

**BOARD OF ADJUSTMENT MINUTES
OCTOBER 25, 2023 – 2:00 P.M.
Commission Chambers**

PRESENT: Michael Bomar, Vice Chair
Denise Chase, Member
BJ Lawson, Member
Dan Small, Member

ABSENT: Paul Skipper, Chair

STAFF PRESENT: Kristin Coman, Senior Planner; Matthew McConnell, Assistant City Attorney; Brandon Berry, Senior Planner; Ginny Bodkin, Deputy City Clerk

Vice Chair Bomar called the meeting to order at 2:00 P.M.

1. Approval of the Agenda - There were no changes.

The Board unanimously approved the October 25, 2023 agenda by a voice vote.

2. Audience Comments – There were no comments.
3. Approval of Minutes – September 27, 2023 Meeting

Member Lawson moved, and Member Chase seconded approval of the September 27, 2023 meeting minutes as presented; the motion carried unanimously.

4. Action Items

- a. Consideration and Approval of Meeting Dates for 2024

Assistant City Attorney McConnell explained that the meeting dates were distributed early in order for members to check their calendars; a full Board has not been present to date in 2023. He reminded the members that they have the power to change meeting dates by motion if they anticipate an upcoming absence. Member Chase stated that May 29th and June 26th would be conflicts for her; Member Small also had a conflict for May. Member Chase could be available May 27th or 28th. Staff will reach out to secure alternate dates.

Member Chase moved, and Member Small seconded to approve and accept the meeting dates for 2024 as presented; the motion carried unanimously.

- b. Case No. 23060 - 2005 Gulf Way: Practical Difficulty Variance; Sam Angelides, Angelides Builders for Andrea Crowe requests to construct a 10' x 36' elevated rear addition that will not meet the required 20' rear yard setback with 9.9' proposed (LDC 11.7(a)(4)).

Senior Planner Kristin Coman presented the information for this Practical Difficulty Variance request. Her presentation included photographs, zoning, zoning table, property description,

hearing notices, proposed elevation plans, variance criteria, staff analysis and staff comments; the presentation is part of the meeting record.

Staff findings included: the requested rear yard setback represents a 50.5% difference and an encroachment of 10'1", 9 of the 11 properties in the subject block gain access exclusively using the alleyway, the proposed rear addition would be in close proximity to the "T" intersection that may impair maneuverability and visibility of the alley, and alleys in this area are heavily utilized. Staff found that the interest of justice would not be served in granting the variance; the lot is fully conforming in terms of lot requirements for the zoning district, the existing dwelling is already non-conforming with the rear yard setback, and the request increases that by another 50%.

The staff recommendation found that the variance sought would not advance the purposes of Land Development Code (LDC) Section 1.1 and the variance would be a substantial detriment and impair the intent and purpose of the zoning code. Staff recommendation was for denial. No letters were received for or against the variance.

None of the members present declared any ex-parte communications to report.

Owner/Applicant Dan Crowe of 2005 Gulf Way appeared and testified that the homes on both sides of the alley go all the way back to the limit and they are asking for less than that, creating more space for vehicles than the others. When exploring options to expand, they looked at going higher, but that seemed more intrusive with a bigger impact to views.

Authorized Agent Sam Angelides of 3990 Belle Vista Dr. testified that he studied the expansion in many ways, including building up higher and stated the 10 feet off the alley is more than anyone else has. Building up would require new footings within the structure, which would mean taking down a large part of the structure and cause adverse conditions for the neighbors for 6-8 months. He said the columns could be pushed in two more feet if that would help.

Ms. Coman noted that staff looked at the surrounding properties and some were built in the 1930's and 40's; some are single family homes with garage apartments.

Michael Kan of 104 21st Ave., gave public comment against the variance and setting a precedent with future similar variances.

Mark Ciccarelli of 106 21st Ave spoke against the variance.

Vice Chair Bomar closed public comment.

Mr. Angelides was allowed to speak again; the applicant is not asking to put up a fence on the property line as some of the other properties have done, they are trying to minimize the impact.

Board discussion was reopened. Member Lawson inquired about using people's property for alley navigation; resident Michael Kan was asked by the Board to explain that situation. The Board deliberated. They all acknowledged that each case needs to be considered individually.

Member Chase moved, and Vice Chair Bomar seconded to deny the variance for Case No. 23060 based on testimony heard today and staff recommendations that the variance does not

advance the LDC, Section 11.7; the motion failed with a vote of 2-2. Members Lawson and Small voted no, Member Chase and Vice Chair Bomar voted yes.

Member Lawson moved to approve the variance for Case No. 23060 based on testimony heard today with the addition of staff recommendations to prohibit ever enclosing the space beneath the addition and taking appropriate measures to safeguard navigation around the corner; the motion died 2-2. Members Small and Lawson voted yes, Member Chase and Vice Chair Bomar voted no.

The Vice Chair reopened Board discussion on setbacks, frontage, and building up. Attorney McConnell explained the option to the Board of continuing the case to a date certain to have a full Board in attendance or give staff further direction to assist with decision making. He reminded the members that their vote should be based on evidence and criteria presented, not on personal preference. Applicant Crowe was permitted to speak again; he is willing to not park in the space at the turning point to be more accommodating. Resident Mark Ciccarella was allowed to speak a second time regarding setbacks and against the variance. The Vice Chair closed public comment a second time.

Member Chase moved and Member Lawson seconded to continue the hearing of the variance for Case No. 23060 to a date certain of November 29, 2023; the motion passed unanimously.

- c. Case No. 23078 - 2905 Sunset Way: Practical Difficulty Variance; Don Saunders, Saunders Construction for Eliot and Bridgette Heller requests to permit the constructed 20' x 7' (140 sf) trellis to remain that does not meet the required minimum side yard setback of 5' with 1'-10" proposed (LDC Sec. 6.13.(c)(3)a).

Senior Planner Brandon Berry presented the information for this Practical Difficulty Variance request. His presentation included an explanation of the request, zoning, survey, prior variance approval information from 2022 for a balcony, plans of the request, a zoning table, photographs, variance criteria and staff findings and recommendations; the presentation is part of the meeting record. Mr. Berry explained that this property received a variance in April of 2022 for a balcony, pool, patios and walkways. At that time, a trellis was included in the plans but not the variance request for reasons unknown; the trellis was constructed with a permit. Mr. Berry explained the details of the variance request. One letter was received from the neighbors to the north, where the encroachment lies, and they had no opposition.

Staff found that the request would not have an adverse impact on the neighborhood. Staff recommended approval with the conditions that – 1) that the size of the trellis remain at 7'x20' with slats that encroach approximately 8" beyond, and a height of 9'2" as depicted on the variance site plan dated 9/18/23. Any expansion, height increase, or relocation of the trellis would require compliance with the LDC or a subsequent variance obtained and 2) the trellis will not be enclosed or roofed by any means except for the installation and future replacement of the slats as depicted on the variance site plan dated 9/18/23 and the ornamental growth of vines or other landscaping as referenced in the application.

Attorney Brian Aungst, 625 Court St., Clearwater, appeared and testified on behalf of the applicants that the structure that was built was permitted by the City; he suspected that staff at the time assumed it was a garden trellis although it was on the plans as it presently exists. His client

would be fully supportive of complying with all of the conditions of approval. He noted that when the permit was resubmitted in June of this year, all issues pointed out, including pavers and pervious surface ratio, were immediately corrected. He also noted that neighbors at 2909 Sunset Way are supportive of the application.

Applicant Eliot Heller of 2905 Sunset Way testified that the fence will be conforming to City Code, and they are willing to negotiate with the neighbors in any way, if necessary.

There being no audience comment, Vice Chair Bomar opened Board discussion.

Member Small moved, and Member Chase seconded to approve the variance for Case No. 23078 based on the evidence and testimony today, and with the staff recommended provisions on the trellis size and specifications from the 9/18/23 site plan adhered to; the motion carried unanimously.

5. Adjournment – Next meeting November 29, 2023.

The next meeting was discussed in terms of attendance; alternate members were discussed. Mr. McConnell suggested that the Board members request continuing the meeting/s. The City has never used alternates. Ms. Coman asked if there is any additional information that she can include in staff reports to assist with decision making, but the members felt the packets are very inclusive and informational. Ex-parte site visits were discussed; they are not considered negative and can be helpful – just disclosing them is required.

Member Chase moved and Vice Chair Bomar adjourned the meeting at 3:31 PM.

These minutes were approved at the November 29, 2023 Board of Adjustment meeting.