

CITY OF ORLANDO
QUASI-JUDICIAL PROCEEDING

Applicant: Randy Bumbalough, ARC Design Lab
Owner: Richard Faulkner
Petitioner: Jonathan Williams
Case No.: QJ 2017-002 (VAR2017-10008)

ORDER DETERMINING LACK OF JURISDICTION

On August 22, 2017, Petitioner Jonathan Williams timely filed his Request for a Hearing Before a Hearing Officer requesting a quasi-judicial determination of variance requests concerning property located at 642 W. Church St, Orlando, Florida. After thorough review of the City of Orlando Code of Ordinances ("City Code") and all other applicable legal authority, there is no jurisdiction for a hearing officer under Article XXXII of the City Code to proceed or preside over this matter at a quasi-judicial hearing.

1. Article XXXII of the City Code vests an assigned hearing officer with jurisdiction and the authority to preside over quasi-judicial matters upon the timely filing of a hearing request. See Art. XXXII, §§2.203(8) and 2.205(1), City Code.
2. A hearing officer's authority and jurisdiction to preside over quasi-judicial matters is also conditioned upon a petitioner's timely filing of a petition pursuant to Art. XXXII, §2.205(2).
3. For a quasi-judicial matter to proceed before a hearing officer, Art. XXXII, §2.205(2), City Code, requires a petitioner file his petition within 20 days of the date of petitioner's request for hearing.
4. Art. XXXII, §2.203(5), City Code, defines "days" as "calendar days" and does not authorize any party or hearing officer to modify, waive or rescind the definition of "days" as set forth in the City Code.
5. Pursuant to §2.205(2), Petitioner Jonathan Williams timely filed his Request for a Hearing Before a Hearing Officer on August 22, 2017.

6. Petitioner Jonathan Williams was required to file his petition on September 11, 2017.
7. Petitioner failed to timely file his petition on September 11, 2017, and as of the date of this Order, Petitioner Jonathan Williams has not filed his petition.
8. After the deadline for filing the petition, Petitioner requested an extension to file his petition due to "Hurricane Irma."
9. Regardless of the reasonableness of Petitioner's request for an extension of time to file his petition, the City Code does not permit a hearing officer to deviate from the City Code's mandate a petitioner file his petition within 20 days of the date of petitioner's request for hearing.
10. The City Code also does not grant discretion to a hearing officer to extend the date for Petitioner to file a petition. To the contrary, the Code states: "Failure to file the petition in a timely manner shall result in an automatic denial of the appeal with prejudice with no hearing being necessary." Art. XXXII, §2.205(3), City Code.
11. Governor Rick Scott's September 4, 2017, Executive Order 17-235 which declared an emergency due to Hurricane Irma, extended and waived certain deadlines, but did not extend or waive the requirement for petitioner to file his petition on September 11, 2017.
12. Similarly, the declaration of emergency declared by Mayor Buddy Dyer activated Chapter 43A of the City Code which alters, during a state of emergency, certain code requirements, but did not extend or waive the requirement for petitioner to file his petition on September 11, 2017.
13. There was no extension of time for petitioner file his petition passed the code mandated due date.
14. Because there was no extension and because a hearing officer's authority and jurisdiction to preside over quasi-judicial matters is conditioned upon a petitioner's timely filing of a petition, there is no jurisdiction and petitioner's request is **DENIED**. See Miami-Dade County

v. *Peart*, 843 So.2d 363 (3rd DCA 2003)(where rule requires timely filing for jurisdiction, untimely filing results in dismissal of appeal because there is no jurisdiction).

ORDERED this 20th day of September, 2017.



DEREK A. SCHROTH, ESQ.
Hearing Officer
Florida Bar No. 0352070
Florida Bar Certified Expert in Business
Litigation and Local Government Law

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished this 20th day of September, 2017, by electronic mail to all persons listed below.

/s/ Cynthia E. Sanford
Cynthia Sanford
Hearing Administrator

Jonathan Williams, Petitioner
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