

VARIANCES

CRITERIA 1 – 7 OF §158.295

Duties of the Zoning Administrator and Planning and Zoning Board in authorizing a variance. The Planning and Zoning Board and Zoning Administrator may authorize the variance from the provisions of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this chapter, the Planning and Zoning Board or Zoning Administrator should consider:

(1)

That 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.

The surrounding zoning district is entirely zoned for commercial uses. See Aerial.pdf. Adjacent to the north is a Walgreens Drug Store with a drive through. Across Casella Street to the east are mini storage units. To the south is Bush Construction including a temporary storage yard. Across a major drainage ditch to the west are industrial automobile repair units.

The property, herein Lot 12, is located inside Land Use Conversion Area 24. See LandUseConversionAreas.pdf and LandUseConversionArea24.pdf. The conversion from residential to commercial zoning has been denied because Lot 12 does not meet the minimum size or area requirements. Lot 12 and adjacent Lot 13 (owned by Bush Construction) were originally owned in common. See DeedLot12.pdf and DeedLot13.pdf. The "unity of title" between Lot 12 and Lot 13 was destroyed by Order of the St. Lucie Circuit Court. Bush was awarded Lot 13 and I purchased Lot 12 at a court ordered execution sale. See ProofOfOwnership.pdf.

Lot 12 (and Lot 13) were cleared, filled and fenced by Bush Construction in 1996. They were continuously used for commercial purposes and storage from 1996 up to the current code violation cases 21-07328 and 21-07329. The City was aware of such use

and issued a Notice of Violation on 05/16/2012, Case 12-04188. See NoticeOfViolation.pdf. I responded and denied the City's allegation that "open storage" was not permitted. See ResponseToNoticeOfViolation.pdf. The City acquiesced and commercial uses were allowed without objection for almost 10 years.

(2)

That the special conditions and circumstances do not result from any action of the applicant.

At present, the surrounding zoning district, Land Use Conversion Area 24, facilitates the change from residential to commercial resulting in an almost completely commercial Casella Street. The conversion of Lot 14 and Lot 15 occurred in 1992 when Bush Construction contracted to purchase the Lots subject to the contingency they be rezoned from residential to commercial. My former clients, the owners of Lot 12 and Lot 13, responded to the proposed rezoning and objected to "SPOT ZONING". They were also concerned how their property would be protected from trespass. See ResponseToRezoningLots14And15.pdf.

I did not cause the surrounding zoning district to become commercial. I did not cause the ownership of Lots 12 and 13 into separate owners thus destroying the "unity of title". I did not clear, fill or fence Lot 12. When I acquired Lot 12 by Sheriff's Deed in 2008, I continued to use it for commercial and storage purposes that Bush Construction had started in 1996.

(3)

That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district.

No special privilege to permit commercial activities on Lot 12 when surrounding properties are all commercial. The minimum size requirements existed in 1996 when adjacent Lots 14 and 15 were rezoned. The adjacent Lots 12 and 13 should be vested with the same developmental rights at that time. The "unity of title" was destroyed by court order, not by any voluntary act of the owners.

(4)

That literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant.

The surrounding zoning district facilitates the conversion of property from residential to commercial, but denies such use because Lot 12 is a single lot and does not have "unity of title" with Lot 13. The minimum size requirements are arbitrary and do not have a rational relationship to a permissible governmental objective. I have suffered an unnecessary and undue hardship by being denied the continued commercial use of my property which started in 1996.

(5)

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The most reasonable use of the land is to permit the same commercial uses that the surrounding properties enjoy. For example, Bush Construction was granted permission for a Temporary Storage Yard. See SitePlan.pdf. It would be unreasonable to deny similar zoning to the adjacent property.

(6)

That the granting of the variance will be in harmony with the general intent and purpose of the chapter and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The location of Lot 12 inside Land Use Conversion Area 24 indicates that the City has already determined that it is in the best interests to convert this area from residential to commercial. The minimum size requirements are arbitrary and do not have a rational relationship to a permissible governmental objective.

(7)

That there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator

may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both.

I cannot agree to any conditions or safeguards until I receive notice of what they are. I have already complied with the reasonable requests of the code enforcement officer and special magistrate.

(Ord. No. 98-84, § 1, 3-22-99; Ord. No. 00-104, § 1, 11-27-00; Ord. No. 05-100, § 1, 7-25-05; Ord. No. 15-85, § 1, 12-7-15)