

MINUTES FOR THE SEMINOLE COUNTY BOARD OF ADJUSTMENT SEPTEMBER 28, 2009 MEETING 6:00 P.M.

Members Present: Mike Hattaway, Chairman; Dan Bushrui, Stephen Coover, and Tom O'Daniel

Staff Present: Kathy Fall, Principal Planner; Denny Gibbs, Senior Planner; and Patty Johnson, Staff Assistant

Mr. Hattaway, Chairman; called the meeting to order at 6:00 P.M. Mr. Hattaway then explained the method by which the meeting would be conducted, rules for voting and appealing decisions.

PUBLIC HEARINGS

1. **2930 Harbour Grace Court** – Martha Garcia, applicant; Request for a rear yard setback variance from 15 feet to 3 feet for a covered screen room in PUD (Planned Unit Development) district; Located on the north side of Harbour Grace Ct approximately 500 feet east of Burlington Dr; (BV2009-81). (District - 3)
Joy Williams, Planner

Denny Gibbs introduced the location of the property and stated the applicant proposed to construct a covered screen room that would encroach 12 feet into the required 15 feet rear yard setback. She further stated there were currently no code enforcement or building violations for the property. She then stated there was no record of prior variances granted for the property.

Martha Garcia stated her name.

Mr. Hattaway asked the applicant would she like to add anything to what Staff had said.

Martha Garcia stated no.

Mr. Coover made a motion to approve the request.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

2. **3626 Supreme Court** – Jonathan McGrath Construction, applicant; Request for a rear yard setback variance from 30 feet to 18.4 feet for a proposed room addition in R-1A (Single Family Dwelling) district; Located on the north side of

Supreme Ct approximately ¼ mile north of McNeil Rd; (BV2009-82). (District - 3)
Joy Williams, Planner

Denny Gibbs introduced the location of the property and stated the applicant proposed to construct a room addition that would encroach 11.6 feet into the required 30 feet rear yard setback. She further stated there were currently no code enforcement or building violations for the property. She then stated she did receive a letter of opposition from the rear neighbor. She also stated there was no record of prior variances granted for the property.

Jonathan McGrath stated he was the building contractor for the applicants. He further stated they were proposing to bring the addition out even to the back of the existing pool. He then stated there was an existing fence and hedge that would make the addition not easily seen from the rear neighbor.

Dr. Brad Giedd stated in regard to the letter of opposition they disagreed with everything stated. He further stated the construction would be along the side of the property that has an 8 foot hedge that would keep any type of nuisance away from the neighbor's property. He then stated as far as the value the addition would improve the property value.

Dr. Kerry Giedd stated the owner of the property that sent in the opposition letter did not reside there but his kids did. She further stated they had complained about the all night parties therefore they knew the neighbors had a grudge with them. She then stated the house on the other side of their neighbors that sent in the opposition letter just completed an addition that far more affected them and they did not complain about it. She also stated they had a mandatory Homeowner's Association but decided to apply for the variance first, but they had submitted an application to the Homeowner's Association and were on the Agenda in two weeks. She lastly stated they had a letter of support from the neighbor next to them on Supreme Court.

Mr. Bushrui made a motion to approve the request.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

3. **Wellington Terrace (Lot 25)** – Robert Micalizio, applicant; Request for a front yard setback variance from 25 feet to 0 feet for an existing Privacy fence in R-1AA (Single Family Dwelling) district; Located on the north side of Wellington Terr approximately ½ mile north of Derbyshire Rd; (BV2009-83). (District - 4)
Joy Williams, Planner

Denny Gibbs introduced the location of the property and stated that applicant proposed to replace an existing 6 feet privacy fence that encroached 25 feet

into the required 25 feet front yard setback along the west property line. She further stated the lot was owned by the Homeowner's Association and was vacant with the exception of a boat dock and boat ramp. She then stated there were currently no code enforcement or building violations for the property. She also stated there was no record of prior variances granted for the property.

Robert Micalizio stated he was a member of the Board of Directors for the Wellington Terrace Homeowner's Association and they wanted to replace the 1981 stockade fence with a new fence in the same location. He further stated he had a letter of support from the owner of lot 24 who was also present. He then stated there was a retention pond to the right of the property that was maintained by the County.

Paul Plasschaert stated he was the owner of lot 24 and he was in favor of doing the same fence that was there.

Mr. Coover made a motion to approve the request.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

4. **1151 Scenic Point Road** – Celia da Silva, applicant; Request for a rear yard from 30 feet to 15 for a pool and 25 feet to 15 feet for the pool screen enclosure in R-1 (Single Family Dwelling) district; Located at the west end of Scenic Point Road approximately 150 feet west of Lakeshore Circle; (BV2009-84). (District 4)
Kathy Fall, Principal Planner

Kathy Fall introduced the location of the property and stated the applicant proposed to construct a pool that would encroach 15 feet into the required 30 feet rear yard setback and a pool screen enclosure that would encroach 10 feet into the required 25 feet rear yard setback. She further stated the property backed up to a canal which is considered a water body and increases the setback requirement.

Celia da Silva stated her name.

Mr. Hattaway asked if there was anything else the applicant would like to add to Staff's comments.

Celia da Silva stated no.

Mr. Coover made a motion to approve the request.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

5. **271 Hound Run Place** – Santos Pardo, applicant; Request for a rear yard setback variance from 15 feet to 13 feet for a proposed covered screen room in PUD (Planned Unit Development) district; Located on the east side of Hound Run Place approximately 50 feet south of Buglers Rest Place; (BV2009-78). (District 2)
Kathy Fall, Principal Planner

Kathy Fall introduced the location of the property and stated the applicant proposed to construct a screen room that would encroach 2 feet into the required 15 feet rear yard setback. She further stated the applicant received an approval letter from their mandatory Homeowner's Association. She then stated the applicant's property backed up to a retention pond in Deer Run.

Santos Pardo stated his name.

Mr. Hattaway asked the applicant was there anything else he would like to add to Staff's comments.

Santos Pardo stated no.

Mr. Bushrui made a motion to approve the request.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

6. **1517 Eden Hall Point** – San Sebastian Estate Homes, applicant; Request for a rear yard setback variance from 20 feet to 13 feet for a proposed single family home in PUD (Planned Unit Development) district; Located on the east side of Eden Hall Point approximately 400 feet north of Henley Downs Place; (BV2009-80). (District 5)
Kathy Fall, Principal Planner

Kathy Fall introduced the location of the property and stated the applicant proposed to construct a single family home that would encroach 7 feet into the required 20 feet rear yard setback. She further stated that on July 27, 2009 the Board of Adjustment granted a side yard setback variance from 7.5 feet to 5 feet but denied the rear yard setback variance from 20 feet to 13 feet for the proposed single family home. She then stated there was a subdivision wall located on the east side of the property that abutted Markham Woods Road. She also stated the applicant wanted another opportunity to further clarify his request. She lastly stated because the cabana was covered it required a 20 feet setback.

Jorge Ulibarri stated the reason he resubmitted the request was because he really felt he needed to clarify what he was doing. He further stated he submitted a letter of support from the neighbor directly behind his property.

Mr. O'Daniel asked if the applicant had changed anything from what he proposed from the last meeting.

Jorge Ulibarri stated yes, I submitted a letter of support from the neighbor directly behind me that also received a variance to come close to the brick wall. He further stated he submitted a view from the neighbor in opposition which is really no view. He then stated there was an issue about the landscaping behind the cabana; he referred to the picture where he showed the area opened and stated it would have to be maintained.

Mr. O'Daniel made a motion to deny the request.

Mr. Coover seconded the motion.

The motion passed by a (3-1) vote. Mr. Hattaway was in opposition.

7. **3533 Foxcroft Circle** – Ellen Schatz, applicant; Request for a rear yard setback variance from 20 feet to 14 feet for a proposed covered screen room in PUD (Planned Unit Development) district; Located on the north side of Foxcroft Circle approximately 700 feet north of Foxton Lane; (BV2009-85). (District 1)
Kathy Fall, Principal Planner

Kathy Fall introduced the location of the property and stated the applicant proposed to construct a screen room enclosure that would encroach 6 feet into the required 20 feet rear yard setback. She further stated the applicant received approval from the Homeowner's Association. She then stated there was an open space tract between the applicant and the Palm Valley Mobile Home Park.

Ellen Schatz stated she really had nothing more to add.

Mr. O'Daniel made a motion to approve the request.

Mr. Coover seconded the motion.

The motion passed by unanimous consent (4-0).

SPECIAL EXCEPTIONS

8. **5681 Red Bug Lake Road** – Publix Super Market, applicant; Request for a special exception for a packaged liquor store in C-1 (Retail Commercial)

district; Located on the southwest corner of the intersection of Red Bug Lake Road and Tuskawilla Road; (BS2009-14). (District 1)
Kathy Fall, Principal Planner

Kathy Fall introduced the location of the special exception stating the existing Publix store was expanding its selection of alcoholic beverages to include liquor. She further stated the sale of liquor required by State Law is to have a separate entrance therefore creating a separate liquor store. She then stated the Publix grocery store currently sold beer and wine. She also stated the site did meet the separation requirements from other package liquor stores as defined by the Land Development Code. She further stated she needed to make some clarifications on the Development Order; (1) The legal description on the development order was for the entire Shopping Plaza, but the Board of Adjustment would only be granting a special exception for space #6. (2) omit Item 3 (d) from the development order because the applicant would lease a separate space from the existing Publix Supermarket. She then stated she received a call from the business owner directly next to the proposed site and asked him to send an E-Mail to state his opposition. She lastly stated Staff recommended approval of the special exception with the following conditions:

- The general layout of the proposed uses as depicted on the conceptual site plan shall not change
- No building shall be increased more than 10% in square feet without Board of Adjustment approval
- The sale of alcoholic beverage will be for only off-premise consumption
- Prior to the issuance of development permits, a site plan that meets the requirements of all other applicable code requirements including Chapter 40 of the Land Development Code shall be reviewed and approved by the Development Review Manager

Heather Ramos stated she was an Attorney with Gray/Robinson Attorneys At Law. She further stated she had the pleasure of representing Publix Supermarkets and she had with her LeAnn Santiago; the Store Manager of the Publix in the Willow Spring Plaza, Geoff Pett; Leasing & Development Manager and David Curry; District Manager. She then stated Publix Liquor Stores are very attractive and well maintained. She also stated the Liquor Store would definitely be an asset to the Winter Springs Plaza. She further stated they wanted to point out that the use was consistent with the area; right next door would be a Sports Bar, which would sell alcohol for on premise consumption and across the street was a Albertson's Liquor Store with off premise consumption which was what they were requesting. She then stated the request would have no adverse impact to the traffic in the area because the space they would be leasing was already in the Plaza. She lastly stated they asked for approval of the special exception.

Kristyn Shields stated she represented the Pretzels Bar and Grill which was located next to the proposed liquor store. She further stated they have operated in the shopping center for over 16 years, and they carried a

packaging license as part of their 4COP licensing for consumption on premises. She then stated they had several concerns about the proposed Publix Liquor Store; we have an outdoor patio surrounded by an iron fence which is located just steps from the front of the proposed liquor store. She also stated they tried their best to monitor the customers but it would be easy for someone to pass a small bottle of liquor over the fence. She further stated they understood that there were several stores in the Plaza that were allowed to sell beer and wine, but the Publix Liquor Store would be yet another hit to their sales that had already been hurt enough by the economy. She lastly urged the Board of Adjustment not to approve the special exception request.

Heather Ramos stated one of the things that needed to be focused on was the use to sell alcohol was compatible with the area especially with the existing on and off premise consumption that was already going on in the area. She further stated if there ever became a problem with people buying from the Publix Liquor Store and taking alcohol into the Pretzels, Publix would like to be made aware of it.

Geoff Pett showed the Board of Adjustment pictures of the Publix Liquor Stores and stated the Publix Associates would not be able to see into the Pretzels Bar and Grill space or the outside patio. He further stated they could put the counter on either side.

Mr. Coover made a motion to approve the special exception request with an additional condition that the counter in the Publix Liquor store face the Pretzels Bar and Grill.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

9. **2987 Alafaya Trail** – Edgar Rivas, applicant; Request for a special exception to establish a mechanical garage in C-2 (Commercial) district; Located on the east side of Alafaya Trail approximately 250 feet north of Carrigan Avenue; (BS2009-12). (District 1)
Denny Gibbs, Senior Planner

Denny Gibbs introduced the location of the special exception and stated the applicant proposed to establish an AAMCO service garage with four (4) lift bays. She further stated the surrounding uses included office, auto repair and restaurant and to the east of the property was residential. She then stated the proposed use was consistent with the trend of development along Alafaya Trail. She also stated Staff did receive two letters of opposition. She lastly stated Staff recommended approval of the special exception with the following conditions:

- The special exception granted will only apply to the existing building

- No building shall be increased more than 10% without Board of Adjustment approval
- The site is limited to the use of an auto repair facility with four (4) working bays
- The proposed hours of operation will be Monday – Friday from 7:00 a.m. – 5:30 p.m.; Saturday 8:00 a.m. – 4:00 p.m. and closed on Sunday
- No outside vehicle storage is permitted
- No outside storage of vehicles used for parts
- Any outside storage of parts, supplies, or materials shall be permitted only in an enclosed or fenced area
- All service work shall be performed within the building
- Compressors shall have a sound attenuating barrier to minimize impacts to the adjacent properties
- Doors at the rear of the building shall remain closed to minimize sound impacts to residential properties
- No outside amplifications of sound
- Prior to the issuance of development permits, a site plan that meets the requirements of all other applicable code requirements including Chapter 40 of the Land Development Code shall be reviewed and approved by the Development Review Committee

Steve Pileggi stated he represented both Edgar Rivas and AAMCO. He further stated AAMCO has been in business for 46 years on a national stage. He then stated AAMCO had their own program for recycling fluids. He also stated they contacted all the neighbors to the right and left of the site and no one stated they had any issues with the request therefore he was surprised to hear of the opposition. He further stated they had no use for outdoor storage. He lastly stated they were looking for a special exception for general automotive use specializing in transmission repair.

Mr. Coover made a motion to approve the special exception request with the following changes in conditions. Saturday hours of operation changed to 9:00 a.m. NO outside storage of parts, supplies or material and compressors shall be stored and utilized indoors.

Mr. O'Daniel seconded the motion.

The motion passed by unanimous consent (4-0).

10. **104 Brewer Street** – Moses Estremera, applicant; Request to amend a special exception for a mechanical garage with auto sales in C-2 (Commercial) district; Located on the east side of Brewer Street approximately 250 feet south SR 436; (BS2009-13). (District 4)
Denny Gibbs, Senior Planner

Denny Gibbs introduced the location of the special exception and stated the applicant proposed to amend a special exception granted in 1977 to include general automotive repair with two (2) working bays and auto sales limited to six (6) vehicles. She further stated the special exception granted was for one bay radiator repair shop with five (5) parking spaces. She then stated the applicant had been operating at the location since 2001 and recently received a code enforcement violation for operating beyond the scope of the granted special exception and amending the special exception would define the scope of business that could be performed on the site and bring it into compliance. She also stated the applicant proposed one repair bay in the existing concrete building and one working bay under the pre-fab canopy which had a lift as identified on the site plan and all service work would be performed within the two (2) bays. She further stated the applicant also has auto sales. She then stated historically the use of auto repair businesses is typical along this section of East Altamonte Drive and the use is consistent with auto sales and service uses approved for adjacent properties. She lastly stated Staff recommended approval of the special exception with the following conditions:

- The special exception granted will apply only to the existing buildings shown on the site plan
- No building shall be increased more than 10% without Board of Adjustment approval
- The site will be limited only to the following uses: (1) Auto repair facility with two working bays as depicted on the site plan and (2) Auto sales: six (6) spaces for auto sales
- The hours of operation shall be Monday – Friday from 8:00 a.m. – 5:00 p.m. and Saturday from 8:00 a.m. – to 2:00 p.m.
- Outside vehicle storage permitted only for short term (30 days or less) as necessary to provide auto repair service to the vehicle owner and only within the fenced area
- No outside storage of vehicles used for parts
- No painting of vehicles allowed on premises
- No general auto repair work shall be performed outside the working bays
- At site plan review, recertification of the septic system is required
- Prior to the issuance of development permits, a site plan that meets the requirements of all other applicable code requirements including Chapter 40 of the Land Development Code shall be reviewed and approved by the Development Review Committee

Moses Estremera stated he was the owner of the property and he had Mr. Looney to assist him with any questions he could not answer.

Mr. Hattaway asked the applicant if he was familiar with staff's recommendations.

Moses Estremera stated yes.

Mr. Hattaway asked the applicant did he have any questions or objections to staff's recommendations.

Moses Estremera stated not at this time.

Michael Looney stated he was the applicant's Architect.

Mr. Coover made a motion to approve the special exception with Staff's conditions.

Mr. Bushrui seconded the motion.

The motion passed by unanimous consent (4-0).

APPROVAL AUGUST 24, 2009 MEETING MINUTES

Mr. Hattaway made a motion to approve the August 24, 2009 Minutes.

Mr. Bushrui seconded the motion.

The motion passed by unanimous consent (4-0).

ADJOURNMENT

Time of Adjournment was 7:30 P.M.