

LICENSE AND VARIANCE BOARD

Minutes - Final



Smyrna Community Center
Oak Room
2800 King Street SE
Smyrna, GA 30080

Penny Mocer, Chairperson
Richard Garland, Board Member
Bo Jones, Board Member
Brian Marcos, Board Member
Eric Mohrmann, Board Member
Mary Moore, Board Member
Andrea Worthy, Board Member
Jill G. Head, Secretary

City Attorney Scott Cochran
City Administrator Joseph Bennett
City Clerk Heather K. Peacon-Corn

October 25, 2023
10:00 AM

1. Roll Call

Present: 3 – Chairperson Penny Mocer, Boardmember Richard Garland, Boardmember Mary Moore

Also Present:

Staff: 5 – Tyler Addison, Caitlin Crowe, Jill G. Head, Russell Martin, and Mark Wolff

2. Call to Order

Chairperson Penny Mocer called to order the October 25, 2023 License and Variance Board meeting held at the Smyrna Community Center in the Oak Room at 10:02 AM.

3. Chairperson Instruction and Comment

4. Formal Business

- A. V23-061** Public Hearing - Variance Request - V23-061 - Allow gravel parking - Land Lot 346 - 2433 Ventura Place - Kyle Crump
Ward 5 Councilmember - Susan Wilkinson

Caitlin Crowe, Planner I. provided the following background:

The subject parcel is a 0.29-acre lot located on the east side of Ventura Place. The subject parcel and all adjoining parcels are zoned GC (General Commercial) and are occupied by a variety of commercial uses, including a landscaping company and wrecker service to the south and an animal hospital to the west.

The subject property is currently occupied by Bulldog Electrical Contractors, Inc, an electrical contractor, and U.S. Energy Solutions of GA, LLC, a solar energy sales company; both companies are owned and operated by the applicant. In March 2022, the applicant extended their parking facilities with gravel in the front and rear of their property as well as in the rear of their neighboring property to the north (2423 Ventura Place) without the appropriate permits or variances. The neighboring properties to the east reported significant stormwater issues, including a failed retaining wall, in September

2022. In addition to the gravel, the applicant had erected a 10-foot-tall chain link fence and was using shipping containers in the rear to permanently store materials. Once notified of the violations, the applicant began working with City staff to correct the violations, most specifically the adverse effects of the runoff to the neighboring properties, and come into compliance.

The applicant is proposing to retain the gravel area as a parking surface both in the front and in the rear of the property. Section 901(b) in reference to the City's parking design standards reads, "Each parking facility shall be graded and paved, including access drives and be curbed when needed for effective drainage control." The City's parking design standards do not provide any exemptions from this requirement for specific uses or zoning districts. Therefore, the applicant is requesting a variance to continue use of the gravel parking area. Since gravel is considered an impervious surface due to continued compaction, the subject property is required to provide stormwater mitigation to accommodate the gravel parking. With the addition of the gravel, the subject property has an impervious surface area of 95.3%. The proposed stormwater mitigation involves collecting surface runoff in the northeast corner of the property in a drop inlet structure. From the structure, a 24-inch stormwater pipe will convey drainage within a proposed private easement across two adjacent properties and discharge into an unnamed tributary to Nickajack Creek. Water quality is proposed to be provided in an engineered stone infiltration trench located just upstream of the drop inlet, designed to capture and infiltrate the first 1.2 inches of rainfall. Since the submitted mitigation plan is concept only in nature, a full stormwater mitigation plan must be submitted prior to issuance of a land disturbance permit. Conditions that must be met prior to issuance of a land disturbance permit include a full design of the drainage infrastructure, executed private easement agreement with the adjacent property owners, and a structural evaluation and design of the pipe penetration through the existing retaining wall at the creek. The proposed plan will also restore the rear of 2423 Ventura Place to its original condition prior to the installation of the gravel. As part of this restoration, the applicant will be moving the 10-foot chain link fence and erecting a new 8-foot fence. The City Engineer has reviewed the proposed mitigation plan and can support the variance with the above conditions prior to land disturbance permit issuance.

Due to the nature of the businesses in the immediate surrounding area and the proposed addition of the stormwater mitigation, Community Development believes there will be no further adverse effects to the neighboring properties if the gravel parking area remains.

Community Development has reviewed the request against the variance review standards and recommends approval of the request (V23-061) with the below conditions:

1. Approval of the requested variance shall be conditioned upon the development of the property in substantial compliance with the site plan submitted with the variance application.
2. The applicant shall submit a full stormwater mitigation plan, to be reviewed and approved by the City Engineer, that addresses water quality prior to issuance of the land disturbance permit.
3. A private easement agreement between the property owner and 2465 Ventura Place shall be submitted prior to issuance of the land disturbance permit.
4. A plat revision showing the stormwater management improvements and recorded easement shall be submitted prior to Certificate of Completion.
5. The applicant shall install a concrete driveway apron at the front of the property.
6. Any sections of gravel that is within the City right-of-way shall be removed and replaced with sod.

Chairperson Mocerri asked of staff what happens if the applicant does not comply with the conditions. Ms. Crowe answered that it would become a code violation and handled through Code Enforcement.

Boardmember Moore asked for clarification if a mitigation plan had been submitted. Ms. Crowe responded that a conceptual plan has been submitted, but a full mitigation plan has not yet been submitted. Mark Wolff, City Engineer, explained that for stipulation #2, he will suggest striking through the portion that says "water quality" because the concept that was agreed upon did not address water quality. Ms. Crowe reread stipulation #2 with the strike through: The applicant shall submit a full stormwater mitigation plan, to be reviewed and approved by the City Engineer, ~~that addresses water quality~~ prior to issuance of the land disturbance permit.

Kyle Crump, applicant, came forward. He had no additional information to provide. He stated that he understands and agrees with the conditions read into record.

Boardmember Garland thanked the applicant for doing business in Smyrna and said he is glad to see that they are moving forward toward getting these issues addressed.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Richard Garland made a motion to approve item V23-061, a public hearing and variance request (V23-061) to allow gravel parking on land lot 346 located at 2433 Ventura Place by applicant Kyle Crump; seconded by Boardmember Mary Moore.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Mocerri, Boardmember Garland, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

**B. V23-062 Public Hearing - Variance Request - V23-062 - Allow shipping containers to be used as accessory structures - Land Lot 346 - 2433 Ventura Place - Kyle Crump
*Ward 5 Councilmember - Susan Wilkinson***

Caitlin Crowe, Planner I, provided the following background:

The applicants are proposing to retain two storage containers on the rear of the property to temporarily store solar panels as shipments come in. However, although the storage is temporary until delivered to the client, the containers themselves are permanently on the property to accept each shipment. Since there is room on the property to erect a storage shed or building addition to store the materials, there is no reason that the shipping containers need to be used in lieu of a permanent structure. Community Development believes the hardship is self-created and can be avoided. Staff is not supportive of allowing the shipping containers to be used as accessory structures when adjustments could be made to accommodate City code. Community Development believes there are no unique and special extraordinary circumstances applying to the property to justify the shipping container variance requested. Strict application of the ordinance does not deprive the subject property owner of reasonable use, as a storage shed or building addition could be erected.

According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development has reviewed the request against the variance review standards Community Development finds there to be no unique or extraordinary circumstances applying to the use of shipping containers as accessory structures and recommends denial of that request (V23-062).

Boardmember Garland asked if the City is allowing these anywhere else. Ms. Crowe stated they are not allowing shipping containers anywhere else.

Kyle Crump, applicant, came forward. He added that once the mitigation of the parking lot is rectified, they will lose a large section of their parking lot. They are currently leasing a portion of the neighbor's property. Mr. Crump explained that the reason for the containers is because they are safer, sturdier, and more secure. There has been vandalism and theft around the area, and they have expensive items on their property including generators and solar panels that they are storing in the shipping containers. He also explained that there is not enough parking area. Mr. Crump also noted that they have seen many shipping containers throughout the City. It was stated that they have painted the containers flat black, have hidden them behind a fence, and have gotten permission from neighbors.

Boardmember Garland asked of staff if there is a change in the property encroachment, does that change staff recommendation. Ms. Crowe stated this was always part of the original application. Mr. Garland also asked if the containers are on site now, will there be a grace period given to the applicant for removal. Ms. Crowe affirmed there would be a grace period given.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

*After the vote: Ms. Crowe explained that all appeals go through the Cobb County Clerk of Superior Court. Once a decision letter is finalized, she can give that information to the applicant should he decide to appeal the decision made by this Board.

Boardmember Mary Moore made a motion to deny item V23-062, a public hearing and variance request (V23-062) to allow shipping containers to be used as accessory structures on land lot 346 located at 2433 Ventura Place by applicant Kyle Crump; seconded by Boardmember Richard Garland.

The motion to deny carried with the following vote:

Aye: 3 – Chairperson Mocerri, Boardmember Garland, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

**C. V23-068 Public Hearing - Variance Request - V23-068 - Allow new construction on lot of record below minimum requirements - Land Lot 519 - 1277 Pierce Avenue - Mason Meadows
*Ward 3 Councilmember - Travis Lindley***

Caitlin Crowe, Planner I, provided the following background:

The subject parcel is a 0.46-acre lot located on the north side of Pierce Avenue (see Figure 1). The subject parcel and all adjacent parcels are zoned R-20 and are occupied by detached single-family homes. The subject parcel is located within the J. H. Taylor Subdivision, which was platted in 1944 in Cobb County, prior to the current Smyrna Zoning Ordinance, which was implemented in 1974.

The subject property was annexed into the City in May 2021 through House Bill 744, which brought several Unincorporated Cobb County islands into the City's jurisdiction. Through the annexation, all annexed properties were brought into the City of Smyrna in the R-20 zoning district, which was Cobb County's equivalent zoning district. However, the subject property is only 19,866 square feet while the R-20 zoning district requires a minimum lot size of 20,000 square feet. Since the subject property is an existing lot of record, originally filed for platting in 1944 in Cobb County and then annexed accordingly into the City, the hardship is not self-created. If it were not for the nonconforming lot, no other variances would be required to build the new home.

The applicant is proposing to demolish the existing 1,344 square foot ranch house and build a new 4,467 square foot two-story single-family home on the subject property, which will include five bedrooms and five bathrooms. The façade will be a mixture of brick, board and batten, and hardiplank. As mentioned, the existing one-story home is 1,344 square feet, well below the minimum house size of the R-20 zoning district at 2,100 square feet. With the new construction, the home will be brought into compliance with the R-20 zoning district floor area requirement.

The subject property is unique in that it has less square footage than what the R-20 zoning district requires. The hardship is not self-created as the property is an existing lot of record. The variance requested is the minimum variance needed to build a new single-family home on the subject property. Community Development does not believe building a new single-family home on the subject property in accordance with the R-20 zoning requirements will negatively impact the surrounding properties. Community Development has not received any calls in opposition to the request.

The applicant is requesting to deviate from the City's minimum lot area requirement established for the R-20 Zoning District. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development believes that the requested variance will not adversely affect surrounding properties. Therefore, staff recommends approval of the requested variance with the following condition:

1. Approval of the requested variance shall be conditioned upon the development of the property in substantial compliance with the site plan and elevations submitted with the variance application.

Boardmember Moore asked if the applicant will need further variances. Ms. Crowe stated that with the plan submitted, this is the only variance required.

Mason Meadows, applicant, had nothing further to add, and he understands and agrees to the standard condition read into record.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Richard Garland made a motion to approve item V23-068, a public hearing and variance request (V23-068) to allow new construction on lot of record below minimum requirements on land lot 519 located at 1277 Pierce Avenue by applicant Mason Meadows; seconded by Boardmember Mary Moore.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Mocerri, Boardmember Garland, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

**D. V23-069 Public Hearing - Variance Request - V23-069 - Allow encroachment into the City's 50-foot undisturbed stream buffer - Land Lot 556 - 3351 Lee Street - Karls Mundayar
*Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

Caitlin Crowe, Planner I, provided the following background:

The subject parcel is a 0.42-acre lot located on the east side of Lee Street (see Figure 1). The subject parcel and adjacent parcel to the south are zoned R-15. The adjoining parcels to the north, east, and west are all zoned R-20. All parcels, including the subject parcel, are occupied by single-family detached residences.

The rear yard of 3351 Lee Street is greatly encumbered by the State's 25-foot stream buffer, the City's 50-foot undisturbed stream buffer, and the City's 75-foot impervious surface area setback. In August 2015, the subject property was granted two variances in order to build a new two-car garage within the front setback and 25-foot and 50-foot stream buffers. The variances were granted with several stipulations for stormwater management, to include a pervious paver patio and rain garden in the rear. The current applicant is proposing to renovate the existing rear deck for more usability by enclosing the existing 144 square foot deck to make a sunroom and adding an additional 216 square foot deck. Since this expansion is outside the scope of the original variance application and thus outside the scope of the site's stormwater management, a new variance is required. No other variances are needed as the proposed expansion is within the setbacks and the property is below their impervious coverage maximum of 35%.

The Stormwater Ordinance does not differentiate between replaced and new impervious area. Additionally, per Section 1102, "no nonconforming building, structure or use shall be extended, nor shall its total value be enhanced, unless such extensions or alterations conform with the provisions of this ordinance." Since the deck is being enclosed and a new deck added on, the property no longer remains legally nonconforming. However,

since the existing single-family home and deck were expanded with the previously approved variances, the hardship is not self-created.

The applicant will require additional relief from the City's stream buffer ordinance in order to make the improvements in the rear yard. The applicant has proposed several options for mitigation to include adding a third rain garden, modifying the existing rain gardens, and adding four dry wells. The City Engineer has reviewed the application and accompanying mitigation options and supports the methods proposed for buffer mitigation with the condition that a full mitigation plan be submitted prior to building permit issuance.

Due to the existing stream buffers in the rear yard, Community Development believes this is the minimum variance needed to allow for any expansion of the outdoor amenity. Strict application of the ordinance would deny the applicant the ability to extend the deck in the rear yard due to the existing stream buffers. Similar variances have been approved throughout the city when an appropriate mitigation method has been included. Community Development has not received any calls in opposition to the request.

The applicant is requesting relief from the City's 50-foot undisturbed stream buffer to expand the deck in the rear yard. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. After a review of the standards above, Community Development believes that the additional encroachment will not adversely affect surrounding residents; therefore, staff recommends approval of the requested variance with the following conditions:

1. Approval of the requested variance shall be conditioned upon the development of the property in substantial compliance with the site plan and elevations submitted with the variance application.
2. The applicant shall submit a full stormwater mitigation plan, to be reviewed and approved by the City Engineer, prior to issuance of the building permit.
3. A Stormwater Inspection and Maintenance Agreement must be completed and recorded with the Cobb County Superior Court and an as-built certification statement submitted to Community Development prior to completion of the building permit.

Boardmember Garland asked if work has already begun on this project. Ms. Crowe stated that the deck has been started; there was a deck, but they are expanding it.

Karls Mundaray, applicant, came forward. He stated that the distance from house to end of deck will remain the same. There will be just an extension to the side. The footings will be placed at the same places as previously placed. Mr. Mundaray stated he understands and agrees with the three conditions read into record.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Mary Moore made a motion to approve item V23-069, a public hearing and variance request (V23-069) to allow encroachment into the City's 50-foot undisturbed stream

buffer on land lot 556 located at 3351 Lee Street by applicant Karls Mundaray; seconded by Boardmember Richard Garland.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Mocerri, Boardmember Garland, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

5. Approval of Minutes

A. MIN2023-111 Approval of the October 11, 2023 License and Variance Board Meeting Minutes.

Boardmember Richard Garland made a motion to approve item MIN2023-111, the October 11, 2023 License and Variance Board meeting minutes; seconded by Boardmember Mary Moore.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Mocerri, Boardmember Garland, Boardmember Moore
Nay: 0 – None
Recuse: 0 – None

6. Other Business / Staff Comment

7. Adjournment

Chairperson Penny Mocerri adjourned the October 25, 2023 License and Variance Board meeting at 10:32 AM.

Facilities are provided throughout City Hall for convenience of persons with disabilities.

THIS MEETING WAS PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS IN ACCORDANCE WITH THE NOTICING STANDARDS AS OUTLINED IN O.C.G.A. 50-14-3:
The City of Smyrna website – www.smyrnaga.gov
City Hall, 2800 King Street SE, Notice Boards