



TOWN OF SMYRNA BOARD OF ZONING APPEALS

MEETING MINUTES

June 27, 2023

5:00 p.m.

Smyrna Town Hall

Chairman Steve Sullivan called the regular session of the Smyrna Board of Zoning Appeals to order on June 27, 2023 at 5:00 p.m. The invocation was given by Phil Wilson and the Pledge of Allegiance was led by Scott Demonbreun.

The following Board of Zoning Appeals members/staff were present/absent:

Present: Steve Sullivan, Councilman; Phil Wilson; Jay Michaelson; Scott Demonbreun; Vanessa Haley

Staff Brian Hercules, Town Manager; Todd Spearman, Assistant Town Manager; Jason King, Asst.

Present: Town Attorney; Kevin Rigsby, Town Planner; Mitchell Wensman, Planner; Kathryn Bobbitt, Office Coordinator

1. Citizens' Comments: None at this time.
2. Approval of Minutes of the April 20, 2023 meeting

Motion by Phil Wilson, seconded by Scott Demonbreun to approve the Minutes for the April 20, 2023 meeting.

Vote: 5 - 0 Passed - Unanimously

3. New Business:
 - a. Special Exceptions:
 1. Orlando & Margarita Perez
207 Hager Drive

Location: 207 Hager Drive	Property Owner: Orlando Perez
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Request: For a special exception to allow a detached accessory apartment.



Staff Analysis

The applicant has requested a special exception to convert a detached garage into an accessory apartment at 207 Hager Drive. The property is zoned R-1, Low Density Residential, and is approximately 0.40 acres in size. The applicant is intending to convert the existing detached garage into independent livable space for familial purposes. It is also stated in the application that the intent is not to use the space for rental purposes.

Section 7.060 B of the Zoning Ordinance details the requirements for authorizing special exceptions. These are detailed below.

Special Exception Requirements

Section 7.060 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff’s findings are as follows:

Section 7.060 Procedure for authorizing special exceptions

The following procedure is established to provide procedures for review of a proposed use as a conditional use or special exception by the Board of Zoning Appeals. The procedure shall be the same whether review is required under Section 13-7-206 of the Tennessee Code Annotated, by this ordinance, or whether a review is requested by the Building Official to determine whether a proposed use is potentially noxious, dangerous or offensive.

B. General Requirements:

A conditional use permit (a special exception) shall be provided the Board finds that it:

1. Is so designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.
 1. Staff finds the proposed use of a detached accessory apartment would not negatively

- affect the health, safety, and welfare of the public.
- 2. Will not adversely affect other property in the area in which it is located.
 - 1. Staff finds that the proposed use should not adversely affect other properties in the surrounding area.
- 3. Is within the provisions of "Special Exceptions" as set forth in this ordinance.
 - 1. Section 5.051.1 C lists "accessory apartment" as a special exception in the R-1 district.
- 4. Conforms to all applicable provisions of this ordinance for the district in which it is to be located as well as the provisions cited in Sections 7.060 and 7.061, and is necessary for public convenience in the location planned.
 - 1. Staff finds that this site may be able to conform to all provisions of the Municipal Zoning Ordinance as listed in Criteria Review Section 7.060 C.

C. Criteria for Review:

Prior to the issuance of a special exception, the Board shall make written findings certifying compliance with the specific rules governing individual special exceptions (Section 7.061), and that satisfactory provisions and arrangement has been made concerning all the following where applicable:

- 1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
 - 1. Access to the site would utilize the existing driveway off of Hager Drive.
- 2. Off-street parking and loading areas where required, with particular attention to the items in item 1. above, and the economic, noise, vibrations, glare, or odor effects of the special exception on or by adjoining properties and properties generally in or near the district.
 - 1. Staff finds that the lot would provide sufficient space for off-street parking due to the length of the existing driveway.
- 3. Refuse and service areas, with particular reference to the items in 1. and 2. above.
 - 1. Refuse collection will proceed in the same manner as currently.
- 4. Utilities, with reference to locations, availability, and compatibility.
 - 1. This location has access to all the necessary utilities.
- 5. Screening and buffering with reference to type, dimensions and character.
 - 1. Not applicable.
- 6. Signs, if any, and proposed exterior lighting with reference to glare, traffic, safety, economic effect, and compatibility and harmony with properties in the district.
 - 1. Staff finds that a proposed detached accessory dwelling unit use should fit the compatibility with properties in the same district in reference to the above effects.
- 7. Required yard and other open space.
 - 1. Staff finds that this yard has the necessary yard and open space as the structure is currently existing.
- 8. General compatibility with adjacent properties and other property in the district.
 - 1. Staff finds that the use may not be compatible with adjacent properties due to other lots in the area not having a detached accessory apartment on the same parcel as the principal structure.
- 9. The following additional rules apply for upper story residential development proposals:
 - 1. All upper story residential development proposals shall require a certified statement demonstrating a firm agreement for parking reserved exclusively for the use of the upper story residential development.
 - 2. All upper story residential development proposals shall be in compliance with all Building, Utility, and Housing Codes within the Smyrna Municipal Code.
 - 3. Not applicable.

Conclusion

Staff finds that this lot would provide sufficient space to allow for a detached accessory apartment due to the structure already existing on site. If approved, staff recommends putting a condition on this request that the applicant will be required to pay all applicable fees associated with an accessory

dwelling unit (Rutherford County Development Tax, Town of Smyrna Impact Fees, Codes inspection fees, etc.). Staff would also recommend adding a condition that the building not be used for rental purposes.

At this time, Chairman Steve Sullivan acknowledged applicant Margarita Perez to speak regarding this request.

Motion by Phil Wilson, seconded by Scott Demonbreun to approve the special exception of converting a detached garage into an accessory apartment located at 207 Hager Drive as presented.

Vote: 5 - 0 Passed - Unanimously

b. Setback Variance:

1. Ricardo L. Galvan
111 Suzinne Street

Location: 111 Suzinne Street	Property Owner(s): Ricardo & Linda Galvan
Tax Map/Group/Parcel #: 34I/E/12.00	Zoning/Use Classification: R-2/Low Density Residential

Request: For a front setback variance of 40' to allow a fence in the front setback to the property line.



Staff Analysis

The applicant has requested a 40' front setback variance to place a fence in the front yard to the front property line. The property is zoned R-2, Low Density Residential, and is approximately 1.44 acres in size. This parcel is located at a cul-de-sac, which naturally makes the front yard pie-shaped due to the curvature of the front property line. Minimum front yard setback requirement in the R-2 district is 35' for any structure, but when this lot subdivision was recorded in 1974, the front setback requirement was 40'. The parcel lines have a normal cul-de-sac shape, however the roadway was never constructed to the normal radius of a cul-de-sac. This presents a situation in which the applicant has an

approximate 35' length along the side property line to the edge of pavement which cannot be used.

There was an existing wooden split rail fence that has existed for years; the applicant replaced the wooden fence with a wrought iron fence in the same place due to maintenance reasons. Under the current Zoning Ordinance regulations, no encroachment on the front setback is allowed for fences, except for corner lots. The Ordinance was amended in 2002 to prohibit fences within the front setbacks. Prior to 2002, fences could be located in the front setback without issue, which explains why other neighbors in the Davis Park Estates subdivision have fences located in their front yards. The fence on the applicant's property appears to have always been located within the right-of-way, however. At a minimum, the fence will have to be removed from the right-of-way as no structures of any kind may be built within the right-of-way. Codes Enforcement noticed the new fence and notified the owner of the current regulations and has submitted an application for a variance to keep a portion of the fence.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 *Procedure for authorizing zoning variances*

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property does have a unique shape in the front yard due to the parcel lines creating a pie-shaped front lot for where a cul-de-sac would traditionally be constructed.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. Due to the shape of the lot, construction of the roadway, and Ordinance amendments, the conditions for the petition of this variance are not typical to other properties within the same district.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Fences are allowed by right within the R-2 district, but are to adhere to all applicable provisions of Section 3.180 of the Zoning Ordinance.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation of the lot was not completed by the applicant, however the fence replacement was completed by the applicant without knowledge of the Ordinance

requirements.

6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could potentially provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-2 district with a structure located in the front yard setback.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may not be the minimum to make reasonable use of this structure for the proposed use. The fence could be removed to meet setback requirements.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property is unique in that it is located on a traditional cul-de-sac shaped lot without the typical pavement found in a cul-de-sac. The previous wooden split rail fence on the property existed for years, prior to the 2002 Ordinance amendment to prohibit fences within front setbacks. In addition, the current regulations state a setback for the R-2 zone is 35', but when the plat was recorded in 1974, the requirement was 40'. At a minimum, the fence would have to be removed from the right-of-way, but the applicant is requesting the structure to be placed at the front property line.

At this time, Chairman Steve Sullivan acknowledged applicants Ricardo & Linda Galvan to speak regarding this request.

Motion by Jay Michaelson, seconded by Phil Wilson to approve the setback variance of the fence in the front yard up to but not including the right of way at 111 Suzinne Street.

Vote: 5 - 0 Passed - Unanimously

2. Richard E. Hurtt
8100 Bostic Drive

Location: 8100 Bostic Drive	Property Owner(s): Richard & Patricia Hurtt
Tax Map/Group/Parcel #: 48A/B/19.00	Zoning/Use Classification: R-3/Medium Density Residential

Request: For a front setback variance of 32' to allow a detached carport along the front property line on Steen Boulevard.



Staff Analysis

The applicant has requested a 32' front setback variance to place a detached carport in the front setback along Steen Blvd. The property is zoned R-3, Medium Density Residential, and is approximately 13,531 square feet in size. This parcel is a corner lot, located on the corner of Bostic Drive and Steen Blvd. Minimum front yard setback requirement in the R-3 district is 35' for any structure.

The proposed structure is to be 16' x 30' in size (480 SF) and placed upon an existing concrete pad. There is an existing shed in the rear yard, which is 80 SF; both of these structures would not exceed the 600 SF maximum for detached structures on this lot. In addition, the applicant would like to construct a white vinyl fence around the carport; this fence would match the existing fence.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

Zoning Variance Requirements

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

Section 7.080 Procedure for authorizing zoning variances

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

B. Standards for Variances not Involving Special Flood Hazard Areas:

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
 1. Staff finds that the property is uniform in shape, size and topographic conditions with no unique circumstances.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
 1. The property is a corner lot, which constricts the rear yard for additional structures since the principal structure has two front setbacks to meet. The house is approximately 40' setback from the front property line, which further reduces any additional space for additional buildings on the property.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
 1. Detached structures are allowed by right in the R-3 zoning district, but are to adhere to all applicable front setbacks of the principal structure.
4. Financial returns only shall not be considered as a basis for granting a variance.
 1. The property owner has not identified financial returns as a reason for requesting this variance.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
 1. The creation of the house and lot shape were not completed by the applicant.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
 1. Staff finds that the variance requested could potentially provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district with a structure located in the front yard setback.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
 1. Staff finds that the requested setback variance may not be the minimum to make reasonable use of this structure for the proposed use. The structure could be relocated, but would still not meet setback requirements due to the house placement on the lot.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
 1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
 1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
 1. Not applicable.

Conclusion

Staff finds that this property is uniform in size and shape to other lots within the R-3 district. However, the parcel is a corner lot, which creates a constricted rear lot size for detached structures.

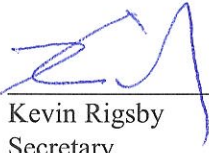
At this time, Chairman Steve Sullivan acknowledged applicant Richard E. Hurtt to speak regarding this request.

Motion by Phil Wilson, seconded by Scott Demonbreun to approve a setback variance of a 32' front setback on Steen Blvd for 8100 Bostic Drive, due to the hardship of two front setbacks.

Vote: 5 - 0 Passed - Unanimously


4. Staff comments and/or other business
5. Adjournment

Respectfully submitted:



Kevin Rigsby
Secretary

Certified by:



Councilman Steve Sullivan
Chairman