



BOARD OF APPEALS

Meeting Minutes for June 26, 2014

Members Present: Emmanuel Albarado, Tim Camp, Don Hawkins, and Van Knight

Members Absent: Buster Bezner, Jess Cason and Lynn Sanches

Staff Present: Linda Ames, Ron Sellman, and Julie Smith

Visitors Present: Eric Carter, Phyllis Gerstberger, and David Jones

Item 1 - Declaration of Quorum

With a quorum present, Temporary Chair Hawkins called the meeting to order at 4:05 pm.

Item 2 - Oath of Office

Kay Lunnon, City Secretary, administered the Oath of Office to Mr. Emmanuel Albarado and re-appointed Board Members Mr. Tim Camp, Mr. Don Hawkins, and Mr. Van Knight.

Board Member Camp motioned Temporary Chair Hawkins to be elected as Permanent Chair. Seconded by Board Member Knight. All present voted AYE. The motion was approved 4-0.

Chair Hawkins motioned Board Member Camp to be elected Co-Chair. Seconded by Board Member Knight. Board Members Hawkins, Knight, and Albarado voted AYE; Board Member Camp voted NAY. The motion was approved 3-1.

Item 3 - Approval of Minutes

The Board of Appeals reviewed the minutes from the August 12, 2013, Board of Appeals' meeting. Board Member Camp moved approval of the minutes as presented by staff. Seconded by Board Member Hawkins. All present voted AYE. The motion was approved 4-0.

Item 4 – Appeal

To hear and take action on an application for appeal to the decision of the Building Official of the City of Gainesville regarding the setback for an addition to a pre-existing, non-conforming residential structure at 1423 Roy Street. Submitted by Eric Carter. Case number BOA 14-2 (ZVR 7995497).

Chair Hawkins read the case into the record.

Community Services Director Julie Smith explained that Mr. Carter wanted to add an addition to his home located on the northwest corner of Roy and Cunningham. The residence is pre-existing/non-conforming, because it was built on the property line along Cunningham Street instead of meeting the 25-foot set-back now required by ordinance. The lot itself is very narrow and the right-of-way along Cunningham large (25 feet). If the addition were placed to meet current ordinances, it would have to be 50 feet from Cunningham.

Also, it could not be aligned with the current structure. Public Works Director Ron Sellman stated that he did not anticipate any issues should the Board grant the variance to permit the applicant to build the addition along the property line and in alignment with the current house. CSD Smith indicated that staff supported the request.

Board Member Knight moved to approve the variance to the set-back requirement for the residential addition at 1423 Roy Street to permit the owner to align the proposed addition with the existing residential structure. Seconded by Board Member Camp. All present voted AYE. The motion was approved 4-0.

Item 5 – Appeal

To hear and take action on an application for a variance from the City of Gainesville's Code of Ordinances regarding the thirty-foot setback requirement for a drive cut on Lanius twelve (12) feet east from the corner of the intersection of Lanius and Lindsay for the residence located at 901 South Lindsay. Submitted by Phyllis Gerstberger. Case number BOA 14-1 (ZVR 6919965).

Chair Hawkins read the case into the record.

Community Services Director Julie Smith provided a history of the property's original building plan. The plan approved and permitted did not include a circular drive in the front of the residence nor access to the north. The property does have an access at the rear of the house off the alley to the garage.

The owner is requesting a variance from the City standard of requiring any drive cuts to be at least 30 feet from a corner or intersection. Given the location of the middle school further to the south on Lindsay and the inability to stack vehicles on Lanius while people are turning from Lindsay in order to access the drive cut, staff's has concerns regarding safety around the intersection of Lindsay Street and Lanius Street.

Chair Hawkins asked where in the Ordinance the language was that described setbacks related to residential driveway cuts, City rights-of-way, and intersections. Public Services Director Ron Sellman explained that the criteria is included in Appendix B, Article III which lays out the design standards for public streets. Chair Hawkins pointed out that the diagram is only labeled as commercial and does not appear to apply to residential since the word "residential" does not appear anywhere on the diagram. PSD Sellman explained that the lack of the word "residential" was an oversight of the consultant that drew the specs and that it has been the practice of the city to apply this standard to both commercial and residential projects. Chair Hawkins stated that the Board of Appeals cannot vote on an ordinance that does not exist and that "city practice" does not make it an ordinance.

Board Member Albarado observed that the law is ambiguous, so the Board must then look to what the City actually practices and follows to determine what to apply in terms of standards. If the City requires the same setback for both residential and commercial projects, it is to be regarded as the practice of the City and carry the weight of the Ordinance. Recognizing this, clearly a drive cut of less than 30 feet would not be following City practice nor, by extension, the Ordinance.

Chair Hawkins expressed his frustration that the Ordinance did not definitively indicate what the appropriate distance should be for residential projects. He considered the City to be practicing a standard that was not supported by the Ordinance and one that would not be obvious to builders and homeowners who might refer to the Ordinance to see what the standard is; they simply would not find one. Chair Hawkins asked PSD Sellman to remedy the discrepancy in the ordinance to avoid a similar problem in the future. Specifically, if the same standard (30 feet from an intersection) was to apply to residential projects, the diagram needed to include the word "residential." PSD Sellman assured the Board he would remedy the discrepancy.

Chair Hawkins motioned to approve the variance for the distance of the driveway cut for the home at 801 South Lindsay from the intersection of Lanius and Lindsay from 30 feet to 12 feet. Seconded by Board Member Camp. Board Members Camp, Hawkins, and Knight voted AYE. Board Member Albarado voted NAY. The motion was approved 3-1.

Item 6 – Adjourn

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Board Member Van Knight moved to adjourn the meeting. The motion was seconded by Tim Camp. All present voted Aye. The motion was approved and the meeting adjourned at 5:30pm.

Signature of Chairman: *Donald H. [unclear]* Date: 8-14-14
Signature of Secretary: *Linda May Ames* Date: 8-14-14