

BOARD OF ADJUSTMENT
MINUTES OF
REGULAR MEETING
May 18, 2023

The regular meeting of the City of Daytona Beach Board of Adjustment was held on Thursday, May 18, 2023, at 1:00 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 (arrived at 2:40 p.m.)
Mr. David Betz
Mr. Patrick Connors
Mr. John George
Mr. Trey Harshaw

Staff members present were as follows:

Ms. Melissa Phillips, Development Review Technician
Ms. Kira Honse, Assistant City Attorney
Ms. Becky Groom, Board Secretary

1. Call to Order

Ms. Bowler called the May 18, 2023, Board of Adjustment Meeting to order at 2:35 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: March 18, 2023

Board Action:

Mr. Betz asked that a correction be made on Page 3 for the motion regarding Case BOA2023-006 to read “that the design of the building match the quoins”

A motion was made by Mr. Betz, seconded by Mr. George, to approve the minutes of the March 18, 2023, minutes as corrected. The motion carried (5-0).

5. Continued Case:

Case C – BOA2023-007- Variances from Article 4, Section 4.7.U.3 and Article 6, Section 6.3.G.6

A request by Wilfredo Guzman of As Built Florida, on behalf of Erinogert Zhutaj (property owner), for variances from Article 4 (Zoning Districts), Section 4.7.U.3 (Redevelopment Base Zoning Districts, Midtown Center Mixed Use - RDM-1) of the CODB Land Development Code (LDC) requirements for a single-family structure, to decrease the required 5,000sf minimum lot area to 2,400sf; to decrease the required 10ft minimum front yard setback to 6.6ft; to decrease the required 5ft minimum interior side yard setback to 2ft; and to increase the maximum 35yo accessory structure coverage in relation to the primary structure to 68%.

The applicant also seeks variances from CODB LDC Article 6 (Development Standards) Section 6.3.G.6 (Mobility & Access, Driveway Locations & Dimensions) requirements for a single-family structure/use, to decrease the required 12ft minimum driveway width at point of entry to 9.8ft; and to decrease the required 5ft minimum driveway setback from the interior side property line to 1ft.

This approval will allow for the following structures, installed/constructed on property without building permit submission or approval, to remain as built: a 120sf addition to the existing, nonconforming home, a 445sf detached, partially enclosed carport, and an approximately 990sf concrete slab and driveway.

The property is located at 542 Foote Court, Parcel ID 5339-21-01-0081.

Board Action:

A request was received from the applicant to continue this case until the June 15, 2023, meeting. The Board agreed to continue the case.

Ms. Barhoo arrived for the meeting at 2:40 p.m.

New Cases:

Case A - BOA2023-011 Variances from Article 4 Section 4.7.Z.3 & Article 5 Section 5.3.B.2.b.v.(c)

A request by Jeff Harvey (property owner) for variances from Article 4 (Zoning Districts), Section 4.7.Z.3 (Redevelopment Base Zoning Districts, RDM-6, Redevelopment Midtown-Residential Preservation) of the CODB Land Development Code (LDC) for a single-family structure, to increase the maximum lot coverage from 35% to 48%; to increase the accessory structure coverage percentage of the principal structure maximum from 35% to 38%; and to decrease the accessory structure with floor area less than 600sf required setback from lot lines of 2.5ft to .7ft. The applicant also requests a variance from the CODB LDC Article 5 (Use Standards) Section 5.3.B.2.b.v.(c) to remove the additional required setback from side and rear lot lines for structures greater than ten feet in height (one additional foot for every two feet the structure's height exceeds 10ft).

This will allow an existing 43ft long x 14ft wide, 570sf (dimensions are approximate) concrete block shed and metal lean-to to remain on property.

The property is located at 205 Jefferson Street, Parcel ID 5338-82-00-0170.

Applicant Presentation:

Jeff Harvey, 205 Jefferson Street, Daytona Beach, Florida, stated he purchased the property in 2004 and the shed and lean-to were already in place. Mr. Harvey stated he is rebuilding due to hurricane damage and the City said the shed has to be torn down. Mr. Harvey stated the shed will be the only storage space he has once the new house is constructed, and the lean-to is a nice place to cook outside. Mr. Harvey stated the structures have been in place since the 1970's and he would like to have them remain. Mr. Harvey stated the structure is made of concrete and he plans to put a new roof on it.

Ms. Bowler asked for a history of the property and if it had been permitted.

Ms. Phillips stated the structures have been there for a long time and there was no record of prior permitting. Permits may not have been required at the time of construction.

Mr. Betz asked if the new structure will be about the same size as the previous structure.

Mr. Harvey stated it would be about the same size; but he was told that because of the setbacks, he would have to make it narrower. Mr. Harvey stated the carport would change from one-car to two-car, which is also a City requirement.

Mr. Betz stated the requirement is for two parking spaces.

Ms. Phillips stated there is an additional 239 s.f. requested.

Mr. Betz asked what material will be used.

Mr. Harvey stated the exterior will be aluminum siding.

Mr. Betz asked Mr. Harvey if the Board agrees to allow the shed and lean-to, would he be willing to make the structures architecturally match the house.

Mr. Harvey stated that would not be a problem, such as adding aluminum siding or painting the structure.

Ms. Bowler stated since the structure has been there so long, she feels it would be unfair to have Mr. Harvey tear it down.

Mr. Harshaw stated he would like to see something that matches the house.

Public Comments:

There were no public comments.

Board Action:

A motion was made by Ms. Barhoo, seconded by Mr. Connors, to approve BOA2023-011 Variances from Article 4 Section 4.7.Z.3 & Article 5 Section 5.3.B.2.b.v.(c), in accordance with the staff report as presented, and to add aluminum siding to the structure to match the house. The motion carried unanimously (6-0).

Case B - BOA2023-012 Variances from Article 6 Section 6.3.G.6 & Section 3 of the Oak Bluff Planned Mobile Home Development Agreement

A request by Beth Moore of Timberline Construction Group (Mobile Home Installer) for variances from Article 6 (Development Standards), Section 6.3.G.6.a. (Mobility & Access) of the CODB Land Development Code (LDC) for a single-family structure, to decrease the minimum interior side

property line setback for a driveway from 5 feet to 2 feet, and to decrease the minimum residential driveway width, at point of entry, from 12 feet to 11.8 feet. The applicant also requests a variance from the Oak Bluff Planned Mobile Home Development agreement, to decrease the required minimum building setback from 5 feet to 2 feet.

This will allow a newly installed mobile home, carport, and driveway to encroach into the required side yard setback.

The property is located at 1366 Blackcherry Street, Parcel ID 4244-15-00-0580.

Applicant Presentation:

Beth Moore, Timberline Construction Group, stated Timberline is working with Rebuild Florida that is replacing mobile homes that were damaged during Hurricane Irma. Ms. Moore stated the property owner bought a vacant lot and a survey was done, but the north side of the property was overgrown so Timberline had a difficult time setting the mobile home. Ms. Moore stated that as a result, the home was slightly shifted. Ms. Moore stated since she has worked with Timberline, she has worked in setting 358 mobile homes and has only requested two variances, one of which is for the subject property. Ms. Moore stated she would like to get the property owner into the home instead of having to break the home apart and moving it over 3 feet. Ms. Moore stated concrete has been poured and a carport has been constructed and that would all have to be removed in addition to moving the home, including removing electrical connections and air conditioning systems.

Mr. George asked how difficult it would be to re-set the home.

Ms. Moore stated the home would have to be taken apart and dismantle the air conditioning, plumbing, and electricity. Ms. Moore stated the home is on blocks so it would have to be picked up and moved over and then re-blocked and the services reconnected, and the carport would have to be reset.

Ms. Bowler asked if conditions could be placed on the variance regarding the setbacks.

Ms. Honse stated yes.

Mr. Harshaw stated the setback could be reduced on the other side so a larger home could not be placed on the lot in the future and that makes sense.

Mr. George asked for clarification if a new owner in the future will have the new setback requirements which the Board may approve or will a new structure in the future have to adhere to the City specified setback requirements.

Ms. Honse stated she is not certain since this is a mobile home. Ms. Honse stated reducing the setback on the other side may keep the lot in the same perimeter, but a new owner may want to request a variance to go back to the original footprint.

Mr. Betz asked why there are no windows at the front of the structure.

Ms. Moore stated that is the way it comes from the manufacturer; however, some mobile home parks require faux windows on the end facing the street, and Timberline would agree to that as a requirement.

David Huerning, 1366 Blackcherry Street, Daytona Beach, Florida stated this is his future home and stated he has been homeless while waiting for this home to be installed. Ms. Huerning stated there is no water or air conditioning service to the structure and it has never been opened. Mr. Huerning stated he is disabled, and the homeowners' association wants him to mow and take care of the property until the unit is complete. Mr. Huerning stated he is receiving water and sewer bills and there is no service connected to the unit.

Public Comments:

Pamela Bossard, 1087 Yaupon, stated she is the Homeowners Association Treasurer, and if this is permitted on this lot, it will set a precedence on all other lots. Ms. Bossard stated she is concerned the home will be too close to the home next door. Ms. Bossard stated it is a requirement of the homeowners' association restrictions for the homeowners' association to receive a copy of the site plan prior to construction and that was not provided. Ms. Bossard stated she was told by a City inspector, Bromley Westberry, that he had a problem with the location of the home from the very beginning.

Mr. Connors stated the action this Board may take does not have any bearing on other homes in the subdivision. Mr. Connors also stated the fact that Timberline did not provide a site plan is not an issue of this Board.

Ms. Honse stated what this Board does has no bearing on the homeowners' association.

Ms. Bowler asked if Ms. Bossard saw the signs regarding the Board meeting.

Ms. Bossard stated yes.

Mr. Betz asked Ms. Bossard if there are other homes in the subdivision that have setback issues.

Ms. Bossard stated yes but the HOA is trying not to let those things happen again.

Joseph Chappas, 1351 Cedar Bluff, stated he is the Homeowners Association President and stated it has been difficult to get homeowners to comply with the restrictions that have not always been adhered to. Mr. Chappas stated this variance may affect fence placement on adjacent properties and may also hinder the sale of the lot in the future. Mr. Chappas stated he feels Timberline is trying to bypass the HOA since they have not contacted the homeowners' association. Mr. Chappas stated he feels the variance request should be denied and the unit should be moved to the right location.

Mr. Betz asked if there are survey markers in place.

Mr. Chappas stated there are survey markers and there are markers to show where the house should be set.

Ms. Bowler asked if he had contacted the city to let them know the house is not in the right place.

Mr. Chappas stated no; he stated he contacted Timberline, but Timberline has not responded.

Ms. Bossard stated she spoke with Bromley Westberry about issues on other properties. Ms. Bossard stated when talking with Mr. Westberry about other properties, he informed her that there was a problem with 1366 Blackcherry as well. Ms. Bossard stated the house was there, but the driveway had not been poured at that time.

Mr. Chappas noted the skirting on the unit is out of compliance with the HOA regulations.

Ms. Moore stated everything Timberline does is through Rebuild Florida. Ms. Moore stated Rebuild Florida makes every attempt to comply with requirements from homeowners' associations. Ms. Moore stated there is nothing in her business database that indicates anyone from the homeowners' association contacted Timberline. Ms. Moore stated there

was no contact from the City that there was a problem with the placement of the home.

Mr. Betz asked if the property is staked to indicate the placement of the home.

Ms. Moore stated the property is staked based on the survey or site plan; however, the problem was the north survey line was in an overgrown area; but a surveyor is not sent out to each site to mark the property.

Mr. Betz asked if Timberline has liability or errors and omissions insurance.

Ms. Moore stated she did not know and that is something corporate would determine.

Mr. Betz stated he is concerned that the owner has not been able to move in and questioned the utility bills that he is receiving.

Ms. Moore stated Timberline has in the past reimbursed a customer for utility bills.

Mr. Betz asked how long it has been since someone has been inside the home.

Ms. Moore stated within the last 30 days.

Mr. Betz stated Ms. Moore indicated they would install faux windows. Mr. Betz asked if Timberline would meet other requirements of the Board, such as skirting.

Ms. Moore stated yes.

Mr. Betz asked if Timberline would be willing to meet all of the homeowners' association's design requirements.

Ms. Moore stated yes as long as it is in writing that it is required by the HOA. Ms. Moore stated the final inspection has to be done by the City and a report made to Rebuild Florida, and then the homeowner can move in.

Ms. Bowler stated it seems crazy to move this home but understands that Timberline is agreeable to adhering to the requests of the homeowners' association and pay some of the utility bills that have been imposed.

Mr. Connors stated he is concerned that this may set a precedence.

Ms. Bowler stated that has been discussed in previous cases with the Board's attorney, Ben Gross, who has stated the Board's action does not set precedence for other properties.

Ms. Honse stated the variance is for this property only and she does not feel it is reasonable for the Board to condition the approval based on the HOA requirements.

Ms. Bossard stated all of the homeowners' association documents have been emailed to Yvonne at Timberline. Ms. Bossard stated the skirting is to look like the rest of the house.

Mr. Betz stated maybe the motion should state the setback should be 7.5 feet instead of 5 feet.

Ms. Bowler stated perhaps the motion should state a total of 10 feet for the setback.

Mr. Harshaw stated he is concerned that the faux window and skirting requirements may delay the applicant from occupying the home.

Ms. Phillips stated those requirements would not have to be done in order to have occupancy of the unit.

Mr. Betz asked Ms. Moore how soon the individual could have occupancy of the unit.

Ms. Moore stated once the final inspection is done by the city and the Certificate of Occupancy is issued, the applicant should be done within 30 days.

Ms. Honse stated there is a 30 day delay in occupancy in the event there is an appeal filed regarding the variance.

Board Action:

A motion was made by Mr. Betz, seconded by Ms. Barhoo, to approve BOA2023-012 Variances from Article 6 Section 6.3.G.6 & Section 3 of the Oak Bluff Planned Mobile Home Development Agreement, in accordance with the staff report as presented, and that the items required for occupancy be completed within 45 days; faux windows be installed on the façade facing the street; horizontal skirting be installed, and the total side yard setbacks for this building be a total of 10 feet. The motion carried (5-1 with Mr. George voting no).

Mr. George stated his negative vote was not intended to delay occupancy. Mr. George stated he feels Timberline should be paying the expenses that are causing the delay and hopes Timberline will do better in the future and require surveyors to mark the lots properly. Mr. George stated he feels the Board had an opportunity to make this correct so that is why he voted no.

Case C - BOA2023-013 Variances from Article 6. Section 6.4.D.2.b

A request by Randy Hudak of Zev Cohen & Associates (Authorized Agent) on behalf of Sam Jaffe of J-3 Land Partners (property owner) for a variance from Article 6 (Development Standards), Section 6.4.D.2.b (Landscaping) of the CODB Land Development Code (LDC) for a vehicular use area located within 50 feet of street right of way, to decrease the minimum required perimeter landscaping width of 8 feet to 5.5 feet along the western boundary of the parcel.

This variance will allow for the existing landscape perimeter buffer to be increased but not meet the depth required in entirety.

The property is located at 1500 Beville Road, Parcel ID 5330-05-00-0020.

Applicant Presentation:

Randy Hudak, Zev Cohen & Associates, 300 Interchange Blvd., stated he and Steve Blais, the Landscape Architect, will present the item. Mr. Hudak stated the reduction in the landscape buffer is requested only for the northwestern corner and no reduction in the number of plantings is being requested.

Mr. Harshaw asked if there is a minimum height requirement for the plants.

Mr. Hudak stated the height is outlined in Section D of the Code and requires 3 feet above surface elevation within 4 years of planting; however, Mr. Hudak stated 6 foot mature plants will probably be installed.

Public Comments:

There were no public comments.

Board Action:

A motion was made by Mr. Harshaw, seconded by Ms. Barhoo, to approve BOA2023-013 Variances from Article 6, Section 6.4.D.2.b, in accordance with the staff report as presented.

7. **Review Cases**

Continued Case C	-	Continued to the June 15, 2023,
meeting		
New Cases – Case A	-	Approved 6-0
Case B	-	Approved 5-1
Case C	-	Approved 6-0

8. **New Business**

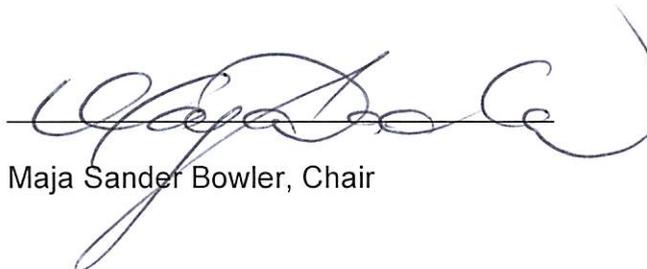
Ms. Barhoo stated she will not be in attendance at the June meeting.

Mr. George stated he will not be in attendance at the June meeting.

Ms. Bowler stated she will attend the June meeting and asked that the discussion of the meeting time be postponed to the July meeting.

9. **Adjournment**

There being no further business, the meeting was adjourned.

	
Maja Sander Bowler, Chair	Becky Groom, Board Secretary