

**CITY OF FORT MYERS
BOARD OF ADJUSTMENTS
MINUTES OF THE JUNE 22, 2022, MEETING**

On May 25, 2022, at 1:30 p.m. the City of Fort Myers Board of Adjustments met in the City Council Chambers, Oscar M. Corbin, Jr. City Hall, 2200 Second Street, in the City of Fort Myers, Florida.

ROLL CALL

Andrew Fitzgerald called the meeting to order at 1:30 p.m.

Members Present

Steven Weisberg
Blake Bartholomew
Andrew Fitzgerald
Solomon Mitchell Jr.
Anthony Gargano
Marvin Burges

Members Absent

Elizabeth Kagan

Planning Staff Present

Taryn Thomas, Senior Planner
Cary Mock, Zoning Officer

Other Staff Present

Travis Cary, Assistant City Attorney
Anthony Palermo, Assistant Community Development Director
William Porter, Engineer, Public Works
Councilwoman Teresa Watkins Brown, Ward 1

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PLEDGE OF ALLEGIANCE COMMENCED

Travis Cary, Assistant City Attorney, swore in all witnesses.

EX PARTE COMMUNICATION ON ANY AGENDA ITEMS: None

APPROVAL OF MINUTES: It was moved by Mr. Bartholomew to approve the minutes of May 25, 2022, seconded by Mr. Weisberg, and unanimously approved 5-0.

Mr. Burges entered the meeting at 1:42 p.m.

ITEM NO. 1 PUBLIC HEARING: Variance for a property located at 1829 Palm Avenue to allow the construction of a single-family home on a lot that does not meet minimum square footage development standards. (Quasi-Judicial) (Ward 2)

Cary Mock, Zoning Officer, Community Development Department gave the staff presentation as follows:

BEGIN STAFF REPORT

PUBLIC HEARING: Consider a Variance for property located at 1829 Palm Avenue, zoned Neighborhood Redevelopment (NR-1), to allow a reduction in lot area from 7,500 sq. ft. to 6,052 +/- sq. ft. (Quasi-Judicial) (Ward 1)

1. Application Information

Owner:	Richardson Construction & Development, Inc.
Address:	1829 Palm Avenue
Location:	East side of Evans Ave.; North of Dr. Martin Luther King Jr. Blvd.; South of Michigan Ave.
Size:	6,052 +/- sq. ft. (0.14 +/- acres) vacant
STRAP No.:	18-44-25-P4-00501.0080
Current Zoning:	Neighborhood Redevelopment (NR-1)
Future Land Use:	Residential Low Density (RLD)
Request:	Variance from Chapter 118.7.5 Neighborhood Plans – for minimum total square footage for development.
File:	VAR22-0016

2. Request

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A variance from the terms of the City of Fort Myers Land Development Code is being requested to address existing conditions. This parcel, part of the Velasco Village Neighborhood, is a corner lot with a total square footage of 6,052 +/- square feet and does not meet current minimum of 7,500 square feet. The variance is sought due to a hardship caused by existing conditions of the parcel, which does not meet current LDC square footage requirements. The difference in existing conditions and LDC requirements is 1,448 square feet. The original N.S. Blounts Subdivision, recorded on June 14, 1911, Plat Book 3, Page 5 shows that this is the original lot size.

A total of 31 public notice letters were sent to property owners within 300 feet of the parcel. The property was posted with a sign alerting the general public about the case; and an ad ran in the News-Press. All actions occurred at least 10 days prior to the meeting on June 22, 2022.

4. Staff Recommendation

Staff recommends approval of the Variance Request. Land Development Code, Section 93.3.5.F. Findings, considered prior to approval by the Board of Adjustments; staff's review of each is as follows:

- 1. The Board of Adjustments shall make findings that the requirements of this section have been met by the applicant for a variance.**

Staff finds that the requirements have been met.

That hardship(s), as defined in this land development code, and circumstances exist which are peculiar to the land, structure, or community development involved and which are not applicable to other lands, structures, or buildings in the same district.

The property owner is unable to build a single-family home on this corner lot because it does not meet the minimum size requirements for the NR-1 zoning district. Once the variance is approved, a single-family home can be built.

There are special conditions and circumstances peculiar to the land and structures which are not applicable to other lands or structures in the same district.

The lot was originally platted this size. When Velasco Village was replatted, the lot remained this small size.

The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other properties in the same district.

This parcel is a corner lot that cannot fulfill the square footage requirements. The development standards as described in Sec. 118.7.5 Neighborhood Plans state the minimum side setback in the Velasco Village Neighborhood is seven (7) feet, which the applicant will meet.

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The special conditions and circumstances are not the result from actions of the applicant.

The hardship is the result of the original platting of this corner lot. This parcel was purchased from the City of Fort Myers for development of a single-family home.

The variance would not confer on the applicant any special privilege that is denied by the section to other lands, structure, or building in the same district.

No special privilege requested – just building a single-family home on a lot that does not meet current square footage requirements.

That granting the variance is in the best interest of the public and promotes the general health, safety, and welfare of the neighborhood to be affected by the variance.

The granting of a variance will add housing that is affordable to an area that desperately needs affordable housing.

- 2. The Board of Adjustments shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.**

Staff finds that the variance is the minimum variance that will make possible the reasonable use and improvement of the land.

- 3. The Board of Adjustments shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Land Development Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

Staff finds that the variance request will have no adverse impacts. Staff finds the variance will be in harmony with the general purpose and intent of this land development code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

5.

Recommended Action

Staff recommends approval of the Variance Request to allow the development of this parcel for a single-family home. Development of the site shall comply with all other regulations of the Land Development Code.

END STAFF REPORT

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PUBLIC INPUT: Shane Richardson, Richardson Construction and Development Inc. and property owner, stated that he does a significant amount of work for the City of Fort Myers and had purchased the property from the City of Fort Myers to build a single-family home and had been advised by the City of Fort Myers that it was a buildable lot. Mr. Richardson stated that he builds for the City of Fort Myers and gives back to the community.

Theresa Watkins-Brown, Ward 1 City Council, stated that the site was not fit for the community in its current condition. Ms. Watkins-Brown stated the property was entirely too small and elevated more than the other properties in the neighborhood. Ms. Watkins-Brown stated that if the proposed home were to be built, it would be entirely too close to the neighboring home and that there were no residents in the neighborhood willing to give up any of their land for the house to be built.

Mr. Mock advised that the minimum setback for Velasco Village was still 7 feet from the property line and that the proposed home would have the same setback for the side of the home.

Ms. Watkins-Brown stated that the residents had concerns about flooding on the property should a home be built and that she felt it would not be conducive for the community.

Robert McClain Sr., 2815 Economy Street, stated that he was concerned that none of the residents of Velasco Village had been advised that the proposed property had been sold. Mr. McClain stated that the elevation of the property was too high and should there be a hurricane, the water would flood onto his property. Mr. McClain stated he was not in favor of the request.

Shirley Felton, Velasco Village resident, stated that her main concern was the elevation of the property and that it would flood the neighbors once a home was built on it and advised that she already had flooding when there were storms. Ms. Felton stated that she was not in favor at all of the proposed home.

Mr. Weisberg asked where the dirt fill on the property already had come from.

Mr. Richardson stated that when building a home, there had to be a certain elevation on the site to build a home and that he had put dirt in as a fill to make the proper elevation. Mr. Richardson assured that he had an escape route for water which was shown on the site plans that would prevent any flooding onto the neighboring property.

Mr. Fitzgerald asked where the water would drain to.

Mr. Richardson advised that it would drain into the city drainage.

Mr. Mitchell asked what the difference was between the proposed property and the other properties owned by Mr. Richardson that he had built on.

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Mr. Richardson advised there was no difference and that he had designed the proposed home to specifically fit the lot.

Mr. Burges asked if there were city storm drains that Mr. Richardson would be draining into.

Mr. Richardson advised that was correct and he assured that his property would drain into the city drainage.

Mr. Weisberg asked Bill Porter, engineering, if the drainage permit was under the engineering purview.

Mr. Porter advised that if the variance was approved by the board, then the permit would go through the engineering department for approval. Mr. Porter advised that the engineering department would also make sure that before development began, that the dirt fill on the property would be lessened so that it would be about three feet above the crown road of the elevation which was the height that most of the other homes were elevated to.

Mr. Weisberg asked for clarification on if he was correct in saying that once the applicant was done with the project, the drainage would be considerably different than it was at the current time, and it would be required to flow into the main drainage system and not onto neighboring properties.

Mr. Porter advised that if the applicant was approved for development, the applicant would first have his evaluation from engineering, which would analyze everything the applicant was proposing, then the applicant would go through inspections to ensure no water flowed off his property that would impact any other residents.

Mr. Fitzgerald asked when the Certificate of Occupancy would be issued.

Mr. Porter stated that it would be issued once the property was properly stabilized and all drainage requirements had been met.

Mr. Burges asked what the minimum retention requirements were.

Mr. Porter advised that there were no major retention requirements for single family homes.

Mr. Fitzgerald asked if the City of Fort Myers was doing utility improvements along the north-south Road.

Mr. Porter advised he was unable to comment on the subject as he was not informed to much about the specific project.

Leon Gulf, city resident, stated that the elevation of the property was too high and that water from storm floods would go into the neighboring residents. Mr. Gulf stated that

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the home should not be able to be built at the proposed property and that the home would diminish the value of the surrounding homes.

Mr. McClain stated that as far as the drainage, there was new drainage pipes that had been installed on Palm Avenue and ran under Economy Street. Mr. McClain stated that when it rained, the water still sat on the property and went nowhere to drain therefore if the property was developed, his property next door would get flooded. Mr. McClain expressed deep concern that Mr. Richardson had already cleared the property, knocked down the trees, removed cable lines that affected 2,500 people, and put in fill without posting a permit.

Leroy Baskin, Velasco Village, stated that he felt the lot was too small for a single-family home to be developed on the property.

Ms. Watkins-Brown stated that she was not in favor of the request and that the proposed home would misconfigure the neighborhood. Ms. Watkins-Brown encouraged the board to deny the request and suggested that the board members pass by the property to see the aesthetics of the neighborhood.

Mr. Gargano asked what Councilwoman Watkins-Brown felt should be done with the property.

Ms. Watkins-Brown stated that either the city should reimburse the applicant, Mr. Richardson, his funds that were paid to acquire the lot or the city should provide Mr. Richardson with a lot that he was able to build on that would not hinder surrounding residents.

Mr. Gargano asked if she was able to provide help in having her suggestions accomplished.

Ms. Watkins-Brown stated that she would be more than happy to investigate for the applicant.

Mr. Bartholomew asked if Councilwoman Watkins-Brown knew who the owner was of the adjacent parcel which was similar in size to the proposed property.

Ms. Watkins-Brown advised that the owner was Edith Dennard.

Mr. Bartholomew questioned if it was known what would be built on that lot.

Ms. Watkins-Brown stated that Ms. Dennard had been advised that the lot was unbuildable.

Ms. Felton asked if there were different setbacks for the lot since it was on the corner.

Mr. Bartholomew advised that the inside setback would be a certain amount of feet and the side that was facing a right of way would be a different setback.

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Ms. Felton stated that she could not see on the site plan what the setback on Palm Avenue was.

Mr. Mock advised that the setback on Palm Avenue was 12.5 feet which was what the minimum setback was for the property.

DISCUSSION: Mr. Mitchell stated that he did not see the difference in Mr. Richardson not building the home if he met all the drainage requirements and property requirements.

Mr. Gargano stated that he felt through permitting, if the proposed home were to be built that the property would be in better condition than it was in currently.

Mr. Weisberg agreed with Mr. Gargano and stated that once the home was finalized that the property would be significantly better than it was currently.

Mr. Bartholomew asked if there could be back-end drainage stipulations placed in the motion.

Mr. Fitzgerald stated that he couldn't support that request. Mr. Fitzgerald reopened the public comment portion for the residents to speak.

Mr. Bartholomew stated that he was in favor of the house itself and that he was in favor of affordable housing, however he did understand the concerns from the residents. Mr. Bartholomew stated that he would struggle to approve a variance without the board knowing if development would make the drainage issues better or worse.

Mr. Weisberg stated that he felt development would make the drainage issues better and suggested that there were two available options. Mr. Weisberg suggested either something be worked out with the City of Fort Myers with the help of Councilwoman Watkins-Brown to return the applicants funds to him or for his neighbor to get together with him and come to an agreement with the applicant to purchase the lot from him.

Mr. Fitzgerald stated that he felt the applicant had met all the requirements to receive a variance. Mr. Fitzgerald stated that the property was unique but that he was confident that the city engineering department would not issue a Certificate of Occupancy or permit for a property that would cause injury to surrounding residents.

Mr. Mitchell agreed with Mr. Fitzgerald and stated that the applicant had met all the requirements needed to be approved for the variance.

Mr. Gargano stated that he could not agree with denying the request due to elevation. Mr. Gargano stated that it was very important to him as to what the surrounding neighbors felt and the effect the request would have on the current residents and due to the City of Fort Myers selling the applicant the property, he felt the solution was that the City of Fort Myers should work out a solution to buy the property back. Mr.

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Gargano stated that the board needed to keep in mind that they were not granting permits and were only granting a variance which was the beginning of the process, and that the applicant would still have to prove to the city that there would be no hindrance on the neighboring properties before he would even be approved to build the home. Mr. Gargano advised that he felt that due to the applicant meeting all the requirements for a variance, it should be approved, however, he did not agree with developing a home on that specific property.

MOTION: It was moved by Mr. Weisberg to accept the findings of fact as heard by the board, seconded by Mr. Gargano, and unanimously approved 5-0.

It was moved by Mr. Weisberg to recommend approval of the variance request to allow the development of the parcel for a single-family home with the caveat that development shall comply with all other regulations of the Land Development Code, seconded by Mr. Gargano, and approved 4-1 with Mr. Bartholomew as a nay.

Mr. Porter advised that it was required to have a permit when doing anything on the property and that if there was any type of construction materials or fill on the property that had been done without a permit, then it would be fully investigated as the engineering department was now aware of it. Mr. Porter assured that if there were any code issues then they would be rectified since there should be no type of construction done on the property until a permit was obtained.

Mr. Bartholomew asked if the applicant was permitted to store any materials on the property.

Mr. Porter advised that the applicant had to have authorization to stage and store on the property and that there should be no work that's been done on the property including the clearing of any grass.

Anthony Palermo, Community Development Assistant Director, stated that based off what he had heard during the meeting, he would have a discussion with the Code Enforcement manager, Mark Campbell, to have the property checked for any open code cases and to check if there should be any open code cases such as for any construction done on the property so far. Mr. Palermo advised that the common practice was that no cases were brought before the Planning Board or Board of Adjustments if there was an open code enforcement case.

OTHER BUSINESS: There being no other business the meeting ended at 2:35 p.m.