

**BOARD OF ADJUSTMENT
DESTIN CITY HALL BOARDROOM
WEDNESDAY, APRIL 5, 2023
5:30 P.M.**

1. CALL TO ORDER:

Chairman Weidenhamer called the Board of Adjustment Meeting to order at 5:30 p.m., on Wednesday, April 5, 2023, at Destin City Hall Boardroom.

2. ROLL CALL & PLEDGE OF ALLEGIANCE:

Present:

Tom Weidenhamer
Daniella Piper
David Emerson
Cyron Marler
James Moomaw
Robert Pinard

Staff Present:

Kim Montgomery Deputy City Clerk
Daniel Butler Senior Planner
Steven O'Connor, Principal Planner
Daniel Butler, Senior Planner
Kyle Bauman City Attorney
Kim Kopp, Land Use Attorney (LUA)

3. APPROVAL OF AGENDA:

With no changes to the agenda, the Chairman announced the agenda is approved.

4. APPROVAL OF MINUTES:

➤ **March 1, 2023**

Motion to approve the minutes of the March 1, 2023, meeting was made by Board member Marler, with Board member Emerson providing the second. The motion passed 6-0.

5. PUBLIC COMMENT:

None

6. NEW BUSINESS:

A. Variance Request - 735 Planet Drive - BOA-000991-2023

Staff explained the applicant is requesting relief from LDC Section 7.12.08, Table 7-3, which relates to the setbacks within the Bay Estates (BE) zoning district. There is an existing shed (accessory structure) that does not meet the required side setbacks; and the applicant is requesting to anchor the shed (accessory structure) at the current location (2' from property line)

a to the ground to increase the structural integrity.

The City Attorney swore in staff members and members of the public who will be testifying for the request. He then explained to the members that they are to base their decision on the evidence at this hearing and to not be biased by any outside prejudices. He then asked each individual Board members if they have had any ex parte discussions. Based on the information provided by the members he announced that it appears that all members are able to provide a fair and unbiased decision for the hearing at this meeting. The City Attorney then asked the applicant's and staff's Counsel if they had any objections to waiving the reading of the Notice into the record, with both Counsel's agreement. The Land Use Attorney then entered the city's Staff Report and Recommendation and all attachments thereto into the record. Counsel for the applicant, Mr. Jeff Burns, verified the letters from the neighbors and the site plan are a part of the record. The City's Land Use Attorney, Ms. Kim Kopp, (LUA) verified that they are.

Mr. Burns briefly explained that one of the witnesses for the defendant needs to get home and she would need to be cross examined first, so she could be released.

Mr. Burns then examined the following:

Ms. Mary Noser of 734 Planet Drive who has resided at her residence since 1992, stated that she knew the former owner of said property and stipulated for the record that Mr. Brunson, was somewhat of a packrat and the property was overgrown and he had accumulated a lot of things for fishing all over the property. Mr. Burns then asked her if there was a shed located on the property during the time that Mr. Brunson owned the property. According to Mrs. Noser, there was, it was an old shed that had fallen into disrepair and exclaimed that the one there now is a lot better looking than what was there.

The LUA's asked Mrs. Noser if she lived next door or across the street from Mr. Trammell. According to Ms. Noser, she lives across the street. The LUA then asked Mrs. Noser if the shed, where it is currently located, bothers her in any way. Ms. Noser stipulated that it did not and reiterated her previous statement, that it is much better looking than the original shed.

Board member Weidenhamer asked Mrs. Noser when she originally bought her property, was the shed located where the one is presently located. Mrs. Noser stated that yes, there was a shed in that spot.

Board member Piper asked if it is a different shed. According to Mrs. Noser, it has been completely overhauled to better match his house.

The following is the criteria that staff based their finding on per the requirements of the

Land Development Code:

FINDINGS: According to LDC Section 2.25.03(C), to authorize upon appeal such variance from the terms of any zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of the conditions, the Board of Adjustment must find:

A. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Applicant response: Two factors necessitate granting the variance request.

First, the only location on the property for the shed anchoring that will not create drainage issues, if the shed is improved by affixing it to the ground, is the proposed location within the setback. No other location in the backyard can hold the shed without either cutting down century-old oak trees or reducing the percolation holding capacity of the backyard.

Second, the original owner of the property, Mr. Brunson, who developed the property and built the home in 1978, placed the home much further to the western part of the lot. He also placed a shed in the location where the current shed sits and landscaped the property in a manner to prevent drainage issues while sitting the shed in its current location. Additionally, the lot is shaped in a manner that the lot lines intersect Planet Drive at a 45-degree angle.

When considering the lot shape, Mr. Brunson's off-center placement of the home, and Mr. Brunson's design of the yard to prevent drainage issues (with the shed in mind), then the only viable ingress/egress from the front yard to the back yard, is through the eastern side yard. Considering factor 1 (drainage concerns if shed is anchored somewhere else) then the only location for the shed is the eastern side yard within the setback. The current lawful non-conforming shed sitting is the only part of the eastern side yard that will not both block ingress/egress to the backyard and result in drainage problems along the eastern side yard.

Staff Findings: The Board needs to determine whether special conditions do exist in the fact that the original property owner sited the structure in its original location.

B. That special conditions and circumstances do not result from the actions of the Applicant.

Applicant response: The Owner is not responsible for any of the hardships noted above. The on-site drainage conditions are naturally occurring, Mr. Brunson's off-center placement of

the home was done before the City's existence in 1978, and the shed placement and drainage-minded landscaping by Mr. Brunson was done before the City was incorporated.

Staff Findings: The applicant states that the primary residence and the shed (accessory structure) were constructed prior to the incorporation of the city. Therefore, the Board needs to determine if these conditions do not result from the actions of the applicant.

C. That granting the requested variance will not confer on the Applicant any special privileges denied by any zoning ordinance to other lands, buildings or structures in the same zoning district.

Applicant Response: The granting of this variance will not provide any special privilege to the subject property, nor the owner of the subject property. The variance request is due to hardships unique to the subject property that are not the result of the Owner's actions.

Staff Findings: The Board needs to determine that granting of this variance would not confer the applicant any special privileges, as the applicant did not construct the structure. Relocating the shed (accessory structure) could negatively affect the surrounding landscape and stormwater retention.

D. That literal interpretation of the provisions of any zoning ordinance would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of any zoning ordinance and would result in unnecessary and undue hardship on the Applicant.

Applicant Response: Requiring the applicant to meet the relevant language of the setback requirement would create a situation where applicant must either:

(1) deprive the Applicant of normal ingress/egress to the backyard by moving the shed closer to applicant's home,

(2) undergo an unnecessary and undue hardship by creating a location in the backyard for the shed by cutting down irreplaceable century old Southern Live Oak trees and expending significant resources to rework the drainage conditions of the backyard to ensure stormwater is not discharged onto neighboring properties, or

(3) having no shed at all therefore depriving the Applicant of a right commonly enjoyed by all of his neighbors.

Staff Findings: The Applicant states that the literal interpretation of the code section would require some sort of action from the applicant to relocate the shed (accessory structure). Staff defers to the Board on whether this criteria has been met and whether the evidence and justification provided by the applicant satisfies this criteria.

E. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Applicant Response: Given the aforementioned site constraints, the requested variance is the minimum possible to create a safe, consistent development with regards to the subject property and the necessary ingress/egress locations, while preventing drainage problems for both the Owner and the Owner's neighbors.

Staff Findings: The Board needs to determine whether this request is the minimum variance that will make possible the continued reasonable use of the existing structure.

F. That the granting of the variance will be in harmony with the general intent and purpose of any zoning ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant Response: No portion of the request is detrimental or injurious to the area or public welfare. The request is consistent with the overall pattern of development previously approved in the general location, while also maintaining the overall intent of the City's Land Development Code as it relates to the development and public safety.

Staff Findings: Granting this request would not alter the overall use of the property (single-family dwelling) and would not be injurious to the area involved or to the public's welfare.

Mr. Burns then asked the applicant, Mr. Matthew Trammell, a series of personal questions in relation to his upbringing and then his studies towards his professional career as an Engineer. He then asked Mr. Trammell for the timeline of what all took place from the time he purchased the property to how it currently is for the purpose of providing the Board with the reasonings why the shed is at its current location.

Mr. Trammell explained that when he purchased the property, was very overgrown and had various items throughout that were associated with the fishing industry. There were several small out structures including a shed, located where the one in question is now. He explained that he cleaned up and removed all the items throughout the property and used the old shed until it was damaged, from Hurricane Michael. Explaining that by that time, it had begun to deteriorate being that it was made of plywood. After demolition of the damaged, old shed, he did attempt to relocate it in the yard but quickly realized that because of the way lot is situated, and the topography of the land, that slopes northward towards the Choctawhatchee Bay, when it rains real hard, stormwater water sheets off his property towards the north and he realized it was better placed in its original location. He also stipulated the house was originally built to preserve several of the heritage oaks on the property that are at least a century old and contributes to the way the stormwater runs off. He explained further all of his utilities; the sewage, air conditioner

and its lines, and irrigation pump and lines as well as ingress and egress to the property are all on the opposite side of his home and the shed could not have been moved to that side of the property. Mr. Trammel then explained that he also sent letter to all his neighbors to his property, and they all signed statements saying they had no issues with the location of the shed except for his neighbor, Mayor Jarvis who personally told him that he had no issues with the shed and the other neighbor, who lives out of state and did not reply.

Chairman Weidenhamer opened the hearing to the public for comment.

Mr. Tim Krueger of 605 Harbor Lane spoke against the Variance Request stating how setbacks are put in place for a reason, how everyone knows they are in place, and have to be adhered to, and how if anyone should be aware of setback requirements, it should be an Engineer that works in the city. He then questioned the use of the shed since it has windows, window treatments, electricity and what appears to be to an air conditioning unit and feels that it may possibly be used as a short term rental, even though those are not allowed in the zoning district. He spoke of how affording this Variance request could potentially open up the ability for others to come and ask for variances for things that are not allowed, and finally, respectfully asked the Board to deny the request.

With no further public input, Chairman Weidenhamer closed the hearing to the public.

Chairman Weidenhamer asked why the permit was not obtained to construct the shed. He then spoke of an old shed that he had that fell apart and when he went to the Building Department to obtain the permit to construct a new one, the setbacks required him to build his new shed, off of the property line from where his old shed was located within the required setbacks.

Mr. Trammell explained that he did not seek a permit for this shed and pleaded ignorance for not being aware of the Land Development Code requirements for buildings. Additionally, this shed was a repair/replacement from a disaster declaration at the time and explained the way he understood it, for State and Federal permitting generally, the permitting requirements are waived as a result of structures being damaged. He explained that he did not expand or change the footprint of the shed and in hindsight, he realizes what he should have done, and it would have saved him a lot of trouble and money and is why he is before them now.

For clarification purposes, Mr. Burns asked Mr. Trammell to explain why permits were not required after a statewide declaration from the Governor and if he is referring to the Emergency Declaration from of Hurricane Michael. Mr. Trammell answered affirmatively, and briefly explained the shed was damaged from Hurricane Michael and he replaced it without a permit because at the time, permits are waived during disaster declarations.

Board member Piper asked Mr. Trammell if he had an air conditioner in the new shed. According to Mr. Trammell, he does have a mini split unit in the shed and the previous shed was also wired for electricity.

Chairman Weidenhamer asked staff what the regulations are for the percentage of damage that negates simple repair compared to new construction. According to Mr. O'Connor there is not a percentage, it is just based on what is necessary to get the structure repaired or replaced based on the Florida Building Code regulations.

Noel Bell, the city Building Official added that typically during a State of Emergency, if your structures or home on your property are damaged, you are allowed to immediately make the necessary repairs to not further the damage.

Board member Piper then asked how the city handles such issues when a shed that has been at its present location prior to incorporation of the city is then damaged from a hurricane.

Mr. O'Connor explained that any said structure that was built prior to the incorporation of the city, the structure is deemed a legal nonconforming structure and it what they consider grandfathered. Should the structure be damaged over 50%, the owner has one year to replace the structure to its original state, within the same footprint, or they lose the non-conforming status, and any new structure would have to be built to the current code requirements.

Board member Emerson asked if there was a geographic area for the disaster declaration of Hurricane Michael. In other words, was Okaloosa County included in the State of Emergency Declaration?

The LUA stated that staff would perform and search to find out. After a few minutes, she then asked Mr. O'Connor if he was able to find out the answer. According to Mr. O'Connor upon searching online, he was able to discern that Okaloosa County was indeed included in the Disaster Declaration from Hurricane Michael.

Board member Emerson asked Mr. Trammell if the shed could not be relocated to closer to the house and out of the setback area. According to Mr. Trammell the whole reason for replacing the shed to its original location was to control his stormwater, as it was originally designed, to stay on his property and not have it pushed to his neighbor's property. Also, to keep it within its original footprint to keep its grandfather status.

Board member Marler spoke of similar cases that had come before this board when he was previously serving and how those Variances were granted.

In closing, Mr. Burn spoke of the requirements that have to be met in order to grant the Variance and the special circumstances that existed as well as the extensive testimony that was given, based on the orientation of the property and how the home was built, the presence of the heritage oaks in the backyard, and how the stormwater would have been effected not only for Mr. Trammell's home, but also its impacts on the adjacent property owners as well. He then provided information on similar Variance Requests that have previously been brought before the Board of Adjustment and during those cases, the board has exercised good judgment on the cases and normally the ones that were denied did not provide adequate evidence for their requests.

Additionally, Mr. Trammell is willing to stipulate in asking for a variance to allow him to seek and obtain an after-the-fact permit to redo the foundations of the shed in accordance to city code within the setback and also as a condition, he will stipulate to no short term rentals or any uses other than storage of items in that shed, will be the only uses. He's also willing to pay any penalties associated with a retroactive permit.

Chairman Weidenhamer made the recommended motion for the Board of Adjustment approve the proposed request, BOA-000991-2022, to allow the applicant's shed (accessory structure) to remain in its original, existing location, with the condition that the applicant anchor the shed to the ground, as presented, and obtain any permitting needed from the city of Destin retroactively. Board member Emerson provided the second.

In discussion, Board member Piper amended the motion to add the stipulation to provide that no short term rentals or no occupancy use.

The Land Use Attorney stated that the stipulation can be added however, those are not allowed per code for that zoning district. **Board member Emerson provided the second for the amendment. On a roll call vote, the motion passed 6-0.**

5. OTHER BUSINESS:

The City Attorney explained to the members that in a recent past Board of Adjustment Hearing, they granted a Variance to Shirley Perman whose address is 155 Calhoun Avenue for the construction of a dock in the same location of an old dock and close to her neighbor, Tim Shores, for which Mr. Shores appealed the case before the 1st Judicial Circuit Court. With that occurrence, Mrs. Perman decided that she was no longer interested in her Variance and decided to seek a permit to build her dock in a location within its required setbacks. Therefore, that obviated the need for the Variance and staff is requesting that the Board rescind the request, which would be recorded.

Motion by Chairman Weidenhamer to rescind the settlement agreement for case #2022CA001640F, with Board member Piper providing the second.

Chairman Weidenhamer opened the hearing to the public, with no one coming forward to speak, he closed the public hearing and called for the vote. **The motion passed 6-0.**

6. ADJOURNMENT:

There being no further business the meeting was adjourned at 7:15 p.m.

Adopted and approved this 7th day of July, 2022.

Tom Weidenhamer
Tom Weidenhamer, Chairman

Kim Montgomery
Kim Montgomery, Deputy City Clerk