

OCALA BOARD OF ADJUSTMENT MINUTES
Monday, May 18, 2009

Public Notice

Public notice for this meeting was posted May 6, 2009, at 151 SE Osceola Avenue, City Hall, Second Floor, Ocala, Florida, 34471.

Meeting Statistics

The regularly scheduled meeting of the Ocala Board of Adjustment was held on Monday, May 18, 2009, in the Council Chambers at Ocala City Hall.

Attendance

The following members were present:

Irene T. Hancher, Chairperson
Richard Williamson, Vice Chairperson
Frederick Rodgers
Rusty Juergens
George Carrasco, Jr.
Thomas Dobbins
Joyce Johnson

Planning and Development Director Tye Chighizola, Planning and Zoning Manager Mike Daniels, Neighborhood Planner Dorothy LeBlanc, Administrative Specialist I Carol McKeever, and others interested in the items for presentation attended the meeting.

Chairperson Hancher called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance.

Consideration of Minutes

Ms. Johnson made a motion to approve the minutes from the April 20, 2009 meeting; Mr. Williamson seconded the motion; which passed unanimously.

Tabled/ VAR09-0001

Petitioner: Todd Scudder
Agent: Steve H. Gray

Request a **variance** to reduce the east side yard set back from 8 feet to 1 foot and the west side yard set back from 8 feet to 9.5 inches, in a R-1, Low Density Residential, for property located at 1213 SE 3rd Street, approximately 0.37 acres.

Dorothy LeBlanc was sworn and presented staff comments:

The site is located in the 1200 block of SE 3rd Street and has 87± feet of frontage on SE 3rd Street. The home is located in the Ocala Historic District which is characterized by single-family

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residences with houses converted to businesses to the north of the subject property. The parcel has moderate vegetation on the southern portion of the site (front yard). The properties adjacent to the north and west are moderately vegetated as well. The original 1,225 square foot house was constructed in 1918 with a 1,750 square foot addition in 2005 making the existing house a total of 2,975 square feet. Out-buildings and covered parking areas add an additional 2,141 square feet under roof bringing the total lot coverage to 5,116 square feet or 31.7%.

The Ocala Historic District was designated as such in 1984 at which time it was placed under the jurisdiction of the Ocala Historic Preservation Advisory Board (OHPAB). The original structure is an example of a Tudor Revival architecture style. The original single-story house and the adjacent garage were built in 1918 as a single-family home.

In October 2001, OHPAB approved several alterations to the exterior of the home. A new 18' x 17' porte-cochere on the east side of the residence, a new 8'8" x 8' bathroom to the north side of the residence, a new 1,018 sq ft master suite to the north side of the residence, a new 95 sq ft concrete slab to connect the new master suite to the existing concrete pool deck, a new 12' wide shed roof dormer to the north side of the residence and new doors and windows were all requested by the applicant. OHPAB found the alterations to be "compatible with the historic character of the site and which preserve the historic relationship between a building or buildings, landscape features and open space" and approved the requested alterations as presented at the meeting. In June 2002, a building permit for the "foundation only" was issued and later voided on June 10, 2002. No work or inspections were ever accomplished under this permit. A new building permit (BLD04-1774) for the "foundation only" was issued for the master suite in September 2004 citing an update to the original Certificate of Appropriateness. This was noted to be the same work that was originally permitted in 2002. As a part of the permit submittal, a revised foundation plan and a wall cross section for the master suite addition which had not been approved by OHPAB were submitted.

In October 2004, a permit for the remaining portions of the addition was issued with revised plans. The revised plans included a master bedroom suite and a laundry room onto the rear of the house. Plans for an enclosure of an existing screened-in porch and the construction of a new screened-in porch on the west side of the house were later reviewed by the Building Department and subsequently built under the issued building permit. The new screened-in porch encroaches into the 8-foot sideyard setback and sits 9.5 inches from the property line. A new shed was also constructed (without a permit) on the east side of the property which sits 1 foot from the property line. These encroachments require a full variance to the side yard setback requirements.

The applicant petitioned OHPAB in February 2009 for a recommendation of approval for a variance of the sideyard setback requirements. Based on public comment and a finding of fact, OHPAB approved a recommendation for approval of a variance of the sideyard setback from 8 feet to 9.5 inches on the west side contingent on an encroachment agreement being fully executed between the applicant and the property owner to the west (Collins) prior to their appearance before the Board of Adjustment. The signed agreement is to run with the property and not the owners. OHPAB also approved a recommendation for the approval of a variance of the sideyard setback from 8 feet to 1 foot on the east property line.

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The property has approximately 89 feet of street frontage and is approximately 160 feet deep. The screened-in addition has an exterior exit door on the west side of the room facing the property line. The subject additions extend the front edge of the house parallel with the roadway and sits approximately 30 feet from the southern property line. The screened-in porch is 9.5 inches from the west property line on which either property owner has the right to erect a fence or block wall. The current location of egress from the subject room addition is on the west side of the structure facing the property line. The shed on the east side of the property is 1 foot from a wooden fence and approximately 5 feet from a garage on the adjacent property.

The Stormwater and Civil Engineering divisions have expressed concerns about the improvements with drainage being directed onto the adjacent property to the west and/or blocking any Stormwater runoff from entering this property from the east. In addition, drainage issues may arise from the adjacent property owners. Based on these concerns, staff met on site with the property owner to fully review the drainage issues. It was determined that the use of existing rain gutters and downspouts on the screened-in porch would prevent the majority of runoff from creating drainage issues on the adjacent property to the west. The construction of a fence on the east property line, which connects to the shed, provides a potential for standing water around the shed, the fence and the existing garage on the adjacent property. Based on the evaluation from Engineering, the owner has agreed to install a channel/conduit to direct any runoff or standing water back onto the subject parcel for redirection into an existing storm drain located in the City right-of-way. This should resolve any runoff issues associated with the subject improvements to the property.

Staff recommends approval of VAR09-0001 with the following conditions:

1. A fully executed encroachment agreement shall be provided prior to approval of the request by the Board of Adjustment.
2. Owner is to install a channel/conduit on the east side of property as required by the Engineering Department within 30 days of approval.

Factual Support Documentation:

1. The requested variance of the sideyard setback is not detrimental to the public interest as per Sec 122-93.

Ms. LeBlanc reviewed the OHPAB approval steps per Mr. Dobbins' request. Mr. Carrasco asked if the need for a variance was in fact a direct result of the applicant's actions. Ms. LeBlanc responded yes; it is the direct result of his actions but in the historic district it is not necessary to show practical difficulty. Mr. Carrasco disagreed. Mr. Williamson asked if both the shed and the two screened-in porches were built without a Certificate of Appropriateness and no permits. Ms. LeBlanc responded yes, that is correct. Mr. Williamson stated that the driveway and the shed were built without the required permits. Ms. LeBlanc said that is correct and the work was completed by a licensed contractor. Mr. Carrasco stated that the Board of Adjustment has to follow the law and the way he reads the code states that the board cannot grant a variance if it is the direct result of the applicant. Ms. LeBlanc reconfirmed for Mr. Dobbins that there are two screened-in porches on this property. Mr. Williamson stated that the new screened-in porch was

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not a part of the Certificate of Appropriateness originally issued for this project and the plans submitted to the building department were not approved by OHPAB which resulted in two items being built without any Certificate of Appropriateness and one item not built according to the approved Certificate of Appropriateness. Ms. LeBlanc confirmed that Mr. Williamson was correct. Mr. Carrasco asked what basis OHPAB used to support a recommendation to approve the variance request. Ms. LeBlanc stated that OHPAB approved the request based on the fact that the additions were in keeping with the historic character of the building. Mr. Williamson stated that OHPAB deals with the visual appearance of the building and code issues are not a function of OHPAB. He commented that there was a similar case where changes were made to a plan approved by OHPAB. Now any plans submitted to the building division must have a stamp from the planning division stating that they are the same plans that were approved by OHPAB. Mr. Carrasco asked on what basis is the City granting approval of this variance request. Ms. LeBlanc stated that the City is recommending approval based on the provision that it is not a practical difficulty in the historic district and it is not detrimental to the neighbors. Mr. Carrasco stated that the approval of this variance will set a precedent for future cases. Mr. Williamson stated that the City is supporting OHPAB's decision and it is a fairly common occurrence for OHPAB to grant its approval after applicants have already completed work on their property. Mr. Carrasco stated that this applicant does not meet the criteria for a variance based on Section 122-94.

Mr. Tye Chighizola was sworn and addressed the board. He said this is an unusual circumstance. The City knows what happened at OHPAB five years ago but is unable to determine what happened after that time when the applicant applied for his permit. The site plans submitted to the building department were not the site plans that OHPAB approved. Past procedures were not always done properly but the procedures have changed. Also, the building and planning divisions are now in one building and this kind of situation should not occur again. Construction on this site was approved by a previous building director. Mr. Williamson and Mr. Carrasco agreed that this variance cannot be approved because the applicant created his own situation, and is now asking the Board of Adjustment to override the Code of Ordinances.

Mr. Steve Gray, 125 NE 1st Avenue, Suite 1, the agent, addressed the board. He said Section 122-93 is the specific provision in the City Code of Ordinances regarding variances in the historic district. The rule is very specific and states that if you are in a historic district or historic structure, variances are not approved based on the general rule. The only requirement in the Code of Ordinances is that the changes are not detrimental. This is the ruling that the City has applied to this case which is not unusual because properties in the historic district have tight property lines and tend to have more variance issues. OHPAB is a recommending body for variance requests. According to Section 122-93, the Board of Adjustment can legally approve the variance request.

Mr. Gray explained that Mr. Scudder did not take a completely different set of plans to the building department in 2004 after receiving his Certificate of Appropriateness from OHPAB. Mr. Scudder took a one page drawing which had been stamped approved which showed the existing slab, foundation, and the new screened-in porch. Mr. Gray said that Mr. Scudder thought that if he got the building permit he would not have to go back to OHPAB and amend his Certificate of Appropriateness. Mr. Scudder was issued a permit and the work was inspected.

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Mr. Gray further explained that Mr. Chuck Collins appeared at OHPAB, on behalf of the Martha Collins Trust who owns the adjacent property, and he had no objection to the variance. The Collins Trust wanted to ensure that future development on their property would not be hindered and that Mr. Scudder did not make a claim to the front yard area. Mr. Collins requested that Mr. Scudder extend the existing fence all the way to the corner. Mr. Scudder has already extended the fence and will maintain the fence. Part of the encroachment agreement states that when the Collins develop their property in the future Mr. Scudder will not challenge or oppose a building that encroaches on the side yard set backs.

Mr. Williamson stated that Section 122-93 does not relieve the Board of Adjustment of the responsibility listed in Section 122-94. Mr. Gray suggested that the case be tabled and the Board of Adjustment obtain an opinion from the City Attorney before moving forward with the case. Mr. Carrasco asked how the variance rule has been applied in the past. Mr. Chighizola stated that applicants have been granted variances in the past citing Section 122-93 as the basis. Mr. Carrasco and Mr. Williamson concurred that the Board of Adjustment has to uphold the Code of Ordinances. Mr. Dobbins stated that there seems to be discussion by the Board of Adjustment that the variance cannot be approved because the encroachment is the result of the actions of the applicant. Mr. Dobbins asked if the encroachment agreement addresses any water flow problems on the west side, if they occur. Mr. Gray stated that the City Engineer and the drainage engineer both visited the site and agreed that the water is handled by the gutters. Mr. Gray stated that the adoption dates of the variance section and the historic section are the same time, so it would suggest that there is no mistake in the Code of Ordinances. Mr. Williamson stated that an example of practical difficulty would be a property owner requesting a variance to build a house on a small lot. Mr. Gray stated that the Section 122-93 limited the rule so that in the historic district you only have to meet the one criterion to receive an approval. He noted that Mr. Scudder obtained a permit. Mr. Carrasco and Mr. Williamson both agreed that just because Mr. Scudder had a permit does not mean that his actions were correct nor does it mean that the Board of Adjustment should approve the variance request. Mr. Williamson stated that no applicant should be allowed to stage the circumstance and then receive a variance. Mr. Gray stated that he disagreed with how the Board of Adjustment was interpreting the Code so he would prefer to obtain an interpretation from the City Attorney. Mr. Dobbins asked if Mr. Scudder has an agreement with the east side property owner. Mr. Gray stated there is not an agreement with the east side property owner but the property owner was notified about the case.

Discussion

There was no public comment.

Mr. Carrasco stated that he did not know if he would accept an opinion from the city attorney on how the Board of Adjustment should conduct their job. Mr. Williamson stated that city attorney's opinion has credibility because he does not stand to gain anything from either side. Mr. Williamson, Ms. Johnson, and Ms. Hancher concurred that asking the city attorney for an interpretation of the Code of Ordinances would be beneficial. Mr. Dobbins stated that there are several reasons to obtain the city attorney's interpretation because it shows courtesy to the applicant and also because this may end up in court if the applicant has to tear down part of his house.

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Mr. Dobbins made a motion to table the case until June 20, 2009 so that the Board of Adjustment could obtain an interpretation of the Code from the city attorney; the motion was seconded by Ms. Johnson, and was unanimously approved upon roll call vote.

Meeting Adjourned

The meeting was adjourned at 6:48 p.m.