

**BOARD OF ADJUSTMENT
DESTIN CITY HALL ANNEX CHAMBERS
WEDNESDAY, MARCH 6, 2024
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, March 6, 2024, at Destin City Hall Annex Chambers.

2. ROLL CALL & PLEDGE OF ALLEGIANCE:

Present:

Tom Weidenhamer
Daniella Piper
David Emerson
James Moomaw

Absent:

Robert Pinard
Joshuah Brister

Staff Present:

Kim Montgomery Deputy City Clerk
Steven O'Connor Principal Planner
Christopher Willis Planner
Kimberly Kopp City Attorney

3. APPROVAL OF AGENDA:

Chairman Weidenhamer asked if there was a consensus on the approval of the agenda as presented. With all agreeing, he announced the agenda is approved.

4. APPROVAL OF MINUTES:

➤ **January 3, 2024**

Motion to approve the minutes of the January 3, 2024, meeting was made by Board member Emerson, with Board member Piper providing the second, the motion passed 4-0.

5. NEW BUSINESS:

A. BOA-001279-2023 – Destin Cottages Variance

The City Attorney read the Variance request into the record and swore Mr. Fletcher in for any testimony he may provide for the hearing.

Mr. Fletcher briefly explained how he came before them last year for a Variance, which was granted, to have the sidewalks installed against the pavement to have more grassy areas for the front yards, however, three homes he is building will have much less yard frontage area and he is seeking a Variance to reduce the size of the sidewalks from 5-feet to 3-feet, noting that the subdivision is gated and there won't be a lot of traffic on the streets. He also stated that he would prefer to put pavers down instead of a sidewalk.

Mr. Steve O'Connor Principal Planner noted for the record that the applicant has not mentioned pavers in any conversations prior to the request.

Mr. Christopher Willis Planner explained to the members the plat for the project consists of 12 private lots with a private road. He explained that in March of 2023, Mr. Flether requested and was granted a Variance for the following:

- Modify the previously approved Lighting Plan for lighting within the development, as Florida Power & Light (FPL) has already placed the connection in areas for such lights without conferring with City Staff.
- Utilize a different model of streetlight within the development, as it is a private street.
- Remove the required pedestrian amenities (benches and trashcans) from within the development and place them on Kelly Street and Siebert Avenue.
- Remove the three-foot buffer between the edge of pavement and the sidewalk and allow it to be installed up next to the curb.

Mr. Willis further explained that Mr. Fletcher is now requesting the following:

1. Reduce the sidewalk width from five feet (5') to three feet (3') in the development, aside from 102, 104, and 108 Fletcher Way.
2. Eliminate the previously approved five-foot (5') sidewalk in front of 102 Fletcher Way, 104 Fletcher Way, and 108 Fletcher Way, and;
3. Install benches as part of the required pedestrian amenities; however, the applicant is requesting to pay a fee in lieu of for the trash receptacles. He then went over the six requirements that the Variance must meet in order for the Board to grant the Variance.

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 (1 answer for each request):

1. Special conditions do exist that are peculiar to the land.

The homes are located in a PUD, as a gated community with 12 homes. Vehicle and pedestrian access is limited and the speed limit is 12 miles per hour which positively affects the security of pedestrians. The lots are situated with the widest portion right to left on the road which narrows the front yard to minimum setbacks and ROW. The front yards have spaces for two cars with pavers, the sidewalk is drawn as 5-feet. This is typical in this zoning to allow side by side and alternating pedestrian flow. However, we are trying to gain as much green space in the front yards for both aesthetics, use of the property and reducing impervious surfaces, and we would like to reduce the width to the minimum allowable under ADA if this is the governing minimum.

2. Elimination of sidewalk adds to the front yards and the green spaces. There is a sidewalk across the street on homes 101, 103, 105, 107 Fletcher Way. Please see photographs of the front yards, these are not townhomes and is a neighborhood.

3. The Multi-Modal appears to be going away. Unsure of what is replacing it regarding the benches and garbage cans requirements.

Staff Findings:

1. The Applicant has not identified nor provided any evidence of any special circumstances existing on the site, which are not applicable to other properties in the zoning district. Staff also cannot identify any special circumstances that are peculiar to the property. Vehicle and pedestrian access was reviewed at the Development Order (DO) level. The applicant states that a speed limit of 12 miles per hour is low enough to forgo the need for an external sidewalk within the private right-of-way. However, this is not supported by any factual basis and does not align with the subject Development Order, DO-21-19. The approved development order requires a continuous pedestrian network throughout the development for safety purposes (please see Exhibit E, Page 11). The applicant wants to remove the pedestrian sidewalk for the purpose of enhancing aesthetics and creating more green space. Staff does not have a factual basis to support the applicant's claims that there is a "typical zoning" practice of creating an alternating pedestrian flow. The external sidewalk within the right of way was approved at the development order level to ensure pedestrian safety and can't be compromised for the sake of creating more green space or some other aesthetic purpose.

2. The sidewalks are not designed or located in the front yard, but rather they are designed and located in the right of way.

3. The Land Development Code (LDC) requires pedestrian amenities, per LDC 8.09.03.A.6.c. The applicant has requested to pay the fee in lieu for the trash receptacles, and will install the benches as required. Sidewalks are still required outside the Multimodal Transportation Districts (MMTD), per LDC Section 8.05.03.A.B. That special conditions and circumstances do not result from the actions of the Applicant.

Applicant response:

1. The 5' sidewalk will fit in the yard, it is too large for an ornamental sidewalk. Applicant did not perform any actions that required the 5' of concrete.

2. The applicant has not made any actions that resulted in the request.

3. The applicant did not have input into the drafting of the ordinance.

Staff Findings:

1. The external sidewalk provides pedestrian network connectivity and was approved as part of the Development Order. External sidewalks are required as part of a pedestrian network, per LDC Section 8.09.03.A.6.a. External sidewalks shall be five feet in width per LDC Section 8.05.03.A.

2. External sidewalks, as part of a pedestrian network, are required, per LDC 8.09.03.A.6.a. External sidewalks shall be five feet in width per LDC 8.05.03.A.

3. A minimum of one bench and one other pedestrian amenity shall be located on either edge of the public sidewalk for every 150 horizontal feet of sidewalk, per LDC 8.09.03.A.6.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:

1. There are various sidewalks in the lands, and some appear to be less than 5' in the same zoning and same area.

2. While this land is in a PUD, zoning may reflect a sidewalk in front of the homes but it is desired that the PUD allows for a Variance.

3. I am offering payment in lieu for the garbage can and keeping the bench. The benches have been installed. Please see the attached pictures.

Staff Findings:

1. The Applicant has not provided an example of neighboring developments in the same zoning district that have external sidewalks less than five feet (5'). Regardless, an existing legal nonconformity would be required to come into LDC compliance at time of redevelopment. All new development shall comply with the existing LDC requirements.

2. Both the development plans and the plat for the subject PUD were reviewed in accordance with the LDC during the Technical Review Committee (TRC) review process.

3. The Applicant confirms that the benches have been installed in accordance with LDC 8.09.03.A.6.c. The Applicant has stated that he would like to pay a fee in lieu for the trash receptacles.

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 it result in unnecessary and undue hardship on the Applicant.

Applicant Response:

1. There is undue hardship for the confined space, less concrete has to be more desirable. Children and grass rather than concrete.

2. The elimination of the sidewalk is favorable to the PUD and addressable by Zoning.

3. The applicant has undue hardship as the garbage can is not in harmony with the street and Kelly St. is developed to the point that few other garbage cans will ever be placed.

Staff Findings:

1. The external sidewalk provides pedestrian network connectivity and was approved as part of the development order. External sidewalks, as part of a pedestrian network, is required per LDC 8.09.03.A.6.a.

2. The external sidewalk provides pedestrian network connectivity and was approved as part of the Development Order. External sidewalks, as part of a pedestrian network, is required per LDC 8.09.03.A.6.a. Reducing sidewalks within the development would require some residents to cross the street to access a sidewalk, potentially creating safety conflicts.

3. The applicant has stated that he would like to pay a fee in lieu for the trash receptacles.

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

Applicant Response:

1. A smaller sidewalk width still allows usage by the 3 to 5 homes that are affected on each run of sidewalk for pedestrian purposes.
2. This is the benefit of less impervious space and increase in green grassed yard to less concrete for limited use. Please see the pictures of the yards in the application.
3. This is the minimum request, saving the benches and removing the unsightly garbage cans.

Staff Findings:

1. External sidewalks shall be five feet in width per LDC Section 8.05.03.A.
2. Removing the pedestrian sidewalk to create more green space is prioritizing aesthetics over pedestrian safety. External sidewalks in the right of way are required per LDC 8.09.03.A.6.(a) and are critical to ensure pedestrian safety within the development.
3. The applicant is confirming that the benches have been installed in accordance with LDC 8.09.03.A.6.c. The applicant has stated that he would like to pay a fee in lieu for the trash receptacles.

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:

1. The grant of the variance enhances the harmony of the neighborhood and public welfare. The site is not open to the general public but the 12 homes of the neighborhood.
2. Removing the sidewalk will greatly improve the harmony of the PUD, the owners in the homes and will not be injurious.
3. The placement of a garbage can is not in harmony with the site nor the street and neighborhood.

Staff Findings:

1. The external sidewalk within the right of way was approved at the Development Order level to ensure pedestrian safety and can't be compromised for the sake of creating more green space or some other aesthetic purpose.
2. The sidewalk provides separate facilities from motor vehicles to ensure pedestrian safety and ADA compliance. If the sidewalk was eliminated, resident safety and welfare could be at risk.
3. The applicant has stated that the placement of the trash receptacle is unsightly and is willing to pay the fee in lieu.

The City Attorney entered the staff report and attachments as City's Composite Exhibit A into the record, with no objections.

Chairman Weidenhamer asked staff to explain how the “Fee in Lieu” is handled. Mr. O'Connor explained that this can happen due to constraints within the right-of-way. He provided an example that happened with this particular request regarding the street lighting and how the pedestrian lighting would never come on because there was already a FP&L streetlight located above it, programmed to come on automatically at sundown. Therefore, the applicant was able to not have to have that one installed. However, because there may be needs elsewhere, within the network, that could eventually be impacted by this development. When that happens, staff can accept a fee in lieu for the Engineers estimate of the cost of the items, as well as the cost of installation and construction and an additional 20% fee.

Mr. Flether provided the members with his reasonings to why he wanted the sidewalks removed from the three properties sidewalks is simply because there is not a lot of green space for the front yards, if the five foot sidewalks are required.

Mr. O'Connor provided the Board with information on the sidewalk requirements and how ADA requires the sidewalks.

Motion by Vice Chairman Emerson to remove the trashcan requirement and substitute with a fee in lieu of as discussed, with Chairman Weidenhamer providing the second. The motion passed 4-0.


Board member Piper moved to approve the Variance Request with modifications to BOA-001279-2023 – Destin Cottages Variance, to provide 5-foot sidewalks throughout the development with the exception of the three properties, 102, 104, & 106 that have limited front yards, to have three foot sidewalks. Board member Emerson provided the second. The motion passed 4-0.

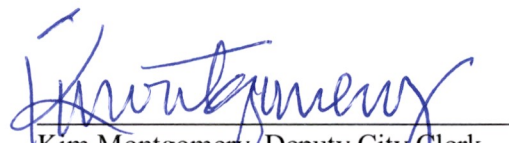
6. OTHER BUSINESS: None

7. ADJOURNMENT:

There being no further business the meeting was adjourned at 6:10 p.m.

Adopted and approved this 15th day of MAY 2024.


Tom Weidenhamer, Chairman


Kim Montgomery, Deputy City Clerk