

**MINUTES OF THE REGULAR MEETING OF THE
CITY OF FLORENCE BOARD OF ZONING APPEALS
VIA ZOOM VIDEO CONFERENCING
MARCH 11, 2021**

MEMBERS PRESENT: Larry Chewning (in person); Shelanda Deas, Deborah Moses, and Ruben Chico (via Zoom Video)

MEMBERS ABSENT: Larry Adams, Nathaniel Poston, and Randolph Hunter

STAFF PRESENT: Jerry Dudley, Derek Johnston, and Alane Zlotnicki (in person); also Danny Young, IT (in person)

APPLICANTS PRESENT: Richard Segers, Robert Harris, Dana Frazier, and Rick Havecost (via Zoom Video)

CALL TO ORDER: Chairman Chewning called the meeting to order at 6:00 p.m.

APPROVAL OF MINUTES:

Chairman Chewning introduced the January 38, 2021 minutes. Ms. Deas made a motion to approve the minutes and Ms. Moses seconded the motion. Voting in favor of the motion was unanimous (4-0).

PUBLIC HEARING AND MATTER IN POSITION FOR ACTION:

BZA-2021-02 Request for a variance from the setback requirements for a carport located at 1418 Madison Avenue, in the NC-15 zoning district; Tax Map Number 90036-03-014.

Chairman Chewning introduced the variance and asked staff for their report. Mr. Johnston gave the report as submitted to the Board of Zoning Appeals. Chairman Chewning asked if there were any questions of staff.

Ms. Moses asked staff if the neighbor was the one who complained about the carport. Mr. Johnston confirmed that Mr. Segers had filed the complaint.

There being no further questions for staff from the Board, Chairman Chewning opened the public hearing.

Chairman Chewning then swore in Mr. Robert Harris, the applicant. Mr. Harris stated he chose the carport location because of the existing driveway. He said due to an existing accessory structure and deck on the rear of the home, the carport would not fit in the rear yard. He apologized for not obtaining permits and asked the Board to approve his request.

Chairman Chewning asked staff if a structure of this size requires permitting. Mr. Johnston stated it requires zoning and a building permit and inspection. The Chairman then asked the applicant if a contractor had installed the carport. Mr. Harris said he hired a contractor and he believed they had gotten the appropriate permits, but upon inspection of the contract after installation saw in fine print that the owner is responsible for all permitting.

Ms. Deas asked if the plat in the staff report was created prior to installing the carport. The applicant stated the plat is older, but that the flags and stakes had been placed by the surveyor after installing the carport.

The Chairman asked if the neighbor was on the call. The neighbor, Mr. Segers did not respond. Mr. Johnston stated it appeared he was not on the call but that he was opposed to the request for a number of reasons, including the proximity to the property line, the structure's height, and rain runoff.

Ms. Deas asked if the applicant had explored any alternatives prior to applying for a variance. Mr. Harris stated because of the small lot size, no other location is feasible.

Chairman Chewning asked if the request is denied, what would the ramifications be for the applicant. Mr. Dudley stated he would need to remove the carport and find another location. The applicant asked if it would be possible to angle the carport if it is three feet from the property line. Mr. Dudley said that would be allowed if the structure remains in the rear yard.

Mr. Richard Segers, the neighbor, phoned in to voice his opposition. Chairman Chewning swore in Mr. Segers.

Mr. Segers stated he is opposed to the request for many reasons. He stated on page 13 of the staff report, the photograph clearly shows the carport is not anchored to the asphalt like the applicant stated in his letter to the Board. He stated it shows it is also too close to the property line being only four inches in some places. He stated it is an obvious safety issue especially during a hurricane. He added that the structure is dropping a large amount of water onto the fence and is even causing his side of the fence to deteriorate. Mr. Segers added the structure would negatively impact property values, and that no other home on the street has a similar structure. Mr. Segers stated one leg of the carport is even on his property.

Mr. Harris responded by stating his surveyor assured him the structure is not intruding on Mr. Segers' property. He added that he has not seen any evidence of flooding along the fence since the installation of the carport.

There being no further questions for the applicant from the Board, and no one else to speak for or against the request, Chairman Chewning closed the public hearing and asked for a motion.

Chairman Chewning moved that the Board deny the variance requested based on the following findings of fact and conclusions:

1. That a variance from the terms of the *Unified Development Ordinance* will be contrary to the public interest when, because of special conditions, a literal enforcement of the provision will, in this individual case, result in an unnecessary hardship, in that: **The Board cannot take into consideration hardship, the homeowner is responsible for all permits for construction on their property. The owner had alternative permanent placement options for the carport including the rear yard of the property.**
2. That the spirit of the *Unified Development Ordinance* will not be observed, public safety and welfare secured, and substantial justice done because: **The purpose of the NC-15 zoning district is to have side setbacks and carport side setbacks to preserve open space between houses and this carport was placed without a City Building Permit so the neighbor brought this forward to Codes Enforcement.**

3. That there are extraordinary and exceptional conditions pertaining to the particular piece of property, namely: **Yes, the property is narrower than adjacent parcels and contains an existing accessory structure (approximately 360 square feet) to the rear of the property as well as rear deck that limits placement of the carport in the rear of the property, but these issues would have been resolved had proper permitting been done.**

4. That these conditions do not generally apply to other property in the vicinity, in that: **Historically, previous Zoning Ordinances have required a minimum 3' setback for accessory buildings; and, when the Unified Development Ordinance was enacted in 2018, the zoning designation of this property and surrounding residential properties was determined to most closely match the NC-15 zoning district with an average of 10' side setbacks. Adjacent single-family detached homes contend with similar side setbacks and setbacks are addressed at the time of permitting.**

5. That because of these conditions, the application of the *Unified Development Ordinance* to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property by: **The property can still be utilized as a single-family residence and contains one accessory structure and a rear deck that limits the placement of an additional accessory structure in the rear yard, but does not limit the use of the property.**

6. That the authorization of a variance will be of substantial detriment to adjacent property or to the public good, and the character of the district will be harmed by the granting of the variance, because: **The carport was installed contrary to the provisions of the Unified Development Ordinance without first obtaining a Zoning or Building Permit. A complaint was filed with City Codes Enforcement by the neighbor because of proximity to the property line.**

Ms. Moses seconded the motion. The motion to deny the variance request passed unanimously (4-0).

BZA-2021-03 Request for a variance from the setback requirements for a commercial building to be located at 1809 Gregg Avenue, in the CG zoning district; Tax Map Number 90025-02-009.

Chairman Chewning introduced the variance and asked staff for their report. Mrs. Zlotnicki gave the report as submitted to the Board of Zoning Appeals. Chairman Chewning asked if there were any questions of staff. There being none, Chairman Chewning opened the public hearing.

Chairman Chewning swore in Mr. Rick Havecost, the applicant, to speak in favor of the request. Mr. Havecost stated the building is intended as a location to store cars and a boat. He added the staff of Mickey Finn's are using the graveled surface of the lot as a parking lot for the time being.

Chairman Chewning asked staff if the request includes three variances, Ms. Zlotnicki stated it is.

Chairman Chewning stated his only issue with the request is that there is no buffer between the property and the neighbor. Mr. Havecost stated he has offered to build a fence for the neighbor at his expense, and that the neighbor approves of the planned construction.

Ms. Moses asked the applicant if this lot is beside Mickey Finn's, Mr. Havecost stated it is located immediately behind the store.

The Chairman added he is a patron of the store, and a friend of the applicant.

There being no further questions for the applicant from the Board, and no one else to speak for or against the request, Chairman Chewning closed the public hearing and asked for a motion.

Chairman Chewning moved that the Board grant the variance requested based on the following findings of fact and conclusions:

1. That a variance from the terms of the *Unified Development Ordinance* will not be contrary to the public interest when, because of special conditions, a literal enforcement of the provision will, in this individual case, result in an unnecessary hardship, in that: **This lot is sized for a residential use but zoned for commercial uses. It is surrounded by commercial uses on three sides, and rental single family housing on the fourth side. Parking and landscaping is required for all new commercial development within the City of Florence, but since the UDO doesn't require improved parking for fewer than 5 spaces, parking is not required here.**
2. That the spirit of the *Unified Development Ordinance* will be observed, public safety and welfare secured, and substantial justice done because: **The construction of a storage building without a principal building is not permitted by the Ordinance. The applicant has provided a small office with a bathroom to create a commercial building in strict compliance with the intent of the Ordinance. The purpose of landscaping is to improve the appearance of the site, diminish expanses of urban infrastructure, and mitigate nuisances such as noise and light pollution, and the applicant has stated his willingness to work with the owner of the property next door to provide any sort of improvement requested.**
3. That there are extraordinary and exceptional conditions pertaining to the particular piece of property: **The size of the parcel limits its flexibility for commercial uses.**
4. That these conditions do not generally apply to other property in the vicinity: **Lot sizes in the immediate vicinity vary significantly. This particular lot was historically used for a single family residence.**
5. That because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows: **Requiring adherence to the setbacks for the Commercial General district would limit the owner to 530 square feet in total available building size. Even if required setbacks are lessened, landscape requirements would not restrict the utilization of the property.**
6. That the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance: **Because of the small size of the existing parcel, reducing setbacks for the building would enable commercial development. Landscaping of the site would protect the public good.**

Mr. Chico seconded the motion. The motion passed unanimously (4-0).

ADJOURNMENT: As there was no further business, Mr. Chico moved to adjourn the meeting. Voting in favor of the motion was unanimous (4-0). Chairman Chewning adjourned the meeting at 7:00 p.m.

Respectfully submitted,

Alane Zlotnicki, AICP, Senior Planner
Austin Cherry, Office Assistant III