

OCALA BOARD OF ADJUSTMENT MINUTES
Monday, June 15, 2009

Public Notice

Public notice for this meeting was posted June 2, 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, June 15, 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

City Manager Rick Horst, Assistant City Manager (Community Services) John Zobler, Planning and Development Director Tye Chighizola, Chief Planning Official Pete Lee, Planning and Zoning Manager Mike Daniels, Neighborhood Planner Dorothy LeBlanc, Administrative Specialist I Carol McKeever, Assistant City Attorney Jimmy Gooding, 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 May 18, 2009 meeting with the following change on page 5 of 6, paragraph 2, sentence 6: "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. Williamson seconded the motion; which passed unanimously.

Continued/ VAR09-0001

Petitioner: Todd Scudder
Agent: Steve H. Gray
Project Planner: Dorothy LeBlanc

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A request for 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.

Discussion

There was no public comment.

Mr. Gooding advised that if Board of Adjustment (BOA) members have questions regarding whether a continuance can be granted he would be happy to answer their questions. He said although this is a discretionary matter for the BOA, there are some standards governing continuances. If the BOA is going to vote against the case, he said he would like to discuss it first but would leave the decision up to BOA members.

Mr. Williamson stated that at some point he would like to hear Mr. Gooding's comments regarding the definition of a variance, but did not know whether Mr. Gooding's opinion would make a difference. Mr. Williams stated that this case has been discussed numerous times and it appears that the only thing that kept the BOA from making a decision at the last meeting was Mr. Gray's request to table the case. Mr. Gray believed that the BOA members were interpreting the Code of Ordinances definition of a variance incorrectly. Mr. Williamson stated that the definition seemed fairly simple, clearly stated and easy to read and understand.

Mr. Gooding said that before the BOA got too involved with discussing the case he wanted to review the standards that govern granting a continuance. If the BOA agrees to continue the case he would rather not discuss the specifics of the case at this time, but would do whatever the BOA wanted him to do. Mr. Williamson asked if Mr. Gooding he will be at the BOA meeting if the case is continued. Mr. Gooding replied yes. Mr. Gooding stated that if Chairperson Hancher directs him to discuss the case tonight, he would do it. Mr. Carrasco stated that BOA members just want clarification of the June 10th and 12th letters written by Mr. Gooding. Mr. Carrasco suggested that before Mr. Gooding provides clarification, that he explains the rules concerning continuances and any other rules that might pertain to the case as a courtesy to Mr. Gray.

Mr. Gooding replied that he would cover both items. Mr. Gooding stated that he could not find any authorities dealing with boards of this type granting continuances because this issue seldom comes up, but there is, however, a well developed area of law for judges granting continuances. The BOA provides due process protection to the applicant and judges do the same thing so the same standards that apply to judges should be looked at to decide if they also govern the BOA. Mr. Gooding stated that the general standard of whether or not a judge, or in this case the BOA, can grant a continuance is that "it is a matter within the Board of Adjustment's discretion" which is a fairly broad discretion; the discretion should not be set aside unless reasonable people disagree about whether or not the continuance is granted. Mr. Gooding stated that in general matters there are certain things that that the appellate court looks at in terms of whether or not a lower court abused its discretion. The absence of counsel is legitimate grounds for granting a continuance but whether a continuance will be granted depends on the facts and circumstances of the case. A decision from a case in 1961 stated that ordinarily the fact that an attorney is professionally engaged elsewhere in the trial of a cause does not give an absolute right of continuance and denial of the application is generally sustained as an exercise of sound

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discretion. The courtesy existing between members of the bar and recognized by trial courts will usually enable counsel to postpone a case for a few days so as to enable an attorney to be present at both trials but this is purely a matter of grace moreover it must be made to appear that under the circumstances that other professional advice is unavailable and that there is a meritorious cause of action for the defense which cannot be effectively presented without the presence of the absent attorney.

Mr. Gooding said he believes Mr. Gray is on vacation, and there are cases concerning vacation. In a 2006 case where the defendant's attorney was absent because of an emergency the court said it was an abuse of discretion. The court should consider the length of the request of the continuance; whether the counsel who becomes unavailable has associates adequately prepared to try the case; whether other continuances have been requested and granted; the inconvenience to all involved in the trial; and any other unique circumstances. In one of these cases where the attorney was absent on vacation but where there was someone from his law firm that was available to attend the hearing, the trial court's denial of the continuance was upheld by the trial court. In this case, Mr. Gooding suggested that in addition to considering these facts, the normal practice should be considered. He noted that it is City Council and the P & Z Commission's general practice to be in favor of granting continuances that are requested by the applicant. Mr. Williamson stated that the BOA has historically granted continuances and that he has never seen the BOA deny a continuance. Chairperson Hancher pointed out that this is the fourth request for a continuance. Mr. Gooding advised that the fact that this is the fourth continuance granted at the applicant's request is a fact that can be considered when deciding whether or not to grant another continuance. He further stated that he has always been of the opinion, particularly when the City of Ocala is involved, that the people be given the benefit of the doubt. However, it is absolutely the Board of Adjustment's decision depending on the number of continuances that have been granted and whether or not the BOA believes the issues have been explained and discussed thoroughly enough. Mr. Williamson stated the reasons for the continuances have been somewhat realistic and proper and he has no problem granting a continuance. He asked if there is a scheduled meeting for next month and if there is another case for next month. Chairperson Hancher asked if the case is continued would it go to the August meeting. The secretary responded that VAR09-0001 is the only case for July. Chairperson Hancher asked the members if they would want to have a special meeting just for this case. Mr. Williamson reminded the board that Mr. Gray's letter stated that he could attend a Board of Adjustment meeting next week. Mr. Juergens asked if the case would come back as a hardship case in July because he saw something in the packet regarding hardships. Mr. Carrasco stated that Mr. Gooding's letter provided information about self imposed hardships.

Mr. Mike Daniels was sworn in and stated that the hardship information was part of the letter but nothing has really changed regarding the application. Mr. Carrasco said he wants to discuss why a continuance was granted last month. Mr. Carrasco stated that the continuance was granted so that the Board of Adjustment members could get the city attorney's opinion on how self imposed hardship applies in the historic district. Mr. Williamson clarified that the reason Mr. Gray requested the continuance was because the BOA was not in agreement with him and Mr. Gray was looking for an option to help the case. Mr. Williamson stated that the self-imposed part does not mention hardship it just says "created by the applicant." He commented that it appears that Mr. Gooding wants to answer BOA member questions in the presence of the

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applicant and at that time the BOA will hear his explanation and make a decision. Mr. Gooding responded that it would be his preference to answer the Board of Adjustment's questions in the presence of the applicant but if BOA members want him to discuss the case, he will do so. He said he is of the opinion, particularly in a situation like this, that the BOA did not give an applicant the opportunity to say that the board discussed the case without him/her being present. Ms. Johnson requested that the board not meet just for this case. If there are no cases scheduled for July, this case should be rescheduled to the meeting in August.

Mr. Carrasco stated that the case can be tabled for two weeks from today so that there is no need to send out notices or re-advertise the case. Mr. Daniels stated that the reason Mr. Gray suggested the case be tabled until next Monday is so that City staff would not have to advertise or send notices for the July meeting. Mr. Chighizola confirmed that council chambers would be available next Monday and that City staff is available to attend the meeting as well. Mr. Gooding and the Board members confirmed that they would be available to attend next Monday.

Mr. Carrasco made a motion to continue the case until next Monday, June 22, 2009; the motion was seconded by Mr. Juergens, and was unanimously approved upon roll call vote.

Meeting Adjourned

The meeting was adjourned at 5:49 p.m.