



AGENDA
BOARD OF ADJUSTMENT
MAY 18, 2016
5:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

1. CALL TO ORDER

2. ROLL CALL / DETERMINATION OF A QUORUM

3. APPROVAL OF MINUTES

Approval of Minutes for the April 20, 2016 BOA Regular Meeting.

Documents: [2016 04-20 BOA RM Minutes Draft.pdf](#)

4. OLD BUSINESS

4.1. JESS NEWBERN C/O RANDY RICE, 2600 S. FLETCHER AVENUE (BOA 2015-09)

****AMENDED****

Amendment to reflect 810 SF existing structure to be designated as an accessory structure so a fully code compliant structure be designated as primary structure.
(*Quasi-Judicial*)

Documents: [Staff Report_Newbern_amended.pdf](#)

5. NEW BUSINESS

5.1. PAUL A. BUTLER, 798 BARRINGTON DRIVE (BOA 2016-14)

Variance from LDC Sections 4.02.03(E).(*Quasi-Judicial*)

Documents: [Staff Report_Butler.pdf](#)

6. COMMENTS BY THE PUBLIC

Members of the public are invited to address the BOA on items of concern not listed on the agenda.

7. BOARD BUSINESS

8. ADJOURNMENT

NEXT SCHEDULED BOARD OF ADJUSTMENT REGULAR MEETING IS ON JUNE 15, 2016

Quasi-Judicial – Denotes that the item must be conducted as a Quasi-Judicial hearing in accordance with City Commission established procedure and Florida Statutes.

All members of the public are invited to be present and be heard. Persons with disabilities requiring accommodations in order to participate in this program or activity should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired).

All interested parties may appear at said meeting and be heard as to the advisability of any action.

All interested parties may appear at said meeting and be heard as to the advisability of any action, which may be considered with respect to such matter. For information regarding this matter, please contact the Community Development Department (904) 310-3135. If any person decides to appeal any decision made by the Board of Adjustment with respect to any matter considered at such meeting he/she will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be made.

MINUTES

1. **Call to Order** – The meeting was called to order at 5:00 pm.

2. **Roll Call / Determination of a Quorum**

Board Members Present

Tisha Dadd, Chair
Marcy Mock
Charles Burns
Barry Hertslet (alternate)

Michael Spino, Vice-Chair
Lynn Williams
Matt Miller (alternate)

Others Present

Tammi Bach, City Attorney
Jacob Platt, City Planner
Sylvie McCann, Recording Secretary

Member Spino disclosed several neighbors contacted him about the Rushlow request, and he received a letter from the Rushlow's that he assumed was sent to all the neighbors outlining their request. Chair Dadd disclosed she was contacted about the Rushlow case, but it was not discussed. There were no other ex parte communications to be disclosed by the board members.

City Attorney Bach briefly explained the quasi-judicial procedures. She then administered the oath to the parties that were about to present testimony.

3. **Approval of Minutes** - The March 16, 2016 Meeting Minutes were presented for approval. **A motion was made by Member Burns, seconded by Member Hertslet, to accept the Minutes.** Member Hertslet corrected the Minutes to reflect comments made by Member Miller rather than him. **Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.**

4. **New Business** - Mr. Platt explained all the required application materials were received, all fees were paid, and required notices were made.

4.1. **Michael C. McAvoy, 737 N. Fletcher Avenue (BOA 2016-11)** Variance from LDC Section 5.01.03(I)

Mr. Platt explained the requested variance was from Section 5.01.03(I) which says buildings shall not be closer than three feet to the rear lot line. He stated this is a R-2 property that is a multi-family dwelling. He pointed out the variance requested was to allow a carport to encroach 18 inches in the three foot rear yard setback. He explained the requested variance was to allow for the carport to be placed where there is an existing driveway that is 18 inches from the property line. He referred to the six criteria for granting a variance and reported there are special conditions as it relates to the land, structure, feature of the parcel. He stated the existing structure was built in 1976 as a multi-family dwelling does not have a garage, and given the constraints this is a logical place for a carport to protect the property owner's vehicle from the elements. He provided further details of the criteria that this request meets 1, 4, 5, and 6 and that it does not meet 2 and 3 as outlined in the staff report.

Mr. Mike McAvoy reported he bought the property about a year ago and he wanted to protect his property. He stated he talked with the neighbors and everyone seemed to support his case.

Member Burns commented as he read it the concrete was in place and Mr. McAvoy wants to put a roof over it. Mr. McAvoy replied correct. **A motion was made by Member Burns, seconded by Member Williams, to approve BOA 2016-11; and that the BOA make the following findings of fact and conclusions of law part of the record that BOA case 2016-11 as presented is substantially compliant with the Comprehensive Plan and the Land Development Code. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.**

4.2. Donald + Donna Rushlow C/O Douglas Mackle, 317 S. 4th Street (BOA 2016-12)
Variance from LDC Sections 1.03.05(A)

Mr. Platt read Section 1.03.05(A) into the record and explained this was an R-2 zoned property off of South 4th Street. He stated this is a 75 by 100 lot with an existing single family home that was built in 1959. He pointed out lots 19, 20, and 21 of block 274 were originally platted by the Florida Railroad Company in 1857. He stated today the existing home is built over all three underlying platted lots of record. He pointed out R-2 has a minimum lot width of 50 feet and a maximum density of 8 dwelling units per acre. He commented in both the Comprehensive Plan and Land Development Code (LDC) we honor those platted lots of record even though a 25 by 100 lot does not meet the density and minimum lot width requirements. He stated the requested variance was from the referenced section. He pointed out as the code states these lots are now the lot of record, and the property owner does not have the option of pursuing a minor subdivision lot line adjustment. He explained the owner is seeking to restore the three underlying platted lots of record to enable flexibility in their sale. He provided details from the staff report that this request meets criterion 5 and 6 and that it does not meet 1, 2, 3, and 4.

Mr. Don Rushlow explained they own this property and the property for the next case to be heard. He stated this property was 75 by 100 and the one next to it is 125 by 100. He expressed his appreciation to Mr. Platt for his support throughout this process and the neighbors for coming out. He pointed out when his wife and he purchased these two properties they invested in the City of Fernandina Beach, and the City has benefited from their investment from over \$53,000 in property taxes. He explained their two property investments in the City are their retirement. He clarified when the variance is approved it will bring these lots down to the Spanish lots which are 25 by 100. He stated this will give them flexibility to offer a buyer whatever combination they are looking for. He pointed out currently as the lots stand they do not have that flexibility. He requested the board to approve the variance request.

Mr. Doug Mackle, 1600 Highland Dunes Way, realtor with Coldwell Banker, noted some are fearful of this variance being approved because it might raise their taxes and that there might be a hotel built there. He commented it might eventually raise taxes in that part of town, but the value of the land will be raised as well. He explained the Rushlow's want to have flexibility with these properties and add value to the neighborhood. He requested the board's help with this request.

Mr. Platt explained when the Rushlow's came to the office they talked about having two lots with underlying lots of record, which they asked if those underlying lots of record could be restored. He commented if the structures were not on the properties the Rushlow's could go to the Property Appraiser's office to restore the underlying lots of record. He pointed out when a structure is built over lots then that is considered the lot of record.

Ms. Donna Rushlow, 86249 Timber Ridge Street, Yulee, briefly explained they wanted to have it returned to the Spanish lots so they could do something with that land.

Member Williams briefly explained the board has to consider what is in the LDC. Member Burns noted the Rushlow's want to go back to the original platted lots of record, and questioned if that can be done while the structures are still there. Mr. Platt replied a variance could be granted contingence upon removal of the structure. Member Burns inquired if each of those eight 25 foot lots can be used for a separate structure. Mr. Platt explained the LDC and the Comprehensive Plan honors platted lots of record, and the same setbacks and height requirements would apply. After a brief discussion about this, Mr. Rushlow explained the intention is not to build eight shotgun houses side by side. He commented people want privacy with space between the houses. Member Burns suggested the idea of continuing this and market the property contingent upon approval of the variance. Mr. Mackle stated he couldn't see how they could market the property unless the variance had been granted. Chair Dadd pointed out the board should consider what the applicant was asking for.

Member Spino noted eight lots with a 2 ½ foot setback would be five feet apart. He commented looking at the plat map that the Rushlow's provided he didn't see 25 foot lots in the immediate vicinity. He inquired if there were a lot of 25 foot lots and houses in this neighborhood. Mr. Platt replied there are some scattered throughout the downtown vicinity. There was a review of the surrounding properties. It was noted if the structures were not on the property the Rushlow's would be able to do what they requested of the board. The board had an extensive discussion about the specifics of this case to restore the underlying lots of record and Mr. Platt briefly explained the process for a minor subdivision.

Member Spino inquired if they demolished the structures would they have to ask for a variance for 50 foot lots. Mr. Platt replied they would still need a variance for a 50 foot lot, which is the minimum lot width for R-2. He explained 317 South 4th Street has three underlying lots of record (75 foot frontage), and the other is 125 feet frontage. He commented 315 South 4th Street wasn't over all five lots, but that property has been conveyed as a 125 foot lot so it is considered the lot of record.

Chair Dadd opened the public hearing at this time.

Ms. Debra Winter, 204 South 6th Street, stated she was against the variance because of parking. She commented parking downtown is a nightmare, and an average house has two cars. She pointed out there are no sidewalks so people walk in the street, and they would have to walk around cars. She stated she didn't know how you could build on a 25 foot lot and still park your cars.

Ms. Anne Thomas, 402 Date Street, expressed her opposition to creating eight 25 foot lots. She stated if they were to subdivide the property into four 50 by 100 lots she would be completely supportive.

Ms. Leigh Anderson, 227 South 4th Street, requested the board to leave the lot sizes as is rather than reduce them to row houses. She commented streets would be jammed with cars due to no parking on reduced lots. She expressed her opinion that reducing lot size would lead to a reduction of the value of homes. She referred to the method of notification and pointed out the only reason she was aware of the variance was due to the fact she was a block away. She stated

this variance affects the whole the historic district not just those in close proximity. She requested the Ordinance be changed to notify all homeowners within at least eight blocks of any variance due to the impact to the historic district as a whole. She referred to the Ordinance that requires a two-step process to vote on a variance and expressed her opinion the variance committee should be empowered to vote down a variance without having to readdress the issue with the City Commission. She commented if the board votes no the City Commission has to then agree to the vote of no. It was pointed out that if the board denies the variance then the next step would be to go to court. City Attorney Bach briefly explained the appeal process under the LDC.

Mr. Curtis Vestal, 432 Tarpon Avenue, explained he was against this because the Rushlow's intentions may not carry through necessarily. He pointed out this was talking about increasing the density. He commented he thought the minimum conforming lot in that area was a little over 5,000 square feet to get the 8 per acre density. Mr. Platt clarified the minimum lot width is 50 feet. He explained 8 units per acre was $43,563 / 8 = 5,445$ square feet. He stated a 5,000 square lot can meet density, because the Comprehensive Plan allows half of the adjoining right-of-way to be calculated into that. Mr. Vestal expressed his concern going back to the 25 by 100 lots, because he didn't think it would enhance the value or the area. He requested the board to deny the variance.

Ms. Linda Schneider, 409 Elm Street, commented she didn't believe it was platted as Spanish lots, but rather was part of the plat of David Levy Yulee as part of the railroad property. She stated on that block they are all 50 feet or more. She explained she would love to see the Rushlow's have flexibility and suggested they should have four 50 foot lots. She expressed her opinion that the flexibility of 25 foot lots was wrong.

Mr. Platt briefly explained these lots were platted by the Florida Railroad Company in 1857 and modified in 1887 and 1901.

Ms. Mary Anne Sharer, 808 Stanley Drive, owner of the lot at 424 South 4th Street, stated density needs to be looked at for downtown. She explained she was not in favor of this plan with 25 by 100 lots. She commented she was in favor of pocket neighborhoods where you can cross property lines and do something interesting with it.

Member Burns pointed out the applicant can change the application. There was some discussion about this noting that to have four 50 by 100 lots would require a minor subdivision lot line adjustment in addition to a variance. Staff provided clarification of the minor subdivision process. Mr. Rushlow commented they were open to the suggestion of four 50 by 100 lots. Ms. Rushlow questioned if they were to do that and someone wanted a bigger lot 75 by 100 would this stop them from being able to make that sale. Mr. Platt commented if someone wanted to come in to buy two 75 by 100 lots and then they would have a 50 left over so the minor subdivision would be for that. He explained they would provide a survey of what the property is now and a survey showing what they want to do. He pointed out it could be conditioned that they couldn't get a variance to restore the 8 platted lots of record, but they could do a 50, 75, or 100 lot. Member Williams commented the board could say no smaller lot than 50 foot width. The Rushlow's concurred with no smaller than 50 foot width.

Ms. Christine Platel, 17 South 7th Street, stated she has been speaking with the City and the County about creating pocket neighborhoods of smaller footprint homes on smaller lots. She

noted there is a problem in this area of not having affordable housing. She provided further comments about the idea of smaller homes on smaller lots in support of the variance.

Mr. Frank Santry, 1005 South 19th Street, owner of two lots at the corner of 5th and Date, commented the neighborhood would like to see the Rushlow's be able to develop their lots in a fashion that is consistent with the neighborhood. He stated the problem is with the density variation. He referred to the slide showing the basis for establishing the lot of record not being subsequently subdivided and pointed out this was in response to if the lots were permitted to go back to their original lots it would result in densities that were way beyond the zoning and planning standard of the per acre requirement. He commented this was to avoid a throwback to densities that are no longer consistent with the City's plan of a 50 foot minimum lot width. He stated nothing has been provided that suggests the staff analysis of where this request doesn't comply with the six standards has been rebutted. He explained he was delighted to hear the applicants may be willing to revert to the suggestion of the 50 foot width for density purposes. He provided further comments about the variance and the comments made by previous speakers.

There was some discussion about the case and whether the applicants were willing to change their request to a minimum of 50 foot lots. It was noted the variance would run with the property. Questions were raised about how to handle the next case which is related to this case. There was also discussion that in addition to the variance the Rushlow's would have to apply for a minor subdivision lot line adjustment. It was noted there would be two motions (one for each case), and the City Attorney requested the motion be made with both the case number and the address.

Ms. Sharer questioned if the depth of the lot had to be 100 feet. City Attorney Bach replied yes. Chair Dadd pointed out it would be a minimum of 50 by 100.

Ms. Peggy Lehosit, 130 South 6th Street, noted the minimum was 50 and commented they could sell a 200 by 100 parcel. She questioned what could be done with a piece of property that large. She pointed out most of the neighbors were here to try to maintain the 50 by 100 buildable lot that is predominant. There was some discussion about what was allowable in the R-2 zoning district.

Ms. Cathy Childers Gates, 320 South 4th Street, stated they live across the street. She expressed her concern about someone coming in with money that wants to build something big.

Ms. Judy Gullede, 206 South 6th Street, referred to the 6th criteria and commented it seemed to be someone that wanted to split it up just so they could sell their land for more. She pointed out that was one of the things that shall not be granted. She provided further comments to the board.

Ms. Debra Winter, 204 South 6th Street, explained whether its 25 or 50 she was against it because of parking. She requested not to add more homes until parking is addressed.

The public hearing was closed at this time.

Chair Dadd inquired if the applicant wanted to proceed with their original request or to modify it. Mr. Rushlow requested to discontinue the variance request for the 25 foot lots and changed the request to 50 by 100 minimum lots. After a brief discussion about a motion for the case, Member Spino noted the board's role was to balance the needs of the private property owner with the needs of the community. He commented the proposed subdivision of larger than 50 is a

reasonable compromise. Member Williams explained there are only certain areas of town where the combining of lots is prohibited, and this is an area where lots can be combined. The board had further discussion about how to proceed with this case. **A motion was made by Member Spino, seconded by Member Williams, for 317 South 4th Street to approve BOA 2016-12; and that the BOA make the following findings of fact and conclusions of law part of the record that BOA case 2016-12 as presented and modified is substantially compliant with the Comprehensive Plan and the Land Development Code to warrant approval at this time; and that modification would be that no lots would be subdivided at less than 50 by 100 feet. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.**

4.3. Donna Lynn Guest Rushlow C/O Douglas Mackle, 315 S. 4th Street (BOA 2016-13)
Variance from LDC Sections 1.03.05(A)

A motion was made by Member Spino, seconded by Member Williams, for 315 South 4th Street to approve BOA 2016-13; and that the BOA make the following findings of fact and conclusions of law part of the record that BOA case 2016-13 as presented and modified is substantially compliant with the Comprehensive Plan and the Land Development Code to warrant approval at this time; and the contingency is that no lot would be less than 50 by 100 feet. Vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.

5. Board Business

5.1 Reappointment of Ms. Tisha Dadd for a 3 year term – A motion was made by Member Williams, seconded by Member Mock, to recommend reappointment of Ms. Tisha Dadd for a three year term. After a brief discussion, **vote upon passage of the motion was taken by ayes and nays and being all ayes, carried.**

6. Comments by the public – There were no comments from the public at this time.

7. Adjournment - There being no further business to come before the Board of Adjustment the meeting was adjourned 6:56 pm.

Sylvie McCann , Secretary

Tisha Dadd, Chair



BOARD OF ADJUSTMENT STAFF REPORT

Case Number 2015-09 *Amended
Meeting Date May 18, 2016

Owner/Applicant Jess Newbern / Randy Rice
Property Location: 2600 S. Fletcher Ave.
Parcel Number: 00-00-31-114A-0049-0000
Requested action: VARIANCE from LDC Section 5.01.04(A)(1) The total floor area of the detached accessory dwelling shall not exceed 625 square feet; ~~LDC Section 5.01.04(A)(3) a detached accessory dwelling shall be located only within a rear yard as established by Section 4.02.03.~~

Current zoning: R-2
FLUM land use category: Medium Density Residential
Existing uses on the site: Single Family House

All required application materials have been received. All fees have been paid. All required notices have been made.

I. SUMMARY OF REQUEST AND BACKGROUND INFORMATION:

The applicant is requesting to amend BOA 2015-09 which was previously approved on August 19th, 2015 for a 1,105sq.ft. accessory structure located in the front yard. The applicant has worked through many designs for this particular property. It is unique in the fact that the existing structure is completely seaward of the Coastal Construction Control Line. Constructed in 1962 and renovated prior to the applicants purchase, this building is structurally sound and the owner and his design profession decided they did not want to tear it down. The applicant was granted a variance from two sections of the Land Development Code previously. The applicants proposed amendment only seeks a variance from the maximum square footage allowed for accessory dwellings. The proposed amendment is more consistent with the Land Development Code than the previously approved request.

Granting this amendment will allow for the existing house to be labeled as the accessory dwelling so that a new primary structure can be built to meet the applicant’s needs. The new structure will be built in full compliance with the Land Development Code and other applicable State requirements.

4.02.03(E). Standards for Building Heights and Setbacks

Zoning District	Maximum Building Height (ft.)	Minimum Setback			
		Front (ft.)	Side ²	Rear (ft.)	Corner Lot (side abutting street) (Ft.)
R-2	35	25	10% of lot width	20	15

II. CONSISTENCY WITH THE COMPREHENSIVE PLAN:

The following Comprehensive Plan statements are applicable in this case:

- Policy 1.02.07 – The City shall implement the Fernandina Beach Comprehensive Plan in a manner that acknowledges private property rights.
- Policy 1.02.10 – The City shall protect privacy and access to light, air, and open space. The City shall consider regulations such as building placement on a site, building design, and building orientation as one means to achieve this policy.

III. CONSISTENCY WITH THE LAND DEVELOPMENT CODE:

Variance procedures and criteria are set forth in Sections 10.02.01 through 10.02.04.

- Section 10.02.01(B) states that the BOA may authorize a variance from the design and improvement standards of the LDC, except for areas within the Historic District Overlay or the CRA Overlay, where requirements of Section 10.02.00 are met.
- Section 10.02.02(B) states that the applicant for a variance has the burden of proof of demonstrating that the variance application complies with each of the requirements of Section 10.02.02(A).
- Section 10.02.04 sets forth the application requirements. This application includes information necessary for the BOA to make the required findings.
- Section 10.02.01(C) sets forth the limitations on the grant of a variance:
 - A variance shall not be granted which authorizes a use that is not permissible in the zoning district in which the property subject to the variance is located.
 - A variance shall not be granted which authorizes any use or standard that is prohibited by the City's Comprehensive Plan.
 - No nonconforming use of adjacent lands, structures, or buildings in the same zoning district, and no permitted use of land, structures, or buildings in other zoning districts, shall be considered grounds for the authorization of a variance.
 - A variance shall not change the requirements for concurrency.
 - A variance shall not be granted to permit the use of a single media peonia for the construction of a dwelling unit.
 - A variance shall not be granted if the evidence submitted by an applicant is a demonstration of financial hardship or economic considerations.
 - A variance shall not be granted for procedure or process components of this Land Development Code.
 - A variance shall not be granted to deviate from LDC section 4.02.02 to combine two (2) or more lots which would result in a lot width greater than 100 feet for lots or parcels that abut Ocean Avenue, North Fletcher Avenue, or South Fletcher Avenue.

Staff's review of this application finds it is not subject to any of these limitations and can therefore be considered by the Board.

IV. SECTION 10.02.02(A) – REQUIRED FINDINGS FOR GRANTING OF A VARIANCE
In order for an application for a variance to be approved or approved with conditions, the BOA shall make a positive finding with regard to each of the following provisions:

Consistent with Criteria? All questions must be answered in the affirmative in order for staff to recommend approval of a variance. Negative answers must be addressed in the findings.

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>1. <u>Special Conditions</u>: <i>Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. Special conditions or circumstances do not result from actions of the applicant and are not based on a desire to reduce development costs.</i></p> <p>Yes. <u>Special conditions do exist</u> as it relates to the land, structure, or features of the parcel. The existing structure sits at the rear of the lot, built seaward of the CCCL. The applicant did not build the primary structure and therefore, special conditions or circumstances do not result from the actions of the applicant and are not based on a desire to reduce development costs. The applicants desire to renovate and add on to the existing structure is restricted by the Florida Building Code which only allows for work up to 50% of the appraised value before the entire structure has to meet today’s code requirements. This structure is not on pilings so there is no way that it can be brought up to current Florida Building Code.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>2. <u>Special Privilege</u>: <i>Granting the variance does not confer upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district.</i></p> <p>Yes. Granting the variance <u>does not confer</u> upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings since others in the same zoning district because this structure will be located in the rear yard in accordance with code and accessory structures do not count towards density.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>3. <u>Literal Interpretation</u>: <i>Literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.</i></p> <p>Yes. Literal interpretation of the Land Development Code <u>would deprive</u> the applicant of rights enjoyed by others in the same zoning district because accessory structures are permissible. Given the additional requirements imposed by the CCCL, preserving this structure for guest and building a new primary structure that will be handicap accessible meets the critical needs of the applicant.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>4. <u>Minimum Variance</u>: <i>The variance requested is the minimum variance needed that will make possible the reasonable use of the land, structure, or building.</i></p> <p>Yes. This <u>is</u> the minimum variance need that will give the applicant sufficient room for his extended family and also allow for the new structure to be fully handicap accessible which is a critic need and a design challenge when working with the existing structure.</p>

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>5. <u>General Harmony</u>: <i>Granting the variance will be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan.</i></p> <p>Yes. This request for a variance <u>is</u> in general harmony with the Land Development Code and Comprehensive Plan because approval of a variance will preserve private property rights. Accessory dwelling units do not count towards density and therefore does not increase the density on this parcel.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>6. <u>Public Interest</u>: <i>Granting the variance is compatible with surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment.</i></p> <p>Yes. Granting of a variance <u>is</u> compatible with nearby development and the character of the surrounding properties, it will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment. The new primary structure will meet all of the applicable Land Development Code requires as well as all of the Florida Building Code requirements for structures seaward of the CCCL.</p>

V. ANALYSIS:

The variance requested for the rear-yard setback is consistent/inconsistent with the criteria for granting a variance as follows:

	Consistent	Inconsistent
1. Special Conditions	X	
2. Special Privilege	X	
3. Literal Interpretations	X	
4. Minimum Variance	X	
5. General Harmony	X	
6. Public Interest	X	

The applicant appears to meet all six criteria for granting a variance with this amended plan which is more consistent with the Land Development Code than the previously approved proposal, therefore staff recommends approval!

VI. MOTION TO CONSIDER:

I move to **approve or deny** the amended BOA case number 2015-09; AND I move that the BOA make the following findings of fact and conclusions of law part of the record: That amended BOA case 2015-09, item, as presented, **is or is not** substantially compliant with the Comprehensive Plan and Land Development Code to warrant approval at this time.



Jacob M. Platt, Planner I
 Community Development Department

BOA 2015-09 *Amended
2600 S. Fletcher Ave
May 11, 2016

BOA 2015-09 *Amended
2600 S. Fletcher Ave
May 11, 2016



BOA 2016-14
798 Barrington Dr.
May 11, 2016

BOARD OF ADJUSTMENT STAFF REPORT

Case Number	2016-14
Meeting Date	May 18, 2016
Owner/Applicant	Paul A. Butler
Property Location:	798 Barrington Drive
Parcel Number:	00-00-31-110B-0001-0000
Requested action:	VARIANCE from LDC Sections 4.02.03(E) Corner lot side abutting street requires a 15 foot setback.
Current zoning:	R-1
FLUM land use category:	Low Density Residential
Existing uses on the site:	Vacant

All required application materials have been received. All fees have been paid. All required notices have been made.

I. SUMMARY OF REQUEST AND BACKGROUND INFORMATION:

The applicant is seeking a five foot reduction from the required 15 foot side yard, side abutting street setback requirement for corner lots. The reason for the requested reduction is to save a mature oak tree in the front yard of this property. Building permit 2016-1143 was issued on April 25th 2016; upon staking the property in preparation for construction, the applicant realized that the oak tree would have to be removed if the house were to stay in the same location.

Mr. Butler decided that he did not want to lose this mature oak tree even though we would permit its removal because of its location within the footprint of the driveway. Mr. Butler decided that he not only wanted to save this tree because it enhances his property, he feels that this tree adds beauty and value to the entire subdivision.



BOA 2016-14
798 Barrington Dr.
May 11, 2016

II. **CONSISTENCY WITH THE COMPREHENSIVE PLAN:**

The following Comprehensive Plan statements are applicable in this case:

- Policy 1.02.07 – The City shall implement the Fernandina Beach Comprehensive Plan in a manner that acknowledges private property rights.
- Policy 1.02.10 – The City shall protect privacy and access to light, air, and open space. The City shall consider regulations such as building placement on a site, building design, and building orientation as one means to achieve this policy.

III. **CONSISTENCY WITH THE LAND DEVELOPMENT CODE:**

Variance procedures and criteria are set forth in Sections 10.02.01 through 10.02.04.

- Section 10.02.01(B) states that the BOA may authorize a variance from the design and improvement standards of the LDC, except for areas within the Historic District Overlay or the CRA Overlay, where requirements of Section 10.02.00 are met.
- Section 10.02.02(B) states that the applicant for a variance has the burden of proof of demonstrating that the variance application complies with each of the requirements of Section 10.02.02(A).
- Section 10.02.04 sets forth the application requirements. This application includes information necessary for the BOA to make the required findings.
- Section 10.02.01(C) sets forth the limitations on the grant of a variance:
 1. A variance shall not be granted which authorizes a use that is not permissible in the zoning district in which the property subject to the variance is located.
 2. A variance shall not be granted which authorizes any use or standard that is prohibited by the City's Comprehensive Plan.
 3. No nonconforming use of adjacent lands, structures, or buildings in the same zoning district, and no permitted use of land, structures, or buildings in other zoning districts, shall be considered grounds for the authorization of a variance.
 4. A variance shall not change the requirements for concurrency.
 5. A variance shall not be granted to permit the use of a single media peonia for the construction of a dwelling unit.
 6. A variance shall not be granted if the evidence submitted by an applicant is a demonstration of financial hardship or economic considerations.
 7. A variance shall not be granted for procedure or process components of this Land Development Code.
 8. A variance shall not be granted to deviate from LDC section 4.02.02 to combine two (2) or more lots which would result in a lot width greater than 100 feet for lots or parcels that abut Ocean Avenue, North Fletcher Avenue, or South Fletcher Avenue.

Staff's review of this application finds it is not subject to any of these limitations and can therefore be considered by the Board.



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I. SECTION 10.02.02(A) – REQUIRED FINDINGS FOR GRANTING OF A VARIANCE

In order for an application for a variance to be approved or approved with conditions, the BOA shall make a positive finding with regard to each of the following provisions:

Consistent with Criteria?

All questions must be answered in the affirmative in order for staff to recommend approval of a variance. Negative answers must be addressed in the findings.

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>1. <u>Special Conditions</u>: <i>Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. Special conditions or circumstances do not result from actions of the applicant and are not based on a desire to reduce development costs.</i></p> <p>Yes. Special conditions <u>do</u> exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. The Covenants and restrictions for the Barrington subdivision require 2,000 square feet of heated space and a minimum two car garage. The proposed Butler residence has 2,120 square feet of heated space. Given the minimum heated space and additional setback requirements on a corner lot, the applicant does not have room to reposition the house.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>2. <u>Special Privilege</u>: <i>Granting the variance does not confer upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district.</i></p> <p>Yes. Granting the variance <u>does not confer</u> upon the applicant a special privilege that is denied by the Land Development Code to other lands, structures, or buildings in the same zoning district. City staff works hard to help homeowners preserve mature trees and design sites that complement existing site features. Granting this variance will not only enhance this property it will enhance the entire subdivision.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>3. <u>Literal Interpretation</u>: <i>Literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.</i></p> <p>Yes. Literal interpretation of the Land Development Code <u>would</u> deprive the applicant of rights enjoyed by others properties. The applicant is constrained by both the Land Development Code 15 foot side yard, side abutting street setback requirement and the Covenants and Restrictions for the Barrington subdivision declared by the developer.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>4. <u>Minimum Variance</u>: <i>The variance requested is the minimum variance needed that will make possible the reasonable use of the land, structure, or building.</i></p> <p>Yes. The variance requested <u>is</u> the minimum variance needed to make possible the reasonable use of the land, structure, or building. Reducing the side yard, side abutting street setback by five feet will allow the applicant a reasonable driveway to enter and exit the two car garage while preserving the mature oak tree.</p>



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<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>5. <u>General Harmony</u>: Granting the variance will be in harmony with the general intent and purpose of the Land Development Code and Comprehensive Plan.</p> <p>Yes. Granting the variance <u>will</u> be in harmony with the general intent and purpose of Land Development Code and Comprehensive Plan. Preserving the mature tree canopy on the island is emphasized in both the Land Development Code and Comprehensive Plan.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>6. <u>Public Interest</u>: Granting the variance is compatible with surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment.</p> <p>Yes. Granting of a variance <u>is</u> compatible with surrounding properties, will not cause injury to the area involved, or otherwise be detrimental to the public health, safety, welfare or environment. Granting this variance will only enhance this property and the surrounding properties with the esthetic and environmental benefits of a mature oak tree. Shifting the structure five feet closer to Amelia Road will not impair vehicular visibility.</p>

V. ANALYSIS:

The variance requested is consistent/inconsistent with the criteria for granting a variance as follows:

	Consistent	Inconsistent
1. Special Conditions	X	
2. Special Privilege	X	
3. Literal Interpretations	X	
4. Minimum Variance	X	
5. General Harmony	X	
6. Public Interest	X	

The applicant appears to meet all 6 criteria for granting a variance, therefore staff recommends Approval!

VI. MOTION TO CONSIDER:

I move to **approve or deny** BOA case number 2016-14; AND I move that the BOA make the following findings of fact and conclusions of law part of the record: That BOA case 2016-14, item, as presented, **is or is not** substantially compliant with the Comprehensive Plan and Land Development Code to warrant approval at this time.

Jacob M. Platt, Planner I
 Community Development Department



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