



## *City of Miami Springs, Florida*

The Board of Adjustment met in Regular Session at 7:00 p.m., on Monday, October 7, 2013 in the Council Chambers at City Hall.

### 1) Call to Order/Roll Call

The meeting was called to order at 7:03 p.m.

The following were present: Vice Chairman Francisco Fernández  
Ernie Aloma  
Bill Tallman  
Michael White  
Bob Calvert

Absent: Chairman Manuel Pérez-Vichot

Also present: City Attorney Jan K. Seiden  
Planning and Zoning Director James H. Holland  
Acting City Clerk Suzanne S. Hitaffer, CMC

### 2) Approval of Minutes:

Minutes of the September 3, 2013 meeting were approved as written.

Board member Tallman moved to approve the minutes. Board member Aloma seconded the motion which was carried unanimously on voice vote.

### 3) Swearing in of all Witnesses:

The Acting City Clerk swore in the witnesses in the audience who were going to testify during the meeting.

### 4) New Business: None

5) Old Business:

- A) Case # 07-V-13  
Alex Guillamont  
1095 Raven Avenue  
Zoning: R-1B  
Lot Size: 14,476 sq. ft.

Applicant is seeking a variance to permit an eave of greater than 30 inches and a one-foot encroachment of a column into a required side yard.

Planning and Zoning Director Holland stated that this matter was considered at the last meeting on September 3, 2013, and at that time there were three variance requests, one of which was a flat deck roof in a side yard, which has been eliminated with the design of a gable roof. There are two variances remaining as follows:

1. To permit a one-foot encroachment into the side yard to accommodate columns
2. A roof overhang of 10-feet, where a maximum of 30-inches is permitted

Mr. Holland stated that the Code of Ordinance sections involved are 150.042 (E) (1) and 150-002 (C) (80) (A), respectively. The latter Code Section reads as follows: *"Eaves and overhangs not to exceed 30-inches into minimum setback, nor closer than 3-feet to any side property line."*

Mr. Holland explained that at the last meeting there were discussions about the definitions and he found that there is no definition of "eave" in the Florida Building Code or the City's Zoning Code. The Zoning Code indicates that the City would use a dictionary and general usage and the definition of an "eave" per Merriam-Webster Dictionary is *"the lower boarder of a roof that overhangs the wall (usually used in plural)."* There was discussion about the structure being defined as a "canopy" or "awning" and those definitions are in the City Code.

Mr. Holland clarified that an awning is defined as a detachable roof-like cover supported from the walls of a building for protection from sun and weather. The definition of a canopy is an awning or covered shelter consisting of a detachable roof-like cover supported from the ground, roof or walls of a building for protection from sun and weather. It is clear that what is proposed is an eave and is therefore prohibited from extending more than 30-inches into the side yard, according to Mr. Holland.

Board member Aloma stated that looking at the definition for roof overhang he does not feel that the structure is an eave because it is not an extension of the existing roof. He was of the opinion that the idea for the code provision is to make sure that an encroachment into the neighbor's property does not exist, and in this case it is adjacent to a sidewalk and street since the property is on a corner. In this sense, he does not have any issues with the request.

Board member Aloma commented that the other variance is the one-foot encroachment to allow for the structure. The Code was amended for a section on Hunting Lode Drive to allow porte-cocheres in the front yard to extend as far out as the property line.

City Attorney Seiden stated that there is a separate code section and he wants to make sure there is no confusion. It is correct that there is no neighbor next to the property in question, but there are higher standards for properties that are on open corner lots because of the aesthetics for the community and other factors that come into play. When there is a remedy within the Code and the Board provides an alternative remedy, they must be cognizant of the fact that once this is done it would create a precedent.

Board member Aloma agreed that it could establish a precedent for corner lots with the same type of scenario. He said that this is the first time he has seen a case like this and in his opinion the likeliness of it happening again might be once every three years.

Planning and Zoning Director Holland stated that the Applicant has the option of utilizing an awning.

Board member Aloma commented that the Applicant is building columns and it could be defined as an awning under the Code.

City Attorney Seiden stated that canopies are not permanent structures; they are detachable structures and it is not a detachable structure since it will be a roof line. There is a distinction between a permanent structure and a detachable structure.

Board member Aloma asked if there was any correspondence received approving or opposing the variances.

Mr. Holland replied that there was one letter of objection from the property owner who lives diagonally across from the intersection and a letter of support was received from the neighbor immediately to the north, abutting the rear yard of the particular property.

The Applicant's contractor, George Fulmer, submitted a letter supporting the variance application from the neighbor across the street from the subject property, residing at 1111 Raven Avenue, which Planning and Zoning Director Holland read into the record.

Mr. Holland stated that another letter of support was received from the person residing at 1098 Quail Avenue who has no objection to the variance requests. The letter of objection is from the property owner at 1120 Raven.

Vice Chair Fernández asked if the A/C units would remain in the front yard and Mr. Holland stated that there was a recent amendment to the Code that permits mechanical equipment in a side yard provided that it is not a required side yard.

Board member Aloma clarified that the A/C equipment was moved since the previous application because it was under the flat roof, which was the third variance that Applicant had originally requested. He moved the equipment to allow more air circulation in order to provide more efficiency and durability.

Mr. Holland stated that his recommendation is to oppose both variance requests because there is no apparent hardship and it would set a precedent that would potentially be applicable throughout the community.

Vice Chair Fernández said that for the roof extension there would be a five-foot clearance from the side yard and Mr. Holland answered affirmatively.

Vice Chair Fernández noted that on corner lots the side yard setback is required to be 15-feet. A normal situation in the middle of a block requires a 7-1/2 foot side yard setback for a standard 75-foot lot. A corner lot would need 12-1/2 feet clearance from the property line and he does not see this case as a hardship.

City Attorney Seiden asked if anyone in the audience would like to speak.

George Fulmer of 424 DeLeon Drive provided photographs of the Bahamian gables that were requested at the last meeting. He also took photographs of flat decks in the side yard that are not allowed under the current Code of Ordinances. He noted four such cases on Hammond Drive; one is the same as Mr. Guillamont is requesting. He said that it was allowed in the City at one time.

Planning and Zoning Director Holland clarified that the flat deck is not an issue or a consideration at this time because it was already addressed and Mr. Fulmer said that it does not mean that it does not exist within the community.

Mr. Holland stated that there are only two issues, which are the setback and the cantilevered eave.

Applicant Alex Guillamont of 1095 Raven Avenue stated that in regard to aesthetics, he is trying to build the best possible structure and if this variance is not approved, he would be entitled to have a plastic awning that looks awful. He feels that what he is proposing is better for the community and he obtained letters of approval from the two neighbors that could potentially be affected by the side yard encroachment. He emphasized that the neighbor across the street, opposite the side yard, has lived there a long time; he is not going to move and he gave his approval.

City Attorney Seiden explained that the precedent that would be established if the variance is granted is different from being a detriment. If the Board were to grant the variance, they would have a difficult time defending a decision not to grant the same request to other property owners in like situations.

Attorney Seiden stated that when a property owner is granted relief and the property is sold in the future, the new owner may not keep the property the same and it could become an impact to the neighboring properties. He explained that there are many factors that go into consideration.

Mr. Guillamont said that he had tried to comply with the factors that the Board of Adjustment had requested. He was of the opinion that cities develop by neighbors wanting to do new things and trying to be as compliant as possible.

Vice Chair Fernández explained the Board's role is to ensure that a hardship exists and he cannot see a hardship in this case; it is really a legislative issue and the Code would have to be changed. Mr. Guillamont's proposal would be an enhancement, but it is not a necessity and the role of the Board of Adjustment is not to legislate.

Vice Chair Fernández recommended that the Applicant should approach the City Council to request a change to the City Code, which has happened in the past.

Board member Aloma said that the Applicant could also appeal to Council, and if they have a different opinion about the Board's recommendation they might come to a different decision, or they might consider changing the Code.

City Attorney Seiden advised the Applicant that he could present his argument to the City Council about changing the Code to eliminate or restrict the awning situation. If the majority of Council does not like a canopy or awning and they would rather have a permanent structure, they might consider that option and it could be addressed by changing the Code. He said that Mr. Guillamont should not be misled because this is not something that happens all the time, but he has every right to appeal.

Board member Aloma stated that the Applicant should appeal to Council because they are politicians; they care about votes and tend to be more receptive to the residents' opinions.

City Attorney Seiden explained that a hardship is the standard for granting a variance, but there is also a consideration of changing the character of a neighborhood. This case may also infringe on that factor as well and a relief situation would be to change the legislation.

Board member White commented that he is new to the Board and their job is to listen to the cases and determine if a hardship exists. He feels that Mr. Guillamont wants to better his neighborhood and he would rather see the cantilever structure instead of an ugly awning. The Applicant wants to invest in the community, raise his children here and make the outside patio a livable space, which he does not see as a detriment to the neighborhood.

Board member White understands that what the Applicant is proposing is not permitted by Code and he would not want to delay the request by waiting to change the Code. Mr. Guillamont has already begun construction. He would rather make a decision that would allow the Applicant to finish the construction and if it does set a precedent, the Board would consider future cases on an individual basis.

Board member Aloma stated that it is insulting that the fear of setting a precedent is what limits the rulings of the Board of Adjustment and it seems that their judgment is questionable. He said that every case is different and he understands the legal aspect, but he does not understand the fear of setting a precedent.

Vice Chair Fernández said that he had a lot of experience on the Board of Adjustment and the thing that holds them together is consistency. The merits of the cases are heard on an individual basis and even though every case might be different, the actions of the Board must be consistent.

Board member Aloma expressed his disagreement. He said that young professionals are moving into the City that want to improve their properties; they are being pushed away and they will eventually move to other areas. He agrees that the Code in many cases is black and white, but there are gray areas that require the judgment of the Board of Adjustment, even if it bends the rules. He knows that the Board must be consistent in their decisions.

Board member Tallman said that he is stuck on the idea that an awning would be allowed, but a proper permitted construction would not be allowed. He believes the role of the Board of Adjustment is to consider if a hardship exists and in this case there is no hardship. He hopes that Mr. Guillamont will appeal to Council and ask them to revisit the language in the ordinance.

**Board member Tallman moved to deny the requested variances. Vice Chair Fernández seconded motion.**

Board member Tallman clarified for the record that the Code may not make sense, but it is not the role of the Board of Adjustment to revise the Code "on the fly."

The motion carried 3-2 with Board member Aloma and Board member White casting the dissenting votes.

The City Attorney advised the Applicant of the 10-day appeal period and suggested that he contact the Planning and Zoning Director. He explained that the City Council will be provided with copies of the minutes of this meeting and all pertinent records.

6) Adjourment

There was no further business to be discussed and the meeting was adjourned at 7:39 p.m.

Respectfully Submitted,



Suzanne S. Hitaffer, CMC  
Acting City Clerk

Approved as written during meeting of: 02-03-2014

Words ~~-stricken through-~~ have been deleted. Underscored words represent changes. All other words remain unchanged.

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*"The comments, discussions, recommendations and proposed actions of City Citizen Advisory Boards do not constitute the policy, position, or prospective action of the City, which may only be established and authorized by an appropriate vote or other action of the City Council".*  
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