

CITY OF ORLANDO

IN RE: Quasi-judicial Hearing November 19, 2014
Applicant: Tomas Dordevic
Owner: Dordevic ADC, Inc.
Petitioner: Dean Grandin, Jr., Planning Official, on behalf of City of Orlando
Case No.: QJ 2014-001 (VAR 2014-00077)

RECOMMENDED ORDER DENYING PETITION

The final hearing in this matter was conducted on November 19, 2014. Based upon a complete review of the record, the testimony of the parties and their witnesses, the exhibits and all of the evidence properly presented at the hearing, these Findings of Fact, Conclusions of Law and Recommended Order to deny the Petitioner's Petition are set forth herein.

PRELIMINARY STATEMENT

Mr. Tomas Dordevic ("Applicant") is an agent for the owner of Property located at 119 N. Hyer Ave, Orlando, FL 32801 (the "Property"). The property has two separate buildings. One building is a 2-story, 2,800 foot single family home. The second building is a 1,400 square foot 2-story garage apartment. The Orlando City Council specifically approved the construction and current location of both of these buildings on the Property. On or about July 23, 2014, the Applicant, on behalf of the Owner, Dordevic ADC, Inc. requested a variance from the existing set-back in order to connect the two structures the City previously approved with a breezeway. Thus, rather than access the garage apartment by ground, the Owner, Dordevic ADC, Inc., would rather access the garage apartment through a connected breezeway.

On or about August 26, 2014, the City of Orlando Board of Zoning Adjustment ("Board") granted the applicant's request for a variance by a four to one vote. On September 2, 2014, Petitioner filed its request for a hearing to challenge the Board's decision pursuant to Title II, Chapter 2, Article XXXII, Section 202.05 (1) of the Orlando City Code. Petitioner contends the Board erred in its decision to grant the variance and requests the Board's decision be overturned and the Applicant's requested variance be denied.

Pursuant to §2.208 of the Orlando City Code, the legal description of the Property is:

Lot 2, Block "E", EDGEWATER TERRACE, according to the Plat thereof as recorded in Plat Book "F", Page 5, Public Records of Orange County, Florida.

(hereinafter "the Property").

BURDEN OF PROOF

Article XXXII of the City of Orlando Code of Ordinances ("Code") sets forth the procedures for quasi-judicial hearings before a hearing officer. Quasi-judicial hearings before a hearing officer are de novo. Pursuant to §2.207(5) of the Code, "The party filing the hearing request shall have the burden of coming forward with the evidence and the burden of proof. The Hearing Officer's decision shall be based on competent substantial evidence after applying the criteria set forth in the Orlando City Code and any applicable administrative, federal and state case law in effect at the time the hearing was filed." Therefore, Petitioner has the burden of proof to show by competent substantial evidence why the Board's decision should be reversed and denial recommended for the variance VAR 2014-00077.

FINDINGS OF FACT

1. The Property is located at 119 N. Hyer Avenue, Orlando, Florida 32801 in the Lake Lawsons Historic District with a zoning designation of R-2B/T/HP/SP and a Future Land Use designation of Residential Medium.
2. The Applicant originally purchased the Property which had a residential structure. Sometime thereafter, the Applicant conveyed the Property to Dordevic ADC, Inc.
3. In March 2007, The City of Orlando's Historic Preservation Board (HPB) denied a request from Mr. Dordevic to demolish the residential structure and construct a new single-family house and detached 2-story garage apartment.
4. The Applicant timely appealed the HPB decision, and in July 2007 a hearing officer overturned the HPB decision.

5. In August 2007, the Orlando City Council upheld the hearing officer's determination and expressly permitted the construction of a 2-story 2,800 square foot home and detached 2-story 1,400 square foot garage apartment accessory structure.
6. In September 2007, the City of Orlando's Board of Zoning Adjustment ("Board") approved a variance to allow the 2-story accessory structure to have a rear-yard setback of about 5 feet, where 15 feet is the minimum requirement. Petitioner did not appeal this decision.
7. The City of Orlando expressly approved and permitted the current location of both the buildings on the property.
8. At the November 19, 2014 hearing, no evidence was presented when the current Owner, Dordevic ADC, Inc., acquired the Property.
9. The current 2-story, 2,800 square foot home and detached 2-story, 1,400 square foot garage apartment accessory structure were completed with the City's express approval.
10. In August 2014, the Applicant applied for another variance (VAR2014-00077) to allow the connection of the principal structure to the accessory garage apartment structure by a well-designed aesthetic breezeway.
11. The Orlando City Code requires a 25 foot setback from the rear property line for a principal structure in the subject property's zoning district. Table 1STD1.LDC, Chapter 58, Orlando City Code.
12. Upon an analysis of the standards for a variance contained in §65.382 of the Orlando Code, City Staff recommended denial of the variance request because in their opinion, the Applicant failed to meet the criteria for a variance.
13. The Board, upon hearing presentations by City Staff and the Applicant, voted to approve the Variance at its August 26, 2014 meeting.
14. On September 2, 2014, the City's Planning Official (Mr. Dean Grandin) timely appealed the Board's decision.

15. On November 19, 2014, the parties attended the quasi-judicial hearing on this matter.

16. No one from the public objected to the Applicant's proposed breezeway at the hearing.

The only comments in the record from the public are from the owner's neighbor, Mr. John M.

Manson. Mr. Manson wrote:

Based on the proposed location and size, the breezeway will not be visible to any of the neighboring properties other than mine, from my backyard.

Once again, please accept this letter in support of the breezeway connector that the Dordevic's are proposing.

CONCLUSIONS OF LAW

17. Section 65.382 of the Orlando City Code states a zoning variance may be approved only if each of the below six standards are met:

a. Special Conditions and Circumstances – Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to the other lands, structures, or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties do not constitute grounds for approval of any proposed zoning variance.

b. Not Self-Created – The special conditions and circumstances do not result from the actions of the property owner. A self-created hardship does not justify a zoning variance.

c. No Special Privilege Conferred – Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by the Land Development Code to other lands, buildings, or structures in the same zoning district.

d. Deprivation of Rights – Literal interpretation of the provisions contained in the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would impose unnecessary and undue hardship on the property owner. Financial loss or business competition does not constitute grounds for approval of any

variance. Purchase of property with intent to develop in violation of the restrictions of the Land Development Code also does not constitute grounds for approval.

e. Minimum Possible Variance – The proposed zoning variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

f. Purpose and Intent – Approval of the zoning variance will be in harmony with the purpose and intent of Growth Management Plan and the Land Development Code and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

18. Petitioner failed to show by competent substantial evidence the Board erred in deciding the Owner met each of the six (6) standards for a Variance as stated in the Orlando City Code.

19. Special Conditions and Circumstances - By approving the applicant's request to demolish and construct two new structures in violation of the City's set-back requirements, the City created a peculiar and special condition and circumstance on the property and its buildings. Petitioner failed to show by competent substantial evidence there were not special conditions and circumstances existing which are peculiar to the land and buildings and which are not applicable to other land structures or building in the same zoning district. From the evidence at the hearing, the Property at issue was the only property where the City had expressly approved the demolition of an existing historic structure and approved the construction of two new structures which violated the City's set-back requirements.

20. Not Self-created - Petitioner failed to prove by competent substantial evidence the special conditions and circumstances were the result of the current property owner's actions. Petitioner alleged in its Petition the Property was owned by Mr. Tomas Dordevic. The evidence produced at the hearing showed the Property was owned by Dordevic ADC, Inc., a Florida corporation. There was no evidence presented whether Dordevic ADC, Inc. acquired the Property before or after Tomas Dordevic requested and obtained approval from the City of

Orlando to demolish the historic structure on the property and rebuild two separate structures in violation of the City's setback requirements. Because there was no evidence that the special conditions and circumstances were the result of the current Owner's actions, the City failed to show by competent substantial evidence the special conditions and circumstances were created by the current property Owner.

21. No Special Privilege Conferred - The City failed to prove the Board's approval of the variance would confer upon the applicant a special privilege that is denied by the Land Development Code to other lands, buildings or structures in the same zoning district. This case is unique. The City already approved the location of the existing buildings which already violate the City setback regulations as written. Furthermore, Petitioner and the Applicant both provided ample evidence of numerous homes within the City containing breezeways which connected a principal structure to an accessory structure in violation of the City's setback requirements.

22. Deprivation of Rights - Petitioner failed to show by competent substantial evidence the City's Land Development Code would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would not impose an unnecessary and undue hardship on the property owner. As previously noted, the City expressly approved the demolition of the prior historic structure on the property and permitted the Applicant to construct the buildings in violation of the City's existing setbacks. In addition, to force the current property owner or its tenants to access and travel between the two buildings through the existing gravel walkway as opposed to an above-ground breezeway is unnecessary and would, especially in times of inclement weather, cause an undue hardship on the property owner or its tenants. From the evidence presented at the hearing, the City, through its prior approvals, created a unique circumstance on the property between the two existing buildings.

23. Minimum Possible Variance - Petitioner failed to prove by competent substantial evidence the Board's variance approval was not the minimum variance that will make possible

the reasonable use of the land building or structure. As previously noted, the City created a unique situation regarding the land between the two existing buildings the City expressly approved. The proposed breezeway the Board approved is indeed the minimum variance that will make possible reasonable use of the land between the two buildings. The breezeway is well-designed and is a small, unobtrusive pathway between the two existing structures the City approved. The proposed breezeway is 48 square feet (8 feet long by 6 feet wide).

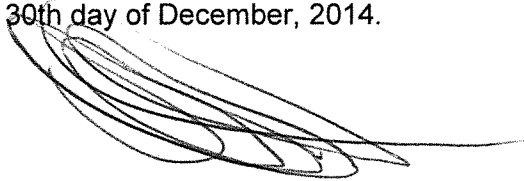
24. Purpose and Intent. Petitioner failed to prove by competent substantial evidence that approval of the variance would not be in harmony with the purpose and intent of the Growth Management Plan and Land Development Code and that such variance will be injurious to the neighborhood or otherwise detrimental to public welfare. Based on the evidence at the hearing, the proposed breezeway is in harmony with the Land Development Code. City of Orlando Code, Section 65.370, Purpose of Zoning Variance Requirements, specifically states "the Board of Zoning Adjustment may grant variances where it finds that there are conditions peculiar to the property which create undue construction or development hardships in complying with the strict letter of this chapter."

As previously noted, the City of Orlando created peculiar conditions to the Property in approving the demolition of the existing structure and the rebuilding of two new structures in violation of the City's setback requirements. Again, the proposed breezeway is minor, well-designed, and is in harmony with the Land Development Code as previously interpreted by the City and is in harmony with all the other breezeways the City permitted or continues to permit between two structures as shown at the hearing. Petitioner also failed to prove that the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare. The only evidence presented of the breezeway's effect on the neighbors or neighborhood, was from Mr. John M. Manson. John M. Manson, according to his letter, was the only property

owner who would see the breezeway from his property and had no objection to the breezeway and supported the Applicant's request for a variance.

Based on the foregoing Findings of Fact and Conclusions of Law, I **HEREBY RECOMMEND** the City of Orlando City Council accept the decision of the City of Orlando Board of Zoning Adjustment and approve Variance 2014-00077.

RESPECTFULLY SUBMITTED this 30th day of December, 2014.



DEREK A. SCHROTH, ESQ.
Hearing Officer
Florida Bar No. 0352070
Board Certified in City, County and Local
Government Law

Pursuant to Section 2.208 of the Orlando City Code, the parties have ten (10) working days from the date of receipt of this Recommended Order in which to submit to the Clerk written exceptions for presentation to the Orlando City Council in its consideration of this Recommended Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished via e-mail to:

Tomas Dordevic
Applicant
tomas@dordevic.com

David J. Bass, Esq.
Attorney for Petitioner
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Cynthia Sanford
Hearing Administrator