

**PLANNING AND ZONING BOARD
MINUTES
CITY COMMISSION CHAMBERS
THURSDAY, MARCH 9, 2023
6:00 P.M.**

Chair Fountain called the Planning and Zoning Board to order at 6:01 p.m. in the City Hall Chambers located at 120 E. Pomelo Street, Lake Alfred, Florida.

Chair Fountain provided the invocation followed by the Pledge of Allegiance.

Board Members in Attendance: Chair Ike Fountain, Alternate Board Member John Reinert, Alternate Member Cathy Long, Vice-Chair Brenda Arnold, and Board Member Scott Gearhart. A quorum was present.

Board Members Absent: Board Member Ganesh Nair submitted his resignation, Board Member Herb Nigg, and Board Member Wanda Daley.

Staff: Community Development Director Ameer Bailey, City Attorney Seth Claytor, and City Planner Erika Tulloch.

Chair Fountain presented the minutes from February 9, 2023, Planning and Zoning Board meeting for approval.

Vice-Chair Arnold made a motion to approve the meeting minutes for February 9, 2023. The motion was seconded by **Board Member Gearhart**. The motion was unanimously approved.

Alternate Board Member Reinert made a motion to accept Board Members Charles Lake and Ganesh Nair's resignations. The motion was seconded by **Alternate Member Long**. The motion was unanimously approved.

City Attorney Claytor reviewed the meeting procedures, swore in the staff and audience members providing testimony, and asked if there was a need for an interpreter. There was no need for an interpreter. He continued and reviewed the Quasi-Judicial requirements.

The burden of proof is first on the property owner then the burden shifts to the government to prove that maintaining the request accomplishes a legitimate public purpose.

- Require procedural due process
 - Opportunity to be heard
 - Opportunity to present evidence, cross-examine witnesses, and be informed of the facts upon which official action is taken by the government.
- Supported by "competent substantial evidence."

Chair Fountain introduced the first item of business.

1. Variance: 110 S. Carolina Avenue

City Planner Tulloch said this request was for a variance to the five (5') feet rear accessory setback and a maximum of thirty percent (30%) rear occupancy.

Case Details

Applicant: Raul Valle

Request: A request for a variance to the five (5) feet minimum rear

setback and the maximum thirty percent (30%) rear yard occupancy.

Property Information

Address: 110 S. Carolina Avenue
Parcel ID: 262732-513651-000260

Land Use: Residential (RES)

Zoning: Vintage Residential Neighborhood (VRN)

Variance from Section: **§ Section 2.1.6.C & Section 3.8.1.F.3** of the Unified Land Development Code (ULDC) Development Standards Table.

Background: A complaint was initiated by the Code Enforcement Officer on June 29, 2022. The applicant was cited for working without a permit application. After this, the applicant submitted a construction permit application for an after-the-fact paver installation. The Planning and Building Departments reviewed the application and determined that the applicant’s request was non-compliant as the applicant did not meet the required rear minimum five feet (5’) setback. As a result, the applicant is requesting a variance to the five feet (5’) rear setback.

City staff continued and reviewed the legal notices, applicable ULDC provisions, the accessory structure setback requirements, the development standard table, and other requirements.

Community Development Director Bailey said there was one inquiry to the mailers however there were no comments on the application.

Variance Criteria

Section 9.9 of the ULDC states that the Board may grant variances when the strict enforcement of the code would create an undue and unnecessary hardship for the applicant. Variances shall be granted after the Board considers all of the following criteria to have been satisfied:

- (1) Special conditions and circumstances exist that are peculiar to the land or structure involved and that is not applicable to other lands or structures in the same land use classification.

The applicant’s property is a corner lot with a swale in the side yard and a slope in the rear yard, which creates difficulty in placing any structure in the yard.

- (2) The special conditions and circumstances do not result from the actions of the applicant.

The applicant purchased the property in 2014 with slopes as is which did not result from their actions.

- (3) The requested variance, if approved, will not confer on the applicant any special privilege that is denied by the provisions of this Code to other lands or structures in the same land use classification.

Residents have the option of requesting building permits to construct accessory structures such as paver decks, meeting all ULDC regulations. If the said permit application is denied, residents

may also request variances from the required setback requirement for accessory structures. Residents may also request ISR variances for accessory structures.

(4) Literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the identical land use classification and will constitute an unnecessary and undue hardship on the applicant.

Literal enforcement of the five (5) feet accessory rear setback would require the applicant to remove portions of the paver deck and garden bed to meet the rear setback and in turn, would reduce the rear yard occupancy rate from 34% to 29%.

(5.) That the variance granted is the minimum variance that will make possible a reasonable use of the land or structure.

The applicant has requested a variance from the required 5 feet, which would result in a rear accessory setback of 9 3/8 inches.

(6) That the granting of the variance will be in harmony with the general intent of this Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Granting of the variance may not be in harmony with the general intent of the ULDC.

Staff Recommendation:

City staff concluded by saying the staff has evaluated the variance request and recommends modifying the variance request because the evidence presented by the applicant did not meet all of the variance review criteria listed above. City staff recommends that the paver deck meet a setback of 2.5'. This would bring the deck into compliance with the 30 percent backyard coverage and prevent the applicant from having to remove the flower bed.

However, if approved by the Planning and Zoning Board, the city staff is recommending the following conditions:

1. That the applicant will be permitted to allow the construction of a paver deck with a rear setback of 2.5'.
2. That the applicant be permitted to allow the construction of a paver deck measuring no more than 915 sq ft (32' 8" x 28') which covers 30 percent of the rear yard.
3. The paver deck may not be modified without an additional permit.
4. The variance shall only apply to the paver deck at 110 S. Carolina Avenue. The paver deck shall meet all other requirements of the Lake Alfred Unified Land Development Code.
5. That the approval of this variance request shall not constitute a variance or additional waiver from any applicable development regulation unless specifically noted in the conditions of approval and consistent with the ULDC.
6. The applicant shall apply for, receive, and finalize all necessary City of Lake Alfred building permits for this paver deck by March 9, 2024, or this approval shall be voided.

Alternate Board Member Reinert asked for clarification regarding the code violation with the

accessory structure and wanted to know what was there now. **Community Development Director Bailey** said it had been removed and showed a photo of an empty concrete slab.

Chair Fountain opened the public hearing.

The applicant Raul Valle said he had to apply for a permit because he did not know he needed one to put pavers in the yard. He said they are removable pavers and water can sink into the ground because there is just dirt underneath. He asked for forgiveness for the mistake that he made and said he wasn't aware of the permit requirement.

Chair Fountain asked if the raised bed was 2 ½ feet back.

Mr. Valle said yes, just about that. He said there was a concrete piece there when they got the house. He said they were bringing dirt into the house so they came up with the pavers to make our family home better. He explained he had a garden on the end of the pavers to plant some stuff.

Chair Fountain asked about the photo and said it appeared there was concrete under the pavers.

Mr. Valle said there was a retainer wall at the end (in the photo) that was concrete blocks and that those blocks could be removed.

Information was shared the aerial view from the property appraiser was about two years old, and the pavers were not existing when he purchased the house.

Muhammad Ishmael said he was the developer of the Medina Subdivision and said they had a very strict engineering design in which the aim was to prevent any overflow of floods and heavy rains because the area slopes from Haines Blvd to the lot where he lives at 290 S. Carolina Avenue. He recommended they put into consideration that there will not be any harmful impacts with approval. He said there were designed swales between several homes for the water runoff. They are 10-12 feet between the lots. He recommended that they make all efforts to prevent anything that might cause flooding or overflow of water from this particular structure to other neighboring structures. He is not in favor of the variance because it would establish a precedent for others to do the same thing.

Chair Fountain asked if he had noticed any runoff problems since the pavers had been down a long time and **Mr. Ishmael** said he was not aware of any problems.

Chair Fountain said if they removed the pavers to 2 ½ feet would it help with the engineering as it was designed, and **Mr. Ishmael** said it would be okay with him.

Information was shared that the staff pays attention to stormwater, the lots drain from north to south, there are no pavers in the swale, and the pavers have been in place without any impacts to adjacent properties.

Alternate Board Member Reinert asked how long the pavers had been installed.

City Attorney Claytor reviewed competent substantial evidence and provided an example of firsthand knowledge and testimony by the engineer versus conjecture and speculation that would not be considered competent substantial evidence. He said a variance has to be considered on

a case-by-case basis and we should not make any decisions based on what a property owner may want to come forward and present a case for a variance on, in, or for.

Mr. Valle said he couldn't remember the exact date but they had been there during the storm and it had been more than eight months.

City Attorney Claytor asked if there was any flooding or excess water as a result of the storm.

Mr. Valle said no, not that he was aware of.

Alternate Board Member Reinert said the code enforcement complaint was in June of last year and **Community Development Director Bailey** said code enforcement cases take a long time. He said he wanted to know how much time before June of 2022 were the pavers put down. Director Bailey said they were down about eight months and the applicant said he did not know an exact date.

Chair Fountain said we had a hurricane in September and if it was going to create a problem it would have done it then.

Chair Fountain closed the public hearing.

Chair Fountain moved that we approve the variance for 110 S. Carolina Avenue with the listed City stipulations. **Alternate Board Member Long** seconded the motion. The motion was unanimously approved.

City Attorney Claytor read the formal motion into the record. "I move to grant the variance request as presented, with the staff conditions of approval, after hearing competent substantial evidence that meets all the variance criteria set forth; and hereby authorize the Chairman to sign a Development Order to be recorded in Polk County Public Records"

Chair Fountain introduced the next business item.

2. Variance: 1516 Melrose Street

Applicant: Clayton Properties Group Inc. dba Highland Homes

Request: A request for a variance to the front built-to zone (5'-30'), and change in the orientation of the primary residence from the approved construction plans.

Property Information

Address: 1516 Melrose Street
Parcel ID: 262732-513651-000260

Land Use: Residential (RES)

Zoning: Vintage Residential Neighborhood (VRN)

Variance from Section: **§ Section 2.1.6.C** of the Unified Land Development Code

(ULDC) Development Standards Table.

Background: The Owner, Clayton Properties Group Inc purchased the property in year 2020. On February 1, 2021, the City of Lake Alfred approved a new Unified Land Development Code (ULDC) with Ordinance 1444-20, to replace the previous ULDC, approved by Ordinance 742-93. However, in January 2021, Tract 6 submitted their application for a development agreement with the site plan, this was prior to the passage of the Ord. 1444-20 code, thus the provisions of the Ord. 742-93 code would have been applied to the development. The approved Development Agreement established that the applicant shall meet all requirements of the R-1AA-C district as established in the ORD. 742-93 ULDC, except for the principal structure setback requirements. The principal structure requirements as outlined in the VRN district include the build-to-zone instead of a minimum front setback requirement of 20 feet. This build-to-zone mandates that houses be placed within 5 and 30 feet from the front property line.

City staff reviewed the legal notices, applicable ULDC provisions of measuring setbacks, access facing the primary street, and the development standards table. There were no responses to the mailers.

Variance Criteria

Section 9.9 of the ULDC states that the Board may grant variances when the strict enforcement of the code would create an undue and unnecessary hardship for the applicant. Variances shall be granted after the Board considers all of the following criteria to have been satisfied:

- (1) Special conditions and circumstances exist that are peculiar to the land or structure involved and that is not applicable to other lands or structures in the same land use classification.

The applicant's property is an irregularly shaped lot.

- (2) The special conditions and circumstances do not result from the actions of the applicant.

The special conditions and circumstances onsite are a direct result of the applicants' actions. The applicant submitted for review their proposed lot layout for Tract 6 of the Lakes subdivision for Site Plan approval, Construction Plan approval, and Final Plat approval. Specifically, a Developer's Agreement with a Site plan was submitted in January 2021. The approved Development Agreement established that the applicant shall meet all requirements of the R-1AA-C district as established in the ORD. 742-93 ULDC, except for the principal structure requirements as outlined in the VRN district of the 1440-21 ULDC (5-30' build-to).

The Developers Agreement was meant to provide flexibility.

- (3) The requested variance, if approved, will not confer on the applicant any special privilege that is denied by the provisions of this Code to other lands or structures in the same land use classification.

Applicants have the option of requesting building permits to construct a new single-family residence, meeting all ULDC regulations. If the said permit application is denied, residents may also request variances from the requirements outlined in the ULDC.

- (4) Literal interpretation of the provisions of this Code would deprive the applicant of rights

commonly enjoyed by other properties in the identical land use classification and will constitute an unnecessary and undue hardship on the applicant.

A literal interpretation of the provisions of this Code would not deprive the applicant of rights commonly enjoyed by other properties.

(5) That the variance granted is the minimum variance that will make possible a reasonable use of the land or structure.

The applicant has requested a variance from the required 5'-30' build to zone and to change the approved orientation of the pad for the proposed single-family residence.

(6) That the granting of the variance will be in harmony with the general intent of this Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Granting of the variance is not in harmony with the general intent of the ULDC.

She said such variance will not be injurious to the area or otherwise be detrimental to the public welfare.

Staff Recommendation:

City staff reviewed the staff recommendation and said City Staff has evaluated the variance request and recommends modifying the variance request because the evidence presented by the applicant did not meet all of the variance review criteria listed above. City staff reviewed the considerations and conditions of approval.

If approved by the Planning and Zoning Board, the City staff is recommending the following conditions:

1. That the applicant be permitted to construct a new residential structure (Savannah model elevation) measuring 3,026 sq ft.
2. That the applicant be permitted to construct a new residential structure facing the side lot line (west).
3. The new residence structure shall not exceed a distance of 49' from the side lot line (west).
4. The new residential structure may not be modified without an additional permit(s).
5. No additional variance(s) be granted for future attached or detached accessory structures.
6. The variance shall only apply to the residential structure (Savannah Model Elevation) at 1516 Melrose Street.
7. The new residential structure shall meet all other requirements of the Lake Alfred Unified Land Development Code.
8. That the approval of this variance request shall not constitute a variance or additional waiver from any applicable development regulation unless specifically noted in the conditions of approval and consistent with the ULDC.
9. The applicant shall apply for, receive and finalize all necessary City of Lake Alfred building permits for this residential structure by March 9, 2024, or this approval shall

be voided.

Chair Fountain asked if a pool was considered an accessory structure and he was told yes.

City Attorney Claytor spoke about the complex situation between the merger of two Unified Land Development Codes, he then read the purpose of variances into the record, and said this situation was an unintended consequence.

Alternate Board Member Reinert asked if this locked the applicant into the Savannah model elevation and he was told yes because this was the model the applicant selected for the variance.

Alternate Board Member Reinert moved to grant the variance request as presented, with the staff conditions of approval, after hearing competent substantial evidence that meets all the variance criteria set forth; and hereby authorize the Chairman to sign a Development Order to be recorded in Polk County Public Records. **Vice-Chair Arnold** seconded the motion.

Chair Fountain opened the public hearing.

Shawn Miller, a representative of the applicant, thanked the Community Development Director for a great presentation. He said he had printed materials for the board however, the presentation provided more detail. He mentioned there was this type of lot in The Lakes Tract Four and concluded by saying he appreciated the presentation.

Chair Fountain closed the public hearing and called for a vote on the motion.

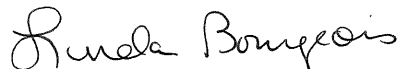
The motion for approval was unanimously approved.

Community Development Director Bailey introduced two audience members interested in joining the Planning and Zoning Board and said they would be considered for appointment at the next City Commission meeting on March 20th. She said on the next agenda there would be a Comprehensive Plan Amendment and consideration to amend the by-laws.

The next Planning and Zoning Board meeting is scheduled for April 13, 2023.

Without any further business, the Planning and Zoning Board meeting was adjourned at 7:01 PM.

Respectfully submitted,



Linda Bourgeois, BAS, MMC, ADAC
City Clerk