



# BOARD OF ZONING ADJUSTMENT

MINUTES  JULY 22, 2014

## MEETING INFORMATION

### Location

#### **City Council Chambers**

2nd Floor, City Hall

One City Commons

400 South Orange Avenue

### Time

2:00 p.m.

### Members Present

Avery Donaudy, Chairperson  
[8/10]

Griff Ariko, Vice Chairperson  
[9/10]

Asima Azam [5/6]

Robert High [8/10]

Laura Hodges [9/10]

Byron Lastrapes [9/10]

Elena Pathak [9/10]

Billy Wilson [6/6]

### Members Absent

None.

## OPENING SESSION

- Determination of a quorum.
- Avery Donaudy, Chairperson, called the meeting to order at 2:00 p.m.
- Pledge of Allegiance.
- The Board ACCEPTED the Minutes of the June 22, 2014 BZA Meeting as presented.

## PUBLIC COMMENT

Chairperson Donaudy pointed out that any member of the public could be heard on any matter before the board; if an item was listed on the consent agenda, any member of the public could ask that the item be pulled and placed on the regular agenda.

## AGENDA REVIEW

Executive Secretary Cechman reviewed the items on the consent agenda.

## CONSENT AGENDA

### 1. VAR2014-00062 AMERICAN HEART ASSOCIATION SIGN

Applicant: Randall Baker, Land Art Landscape Architect, 754 Ellwood Ave., Orlando, FL 32804

Owner: American Heart Association Florida, 11207 Blue Heron Blvd. N., St. Petersburg, FL 33716

Location: 225 E. Marks St. (±0.58 acres)

District: 3

Project Planner: Jim Burnett (407.246.3609 - james.burnett@cityoforlando.net)

### Requested variances:

- A. Design Variance to allow a monument sign in the Traditional City Overlay; and
- B. Variance of 4 sq. ft. to allow 17.5 sq. ft. of total sign area, where a maximum 13.5 sq. ft. of sign area is allowed.

*Recommended Action: Approval of the requested variances, subject to the conditions in the staff report:*

1. Development shall be in strict conformance with all conditions and the survey and photographs found in this report, subject to any modification by the Board of Zoning Adjustment (BZA) and/or City Council. Minor modifications to the

approved variance may be approved by the Zoning Official. Major modifications, as determined by the Zoning Official, shall require additional review by the BZA.

2. All applicable City, county, state or federal permits must be obtained before commencing development.
3. Appearance Review will be required during permitting to ensure compliance with the variance conditions.
4. Final design shall comply with any additional conditions established by the Appearance Review Board (ARB).
5. The sign materials and finishes shall match or complement those of the principal building.
6. Landscaping shall be consistent with the landscape plan provided with the variance application, except any aspect which conflicts with City Code.

## 2. VAR2014-00065 2978 MYSTIC COVE DR.

Applicant/Owner: Duane DeBoer, 2978 Mystic Cove Dr., Orlando, FL 32812

Location: 2978 Mystic Cove Dr. (±0.44 acres)

District: 1

Project Planner: Jim Burnett (407.246.3609 – james.burnett@cityoforlando.net)

Requested variance:

- Variance of ±41.5 ft. to allow a deck/platform ±8.5 ft. from the Normal High Water Elevation of Lake Porter, where a minimum 50 ft. lakefront setback is required.

*Recommended Action: Approval of the requested variance, subject to the conditions in the staff report:*

1. Development shall be in strict conformance with all conditions and the survey and photographs found in this report, subject to any modification by the Board of Zoning Adjustment (BZA) and/or City Council. Minor modifications to the approved variance may be approved by the Zoning Official. Major modifications, as determined by the Zoning Official, shall require additional review by the BZA.
2. All applicable City, county, state or federal permits must be obtained before commencing development.
3. Littoral zone plantings to be placed along the lake edge north and south of the deck (to protect the shore from erosion).

**Board member Ariko moved APPROVAL of the CONSENT AGENDA. Board member Pathak SECONDED the MOTION, which was VOTED upon and PASSED by unanimous voice vote, noting the conflict listed above.**

## REGULAR AGENDA

### 3. VAR2014-00036 6441 MACKENZIE ST.

Applicant/Owner: Harry Lugo, 6441 Mackenzie St., Orlando, FL 32807

Location: 6441 Mackenzie St. (±0.18 acres)

District: 4

Project Planner: Jim Burnett (407.246.3609 – james.burnett@cityoforlando.net)

Requested variance:

- Variance of 1.7 ft. to allow an expanded driveway to be 0.3 ft. from the east side lot line, where a minimum 2 ft. setback is required.

*Recommended Action: Denial of the requested variance.*

Jim Burnett, Planner III, City Planning Division, introduced the case using PowerPoint. He noted that the Board had heard this same case in May 2014, but that it had been remanded back to the Board by District 2 City Commissioner Tony Ortiz at the June 23 City Council hearing. The intent was that a fuller Board could come to a more decisive conclusion rather than the 3-3 tie from May 2014. Mr. Burnett said staff was not changing the recommendation of denial, because the applicant still met only one of the six variance criteria. Board member Lastrapes confirmed with Mr. Burnett that this case had been brought to the City's attention by a Code Enforcement citation.

Harry Lugo, 6441 Mackenzie St., Orlando, FL 32807, spoke as the applicant in support of the request. He distributed a handout with photographs of neighboring properties with similar driveway arrangements. The handout also included an affidavit from his neighbor immediately to the east that stated he had no intention of putting a driveway up against the property line. Mr. Lugo said he wanted to show that his neighbor would not be creating an extra-wide driveway across two properties.

Mr. Lugo stated he had originally poured the driveway with the intent of lining it up with the fence gate—it was an aesthetic choice. He acknowledged that many of the properties in the photographs were “grandfathered in” from older codes, but his driveway matched with the character of the neighborhood. Chairperson Donaudy pointed out that some of the photos showed the driveway didn't always line up exactly with the fence or gate like Mr. Lugo had done. Board member High asked if Mr. Lugo knew he was pouring concrete outside the limits of the code; Mr. Lugo admitted he did the work without a permit, and apologized for that. He did say he would be willing to work with staff on the proposed concrete taper to make the driveway more usable.

Board discussion ensued. Assistant Attorney David Bass recommended that the Board treat the topic as a totally new hearing, rather than trying to remember what had been discussed at the May 2014 hearing. Board member Pathak stated she was still against the request because it went directly against the code. She also expressed concern about the neighbor affidavit, because if someone else moved in they might not agree to the same conditions. Board member Hodges agreed that the landscape buffer needed to be maintained.

Board member Lastrapes said that while he originally voted to deny the request, he was willing to change his vote because the applicant seemed more willing to work with staff this time. Board member Pathak pointed out that without the taper recommended by staff, vehicle tires would tear up any landscaping. Board member Azam noted that two cars is now the norm; the houses were built closer together in the past, leading to the current situation.

Chairperson Donaudy suggested angling or curving the driveway to alleviate the buffer issue, but Board member High cautioned against designing on the spot and stated there wouldn't be enough room for the applicant's truck anyway—a back tire would inevitably sit on the grass.

After more discussion about the landscaping, the Board moved toward approving a lesser variance as a compromise.

**Board member High moved APPROVAL of a LESSER VARIANCE of 12 inches, subject to the following conditions:**

1. Development shall be in strict conformance with all conditions and the survey and photographs found in this report, subject to any modification by the Board of Zoning Adjustment (BZA) and/or City Council. Minor modifications to the approved variance may be approved by the Zoning Official. Major modifications, as determined by the Zoning Official, shall require additional review by the BZA.
2. All applicable city, county, state or federal permits must be obtained before commencing development.
3. Appearance Review will be required during permitting to ensure compliance with the variance conditions.
4. Driveway shall be permitted and finished, including provision of a taper from the front property line to the expanded driveway and re-sodding of area between the new driveway and the front lot line.

**Board member Ariko SECONDED the motion, which was VOTED upon and PASSED by 6-2 voice vote (Board members Lastrapes and Pathak opposed).**

**4. VAR2014-00060 1338 CUMBIE ST.**

Applicant/Owner: J. David Torbert, 1338 Cumbie St., Orlando, FL 32804

Location: 1338 Cumbie St. (±0.21 acres)

District: 3

Project Planner: TeNeika Walker (407.246.4257 – teneika.walker@cityoforlando.net)

Requested variance:

- Variance of 4 ft. to allow an existing 10 ft. tall containment net (fence) along the rear lot line, where a maximum 6 ft. tall fence is allowed.

*Recommended action: Denial of the requested variance.*

TeNeika Walker, Planner I, City Planning Division, introduced the case using PowerPoint. She noted the Code Enforcement citation for the containment net, and that it had been installed without permits. She stated the applicant couldn't meet code under current conditions and that a variance was the only solution. Board member High asked if the structure was temporary or permanent; Ms. Walker said it was intended to be permanent. She also pointed out the minimal distance between the net and the basketball court itself. The Code Enforcement complaint was originally based on a neighbor's concerns about impervious surface ratio and flooding resulting from the court's placement, but Ms. Walker noted the ISR was under the limit.

Board member Wilson asked if this was actually being treated as a fence. Ms. Walker said yes, and Executive Secretary Cechman explained that tennis court rules guided staff's thinking in this case. Chairperson Donaudy asked if a lattice higher than 8 ft. would be allowed. Mr. Cechman noted that he was allowed to issue a Modification of Standards for up to 8 ft., but anything more than that had to go through the variance process. Board discussion ensued on whether the containment net was still needed, since the goalpost had been moved to be up against the house.

David Torbert, 1338 Cumbie St., Orlando, FL 32804, spoke as the applicant in support of the request. He said that previous discussion had covered much of what he wanted to say, but he was adamant that "it's not a fence", though he admitted he might be parsing words. The main purpose was to prevent basketballs from going into the neighbor's yard. He identified the basketball court surface material as tile with concrete underneath. Board member Ariko asked if he had been made aware of the e-mails in support of the request; Mr. Torbert said he didn't know of them. He also stated he didn't know that the neighbor's complaint had been about flooding.

Board discussion ensued. Board member Pathak asked if temporary PVC piping with netting would be a way to get around the requirements, but Executive Secretary Cechman responded that the nature of the term "temporary" would be in dispute, especially in regards to permits. Board member Ariko expressed concern about applying tennis court logic to a basketball court. Assistant City Attorney David Bass noted City Code did not define "fence", so he recommended using the ordinary dictionary definition. Based on that definition, the structure in question should be considered a fence. Board member Azam thought the structure should be lower and that the applicant should be required to find a solution that would be of a less permanent nature. Board member Ariko admitted the netting looked "well thought-out" and better than a homemade object. Board member Hodges stated that a temporary structure that would be put up and taken down multiple times through the years would eventually start to look less appealing.

**Board member Ariko moved APPROVAL of the VARIANCE, subject to the following condition:**

- Development shall be in strict conformance with all conditions, the surveys, and the photographs found in this report, subject to any modification by the Board of Zoning Adjustment (BZA) and/or City Council. Minor modifications to the approved variance may be approved by the Zoning Official. Major modifications, as determined by the Zoning Official, shall require additional review by the BZA.

**Board member High SECONDED the motion, which was VOTED upon and PASSED by 7-1 voice vote (Board member Azam opposed).**

## OTHER BUSINESS

- No items.

## ADJOURNMENT


Chairperson Donaudy adjourned the meeting at 2:52 p.m.

## STAFF PRESENT

Mark Cechman, City Planning  
Karl Wielecki, City Planning  
TeNeika Walker, City Planning  
Jim Burnett, City Planning  
Ken Pelham, City Planning

Richard Forbes, City Planning  
Doug Metzger, City Planning  
Brooke Bonnett, Economic Development  
John Groenendaal, Permitting Services  
David Bass, City Attorney's Office

Also in attendance was Tony Ortiz, City Commissioner for District 2.

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Mark Cechman, AICP, Executive Secretary

  
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Ed Petersen, BZA Recording Secretary