

MINUTES

MARION COUNTY BOARD OF ADJUSTMENT July 12, 2021

A public hearing of the Marion County Board of Adjustment was held on July 12th, 2021 at 2:00 pm in the Marion County Growth Services Training Room, 2710 E. Silver Springs Boulevard, Ocala, Florida.

The meeting was called to order at 2:07 pm. Members present creating a quorum were: Chairman David Rubin, Members: Ernest Hemschot, Douglas Sherwood, Jack Stackman and Alternate Michael J. Saxe sat in for Nathanael Ramos. Staff members present were: Assistant County Attorney Russell G. Ward, Director Mary Elizabeth Burgess and Staff Assistant IV Darlene A. Pocock, along with Senior Planners Kenneth Odom and Kenneth Weyrauch.

Chairman David Rubin, gave the Invocation followed by leading the Pledge of Allegiance.

Atty. Russel Ward then explained the procedures for hearing variance requests.

Ms. Mary Elizabeth Burgess proceeded by reading the provided Affidavit of Publication and the Proof of Required Mailing and Posting of Notice, and advised that the meeting was properly noticed.

1. **210605V** – James W. and Lisa M. Folden, 17688 SE 102nd Circle, Summerfield, FL 34491, request a reduction of the front setback from 25' to 15' for a proposed addition of an attached 2-car garage, in an R-1 (Single Family Dwelling) zoning classification on Parcel Account No. 6003-016-006. **CONTINUED FROM 6-7-21**

Ms. Burgess confirmed that a request to withdraw the application was received on June 22, 2021 from Mr. James Folden.

PUBLIC COMMENT:

There was no one in the audience to speak for, or against, the request and the chair closed the public portion of the hearing.

Douglas Sherwood made a motion to approve the Withdrawal, which was then seconded by Jack Stackman.

Motion for Withdrawal - Passed 5 to 0

2. **210701V** – Dave K. and Adriana Rodriguez, 10897 SE 108th Terrace Road, Belleview, FL 34420, request a reduction of the (N) side setback from 25' to 12' for an existing work shop/storage shed, in an A-1 (General Agriculture) zoning classification on Parcel Account Number 3760-025-000.

Kenneth Odom presented the case to the board and stated that the record shows this 3.90 acre property is located at 10897 SE 108th Terrace Road, Belleview, FL. and is a paved County maintained road. Mr. Odom explained that the applicant is requesting a variance to allow for a twelve foot setback for an existing workshop/garage that was constructed in 2004 (Building Permit #2004050150 – 12'x20' Prefab Shed). Mr. Odom stated that the applicants purchased the property in January 2021 and were only informed of the accessory structure setback violation three days prior to the closing on the property.

Mr. Odom confirmed that 18 property owners were notified within 300 feet, with no letters of objection received and 1 letter of approval received from the adjacent landowner. Mr. Odom concluded that based on the age of the accessory structure, the fact that the applicants have only recently purchased the home, and the adjacent neighbor has indicated that the proximity of the accessory structure to the property line is acceptable, Growth Services Staff do not believe that granting the Variance would be detrimental to the surrounding properties. The applicant/agent was present to answer questions.

Rusty Stout, IPC Services, Inc., 3445 NE 24th Street, Ocala, FL 34470, agent for the applicant, explained that the previous owner put on an addition to the shed that was not permitted and it was only discovered just prior to the closing. Mr. Stout mentioned that the Rodriguez family didn't have any concerns prior to this news, because the shed area lines up with the home. Mr. Stout stated that there are 5 flag lot stems adjacent that total approximately 120' of driveway easements, so there are no immediate neighbors on that side. Mr. Stout also clarified that the "proposed" areas on the site plan are now "existing areas" added onto the original permitted shed and the new homeowner wants to responsibly bring it all into compliance.

PUBLIC COMMENT:

There was no one in the audience to speak for, or against, the request and the chair closed the public portion of the hearing.

Michael Saxe made a motion to approve *with the condition "that should the structure be removed for any reason, any replacement structure must meet the then required setbacks"* and moved that, having heard competent substantial evidence, the Board finds that: 1. A special condition or circumstance exists on the property that does not exist on other properties within the same zoning and land use area; 2. The applicant did not cause the special condition or circumstance; 3. Literal enforcement of the regulations would create unnecessary and undue hardship and deprive the applicant of rights commonly enjoyed by other properties within the same zoning and land use area; 4. The variance is the minimal variance that will allow reasonable use of the property; 5. The variance will not confer any special privilege on the applicant that is denied to other properties within the same zoning and land use area; and 6. The granting of the variance will not be injurious to the neighborhood or detrimental to the public welfare; And that the Board grant the variance.

Earnest Hemschot made the motion to second. The applicant has met the requirements for a variance and granting the variance would not be contrary to public interest.

Motion for Approval – Passed 5-0

3. **210702V** – SHOPNA, Inc., c/o: Golam Rabbani, President, 1202 6th Street NW, Winter Haven, FL 33881, request a reduction of the front setback from 25' to 22.14' to expand from one (1) fuel pump to three (3), in an B-4 (Regional Business) zoning classification on Parcel Account Number 00054-000-00.

MOVED TO 8-2-2021 PER STAFF DIRECTION prior to the commencement of the hearing.

4. **210703V** – Laurence R. and Pamela Ferber, 10721 SE 151st Street, Summerfield, FL 34491, request a Modification of Action Order 200904V (Reduce ESOZ setback from 75' to 15') to include placement of stairs to second floor balcony, a pool slide and a pool grotto and to also update the ESOZ setback reduction from 75' to 7.5', in an R-1 (Single Family Dwelling) zoning classification on Parcel Account Number 4771-002-031.

Mr. Kenneth Weyrauch presented the case to the board and stated that the record shows this is a .34 acre property located at 10721 SE 151st St, Summerfield, which is in JLW Inc., and accessed from SE 151st St, which is a privately maintained road. Mr. Weyrauch explained that this subdivision is comprised of smaller lots, which were, in some cases, not large enough to facilitate a home and accessory uses without a variance. Homes in the surrounding area include a 1990 home to the north, which pre-dates the ESOZ regulations, and a house to the northwest that was granted a lakeside setback reduction to 40' for the placement of a swimming pool and cage in 2009. Mr. Weyrauch continued that the previous owner of this property, had improved it with a 2006 single-family residence that benefitted from a variance in 2005 for 18' from rear (lakeside) and 19' from the front, which facilitated the construction of the house, as well as, later on in 2008, another variance was requested and granted, resulting in a setback reduction to 1' on the south side for an accessory use.

Mr. Weyrauch claimed that the applicants, Mr. and Mrs. Ferber, recently purchased this property in June of 2020, and a third variance on this parcel was requested and granted (200904V), allowing to further reduce the ESOZ setback from 18' to 15' for a small pool and spa. Mr. Weyrauch explained that the lot appears to have had fill placed accordingly around the 2008 timeframe of the second variance and this fill appears to have provided an additional area sufficient for the pool and hot tub expansion, while still meeting a 15' setback from the water-boundary setback line. Mr. Weyrauch stated the applicant now seeks what would be a fourth variance on the subject property, allowing him to go from the currently approved reduced ESOZ setback of 15 feet to 7.5 feet, due to the fact that after a new survey was done, the applicant realized the high-water line is at 55' in elevation. (Which is 10' from the intended project area instead of 15'.) Mr. Weyrauch stated that the applicant is then requesting another 2.5' to account for overhanging items such as the pool slide or ledge of the pool.

Mr. Weyrauch concluded that the applicant has not applied for a pool permit as of yet, but during the pool permit review, the property will be evaluated for impervious surface coverage and if the impervious surface area for the subject property is over 9,000 sf or 35% of the property, whichever is less, the applicant will have to apply for a Major Site Plan or a waiver to the MSP to account for the storm water on-site. Also, the applicant will have to complete an ESOZ plan with Marion County Zoning.

Mr. Weyrauch confirmed that 10 property owners were notified within 300 feet, with no letters of objection received and 2 letters of support received from adjacent neighbors. The applicant was present to answer questions.

Mr. Larry Ferber, 10721 SE 151st Street, Summerfield, FL 34491, presented a power-point to the board, explaining that he had modified the design since his last approved variance, but he never changed the pool. Mr. Ferber stated that he had hired a Licensed Engineer for the project and when the survey was done, it was realized that the *High Water Line* was different than the original number used to base all his original figures around and the additional modification was made to this variance to bring everything up to date. Mr. Ferber continued that a Landscape Engineer was also contacted and the drainage area has also been accounted for; the Grotto is only 6.5' high so that it is not seen from the neighbor's property and cause any interference in their views; and a berm and swale is to be included as well. Mr. Ferber stated that there are others pool slides around the lake and provided sketches of his proposed grottos and circular staircase to the exterior balcony and slide. Mr. Ferber concluded that the side setbacks have not been impacted and are being meet.

PUBLIC COMMENT:

There was no one in the audience to speak for, or against, the request and the chair closed the public portion of the hearing.

Michael Saxe made a motion to approve and moved that, having heard competent substantial evidence, the Board finds that: 1. A special condition or circumstance exists on the property that does not exist on other properties within the same zoning and land use area; 2. The applicant did not cause the special condition or circumstance; 3. Literal enforcement of the regulations would create unnecessary and undue hardship and deprive the applicant of rights commonly enjoyed by other properties within the same zoning and land use area; 4. The variance is the minimal variance that will allow reasonable use of the property; 5. The variance will not confer any special privilege on the applicant that is denied to other properties within the same zoning and land use area; and 6. The granting of the variance will not be injurious to the neighborhood or detrimental to the public welfare; And that the Board grant the variance.

Earnest Hemschot made the motion to second. The applicant has met the requirements for a variance and granting the variance would not be contrary to public interest.

Motion for Approval - Passed 5 to 0.

OTHER BUSINESS:


The Chairman granted Mr. Jack Stackman permission to have a discussion with staff regarding "High-water Lines" and how the determinations are made. Director Burgess explained how the 100 Year Flood Zone, FEMA and the County all determine and work together to determine. It is also understood that a survey is not a required piece of an application, but ESOZ plans are created with the permitting process if an application is approved.

MINUTES:

The **June 7th, 2021** Board of Adjustment Minutes were agreed for Approval upon a motion by Jack Stackman, with a second by Ernest Hemschot. (Michael Saxe was momentarily excused from the meeting.)


Motion for Approval - Passed 4 to 0.

ADJOURNED: The meeting adjourned at 3:10 PM.



David Rubin, Chairman

Attest:



Darlene A. Pocock
Staff Assistant IV

VARIANCE ACTION FORM

ITEM NO: 210701V

DATE OF PUBLIC HEARING: July 12, 2021

OWNER NAME(s):

Dave K. and Adriana Rodriguez
10897 SE 108th Terrace Road
Bellevue, FL 34420

AGENT NAME(s):

Rusty Stout
c/o: IPC Services, Inc.
3445 NE 24th Street
Ocala, FL 34470

LEGAL DESCRIPTION OF PROPERTY: Parcel Account No. 3760-025-000, SEC 26 TWP 16 RGE 23, "Eden Garden Acres", in Marion County, Florida.

VARIANCE REQUESTED: Requests a reduction of the (North) side setback from 25' to 12' for an existing work shop / storage shed, in an A-1 (General Agriculture) zoning classification.

FINDINGS OF BOARD OF ADJUSTMENT

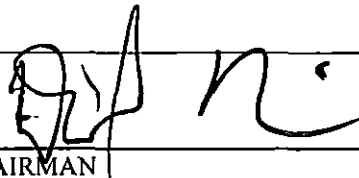
1. **Written Petition.** A written petition for a Variance has been submitted demonstrating that:
 - A. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings with the same zoning classification and land use area.
 - B. The special conditions and circumstances do not result from the actions of the applicant.
 - C. Literal interpretation of the provisions of applicable regulations would deprive the applicant of rights commonly enjoyed by other properties with the same zoning classification and land use area under the terms of said regulations and would work unnecessary and undue hardship of the applicant.
 - D. The Variance, if granted, is the minimum Variance that will allow the reasonable use of the land, building or structure.
 - E. Granting the Variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning classification and land use area.
 - F. The granting of the Variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

2. ✓ **GRANTED:** Based on the Board of Adjustment's finding that the requirements of Paragraph 1 above have been demonstrated by the applicant for Variance.

3. **DENIED:** Based on the Board of Adjustment's finding that the requirements of Paragraph 1 above have not been demonstrated by the applicant for Variance.

4. ✓ **CONDITIONS & SAFEGUARDS:**
A. Should the structure be removed for any reason, any replacement structure must meet the then required setbacks or a variance must be requested.

B. _____



CHAIRMAN

7-12-2021
DATE

VARIANCE ACTION FORM

ITEM NO: 210703V

DATE OF PUBLIC HEARING: July 12, 2021

OWNER NAME(s): **Laurence R. and Pamela Ferber**
10721 SE 151st Street
Summerfield, FL 34491

AGENT NAME(s): N/A

LEGAL DESCRIPTION OF PROPERTY: Parcel Account No. 4771-002-031, SEC 23-TWP 17-RGE 23, "JLW Inc. -- Lake Weir", in Marion County, Florida.

VARIANCE REQUESTED: Requests a modification of Action Order #200904V (Reduce ESOZ setback from 75' to 15') to include placement of stairs to second floor balcony, a pool slide and a pool grotto Also to reduce ESOZ setback from 75' to 7.5', in an R-1 (Single Family Dwelling) zoning classification.

FINDINGS OF BOARD OF ADJUSTMENT

1. **Written Petition.** A written petition for a Variance has been submitted demonstrating that:
 - A. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings with the same zoning classification and land use area.
 - B. The special conditions and circumstances do not result from the actions of the applicant.
 - C. Literal interpretation of the provisions of applicable regulations would deprive the applicant of rights commonly enjoyed by other properties with the same zoning classification and land use area under the terms of said regulations and would work unnecessary and undue hardship of the applicant.
 - D. The Variance, if granted, is the minimum Variance that will allow the reasonable use of the land, building or structure.
 - E. Granting the Variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning classification and land use area.
 - F. The granting of the Variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

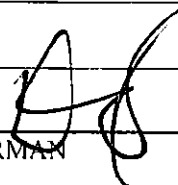
2. **GRANTED:** Based on the Board of Adjustment's finding that the requirements of Paragraph 1 above have been demonstrated by the applicant for Variance.

3. **DENIED:** Based on the Board of Adjustment's finding that the requirements of Paragraph 1 above have not been demonstrated by the applicant for Variance.

4. **CONDITIONS & SAFEGUARDS:**

A. Should the structure be removed for any reason, any replacement structure must meet the then required setbacks or a variance must be requested.

B. _____



 CHAIRMAN

7-12-2021
 DATE