

Board of Zoning Appeals
Minutes
April 2, 2013

I. Call to order

Chairman Mike Layman called the regular meeting of the Board of Zoning Appeals to order on April 2, 2013 at 5:30PM in the City Hall Conference Room, 1207 Palm Boulevard. Other members present were Frances Anderson, Scott Davidson, Arnold Karig and Glenn Thornburg; also Secretary Douglas Kerr was present. Mr. Kerr explained that the meeting was advertised in compliance with the Freedom of Information Act.

II. Approval of minutes

The next item on the agenda was the review of the minutes of the March 5, 2013 meeting. Mr. Karig made a motion to approve the minutes and Ms. Anderson seconded the motion. The vote was unanimous in favor of the motion.

III. Variance

Mr. Layman explained that there was a home occupation on the agenda for #25- 31st Avenue, but the owner had withdrawn the application, so the group would move onto the next item on the agenda.

Mr. Layman explained that the Board acted as a quasi-judicial body and all comments made were treated in the same manner as court testimony and therefore any person who would like to speak to the Board should be sworn in. He then swore in all members of the audience that would be speaking.

107 Charleston Boulevard

Mr. Kerr explained that the applicant was requesting an after-the-fact variance to allow a deck and stairs that have been built into the setback to remain. He explained that pursuant to Section 5-4-33 the required setback for the deck is 20 feet, and the new deck is setback 17 feet, and pursuant to Section 5-4-12 (f) the required setback for the front stairs is 15 feet and the new stairs are setback 13 feet.

Mr. Layman asked the applicant if he would like to add anything to the written application. The applicant, Mr. Travis Bedson, explained that the owner and builder of the deck and stairs assumed that because the house had an existing set of stairs that were setback 13 feet from the front property line, that the new construction would be allowed to come as close as 13 feet to the front line. He explained that the problem the owner had was that the existing stairs were unsafe because there was no landing. He added that there is an additional nine feet of open right-of-way between the owner's property and the edge of Charleston Boulevard, so visually the deck does not look too close to the road. He added that he had taken measurements and pictures of neighboring properties and found that there are numerous other properties with stairs and decks equally as close to the road as this property.

Mr. Karig asked if the Building Department was consulted or if the owner applied for a building permit. Mr. Bedson answered no, that his company was not involved until after the problem arose, but a permit application was not filed.

Mr. Layman explained that the Board of Zoning Appeals had to specifically consider four criteria from the ordinance and make a judgment whether the case meets those criteria. He explained that the wanted to read the criteria and have the applicant specifically address all four points for the Board. He explained that the first criterion is that there are extraordinary conditions pertaining to this piece of property. The second criterion is that these extraordinary conditions do not apply to other properties in the vicinity. The third criterion is that the application is effectively prohibiting or unreasonably restricting the use of the property. The fourth criterion is that the approval of the variance will not be detrimental to adjacent property or the public good. He added that the ordinance also specified that the Board cannot consider financial hardships or conditions created by an owner in granting a variance.

Mr. Bedson explained that he believed that the property was extraordinary because the owner could not safely exit the house. He stated that he believed that the conditions do not generally apply to other properties because of the fact that this house was constructed in the 1950's and it is therefore closer to the road than other properties. He explained that he felt that the ordinance was effectively prohibiting the use of the property because of the fact that the owner could not safely exit the house. He stated that he believe that the project was a benefit to the adjacent owners, because the deck improved the appearance of the property.

Mr. Karig stated he did not see how the Board could approve the request given the facts that a building permit was not sought; that if the code was consulted prior to the construction, an alternative design would have been available that satisfied the safety issue and complied with the code; and that the code did not allow the Board to consider hardships created by an owner. Mr. Bedson stated that he acknowledged that the Board cannot consider conditions created by the owner, but that he was requesting mercy at this stage.

Mr. Karig made a motion to deny the application based on the fact that the Board cannot consider conditions created by an owner. Mr. Thornburg seconded the motion and the vote was unanimous in favor of the motion to deny the application.

V. Adjournment

With no other business, the meeting was adjourned at 5:55 p.m.