mr. Gross stated he did not understand why the swale is required if it is not noted on the plat.

Ms. Bowler asked if the Board felt there are unanswered questions or if they are ready to proceed.

Ms. Barhoo stated she had unanswered questions.

Mr. Harshaw stated he has questions regarding continuing maintenance of the fence.

Mr. Betz stated he is ready to vote.

Mr. Connors stated he had no questions.

Mr. George stated he is prepared to vote.

Ms. Bowler stated she has concerns about the swale.

Mr. Cavanaugh stated a surveyor would stake the property; and if there is an immovable object in place, such as a tree, the fence would be placed "jogged out" around the tree and continue along the property line.

Mr. Connors asked if the properties are rental, who is responsible for the lawn maintenance.

Mr. Garrett stated the owner.

A motion was made by Mr. Betz to approve Case B – BOA2023-002 – Variance from Article 6, Section 6.8.C.4 with the condition that the fence be placed outside of the swale. The motion was withdrawn due to the lack of a second.

**Public Comments:**

There were no public comments.

**Board Action:**

A motion was made by Mr. George, seconded by Mr. Harshaw, to approve Case B – BOA2023-002 – Variance from Article 6, Section 6.8.C.4, as presented. The motion failed (1 to 5, with Mr. George voting yes; and Mr. Connors, Mr. Harshaw, Mr. Betz, Ms. Barhoo, and Ms. Bowler voting no).

**Case A – BOA2023-004 – Variance from Article 4, Section 4.2.B.3**

A request by Certified Building Contractor Dennis O'Neal, on behalf of Mitchell Farbstein (property owner), for a variance from Article 4 (Zoning Districts), Section 4.2.B.3 (Residential Base Zoning Districts, Single-Family Residential) of the CODE Land Development Code (LDC) to decrease the required rear yard setback of 25 feet to 21 feet, and to decrease the required side yard setback for a 50 foot wide lot from 7.5 feet to 6.9 feet. This will allow a recently constructed 420sf attached garage to encroach into the required rear and side yard setbacks. The property is located at 115 Milton Road, Parcel ID 5322-04-13-0060.

**Applicant Presentation:**

Dennis O'Neal, 521 Sixth Street, Holly Hill, Florida spoke representing the property owner. Mr. O'Neal stated Mr. Farbstein approached him about building a garage. Mr. O'Neal stated Mr. Farbstein has three vehicles and no place for storage or security. Mr. O'Neal stated he measured 22 feet which would allow two vehicles to be placed in the garage but limited storage space. Mr. O'Neal stated a mathematical error was made on the survey which caused the measurement to be a foot longer toward the back of the property. Mr. O'Neal stated he is not really sure of the accuracy of the survey. Mr. O'Neal stated he has measured 23 to 24 feet from the fence line, but the surveyor says it is 21 feet 6 inches.

Mitchell Farbstein, property owner, stated the survey shows the back yard is 49.95 feet; and according to the City's rules, if it is less than 50 feet, it only has to have a 5 foot setback on the side yard. Mr. Farbstein stated the issue arose when Ms. Phillips asked him to measure from the back of the garage to the property line. Mr. Farbstein stated the back yard is 21 feet 9 inches; however, to the fence, there is another 8 inches. Mr. Farbstein stated there is 22 and ½ feet which would be within an administrative variance but he is trying to follow the rules.

Ms. Bowler stated if you take the administrative variance, it would only be about one foot.

Mr. Farbstein stated it would be 8 inches. Mr. Farbstein stated he asked the surveyor to re-measure but he wouldn't since it was such a small

amount. Mr. Farbstein stated he has spoken with his neighbors who are not opposed to this variance request.

**Public Comments:**

There were no public comments.

**Board Action:**

A motion was made by Mr. Harshaw, seconded by Ms. Barhoo, to approve Case A – BOA2023-004 – Variance from Article 4, Section 4.2.B.3, as presented. The motion carried (6-0).

**Case B - BOA2023-005 Variance from Article 6 Section 6.8.C.4.a**

A request by Thomas A. Huger (property owner), for a variance from Article 6 (Development Standards), Section 6.8.C.4.a (Fences, Walls, and Hedges) of the CODE Land Development Code (LDC) to increase the permitted fence/wall height between the front wall of the structure and the rear property boundary from 6 feet to 9 feet. This will allow the construction of a decorative block wall, flush with the front wall of the structure, extending to the left side property boundary. The property is located at 935 Sycamore Street, Parcel ID 5339-90-12-0040.

**Applicant Presentation:**

Tom Huger, 935 Sycamore Street, stated this is his family home. Mr. Huger stated he is trying to enhance the property. Mr. Huger stated there is an unsightly fence there; but he would like to build a porte cochere where he could drive his car under to keep the car out of the elements. Mr. Huger stated he wants to extend the fence on the north side to enhance the property.

Mr. Connors stated it appears the block will be extended and asked what will be going in the opposite direction.

Mr. Huger stated a 6 foot PVC fence will be placed to the east.

Mr. Betz asked if Mr. Huger considered reducing the wall height to 6 feet.

Mr. Huger stated it would give him more privacy and would be consistent.

Ms. Bower asked if the 9 foot height will diminish the view of adjacent properties.

Mr. Huger stated no, it will not affect the neighboring property site line.

Mr. Betz asked if the gate will be replaced.

Mr. Huger stated yes.

Mr. Betz asked if he was able to find matching block.

Mr. Huger stated yes.

**Public Comments:**

There were no public comments.

**Board Action:**

A motion was made by Mr. Connors, seconded by Mr. Betz, to approve Case B - BOA2023-005 Variance from Article 6 Section 6.8.C.4.a, in accordance with the staff report as presented. The motion carried (5-1 with Mr. George voting no).

6. **Review Cases**

Case B (Continued from January 19, 2023)	-	failed (1-5)
Case A	-	approved (6-0)
Case B	-	approved (5-1)

7. **New Business**

Ms. Bowler stated Mr. Gentle, who was a former Board member has passed away.

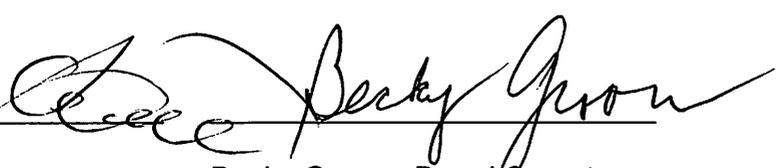
Ms. Barhoo stated she had made a connection with Mr. Gentle and noted his funeral was last weekend.

Ms. Bowler stated there has been previous discussion about moving the meeting to 2:30 on a three-month trial basis. Ms. Bowler stated some Board members have indicated they would prefer meetings to be held in the morning. Ms. Bowler stated she would like to discuss this further at the next meeting.

8. **Adjournment**

There being no further business, the meeting was adjourned.

  
Maja Sander Bowler, Chair

  
Becky Groom, Board Secretary