



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: May 7, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Lot Located at 7208 Seminole Drive

Background: The owner of the lot located at 7208 Seminole Drive is requesting the Council adopt a resolution to resolve any questions regarding the status of the Lot. In May 2013, it appears that the owner, John Crosby, requested and received a variance from the P&Z Board to build a single family home on parcels #29-23-30-4389-04-040 (7208 Seminole Dr.) and #29-23-30-4389-04-050 (7210 Seminole Dr.). The property at 7210 was sold and the existing triplex remained and is now a single family residence. The house at 7208 was never built but a boat dock was built. According to the ordinance at the time, both a residential permit and dock permit could be received at the same time which happened here. The dock was built first and the home was not built and the permit has since expired. **The issue is not the dock; the issue is the lot split and the disposition of this lot.**

The City could not find any evidence in its records of a lot split ever occurring at 7210 Seminole; however in searching the County records, it appears that the previous owner, John Crosby, somehow obtained a lot split from Orange County. At the time these parcels were in the City of Belle Isle, not Orange County. There is no record on file why this was allowed. In order to clear up this problem, the City is recommending the Council pass Resolution 19-05 making this a legally non-conforming lot so the lot can be sold and a house built on the lot.

Staff Recommendation: This can be a very complex and confusing issue therefore, the staff recommends approving Resolution 19-05 making 7280 Seminole Drive a legally non-conforming lot. The staff supports the conclusions stated on the letter submitted by the property owner's attorney that:

- a. the City recognizes the vested non-conforming status of the Lot;
- b. the City not take any action to require approval of a new variance related to lot width;
- c. the City allows construction of a single family home on the Lot that satisfies all setback and building permit requirements whenever plans for such construction are presented to the City.

Suggested Motion: **I move that we approve Resolution 19-05 and the additional requirements listed in the staff recommendation.**

Alternatives: Do not adopt the resolution and see guidance from the City Attorney

Fiscal Impact: TBD

Attachments: Copy of Orange County Lot Split application
Letter from Attorney representing owner of 7208 Seminole Dr.
Excerpt from May 2013 P&Z Meeting
Resolution 19-05



BILL DONEGAN
ORANGE COUNTY PROPERTY APPRAISER
200 South Orange Avenue, Suite 1700
Orlando, Florida 32801-3438

Request for Parcel Split or Combination

PARENT PARCEL NUMBER(S) NEW PARCEL IDENTIFICATION NUMBER(S)
(ISSUED BY MAPPING DEPT. P.A. OFFICE)

SEC_TWP_RNG_SUB_PARCEL SEC_TWP_RNG_SUB_PARCEL

29-23-30-4389-04050 29-23-30-4389-04040

29-23-30-4389-04020

Note
NOTES: SPLIT PER OWNER REQUEST

Split - lot 4 into an individual parcel
lot 5 into an individual parcel

Parcel 04020 will remain for lots 2 & 3

NOTE: A parcel split / combination by this agency (Property Appraiser) is for taxation purpose only and does not imply suitability for parcel development. Please contact the appropriate land development, zoning, and/or planning department of your jurisdiction for questions concerning property development.

Signature: [Signature]
Orange County Property Appraiser's Office

Date: 5/6/2003

Signature:
Owner

[Signature] Date: 5/5/03

Phone: 407-886-7415 - OFFICE
407-889-8485 - HOME

For questions regarding new parcel numbers:

Contact: Michael W. Prestridge, CCF, CFE
Mapping and Research Manager
Orange County Property Appraiser's Office
200 S. Orange Ave. Suite 1700
Orlando, FL 32801

Phone: 407.836.5077
Fax: 407.836.2788



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MAIN NUMBER: 407-843-4600



April 11, 2019

VIA EMAIL ONLY

Mr. Bob Francis, City Manager
Ms. April Fisher, City Planner
City of Belle Isle
City Hall
1600 Nela Avenue
Belle Isle, FL 32809

Re: Lot Located at 7208 Seminole Drive, Belle Isle

Dear Mr. Francis and Ms. Fisher:

The purpose of this letter is to provide background facts and legal argument regarding the Lot located at 7208 Seminole Drive (the "Lot") that is owned by Seminole Investment7208, LLC, an entity controlled by Steve Fusilier, in an effort to resolve any questions regarding the status of the Lot and to formally object to any effort by the City to impose construction time frames for development of the Lot based on a variance that was granted on May 13, 2013.

Historical Background:

- Belle Isle's current form of government was established in 2003, the same year that the prior owner of the Lot obtained a legal Lot Split from Orange County. At that time in the City's history, the City apparently delegated all of its lot splits and building permitting processes to Orange County based on comments from Bob Windom in the Orange County Zoning Division. This delegation may have been because the City had limited staff resources at that time. In any event, in 2003, Orange County was asked by the City to process the lot split that resulted in the re-establishment of the Lot with the identical dimensions as drawn on the plat of Lake Conway Park in 1922. Orange County would not have undertaken this lot split process without first receiving confirmation from a City official that the lot split was acceptable under the City's zoning code. Unfortunately, neither the County nor the City can locate its former file with all of the documents that would have been presented to the County in 2003 to support the lot split. However, at all times since the County granted the lot split in 2003, the Lot has been a legal lot of record in the Orange County Property Appraiser's records and has been assessed taxes as a separate lot.



- In 2013, Mr. Fusilier was considering buying the Lot. Before doing so he consulted with the then City Manager, Keith Severns, to determine how to obtain City confirmation that the Lot was developable as a vested, non-conforming lot in the City's R-1-AA zoning district. Mr. Fusilier was told that the City had no process available to confirm the vested, non-conforming status of a lot other than to make a request to the Planning and Zoning Board (the "Board"). On 3/21/13, Mr. Fusilier submitted an application on the form he was given by Mr. Severns. Although the form is titled "Application for Variance / Special Exception," Mr. Fusilier's request read: "Confirm lot is buildable for a single family home." No variance was requested. (See copy of Application attached as Exhibit "A").
- The Board hearing took place on May 13, 2013. Board Chairman Woods characterized the request as a variance and noted that the only non-conforming matter was the lot width. After discussion, Board Member Templin moved that the request for variance be granted to allow construction of a single family residence on a substandard lot at 7208 Seminole Drive without any conditions as to time.

Argument in Favor of Recognizing Vested, Non-conforming Lot:

- Even though the City Code sets a time limit for variances, there is no provision that a lot split, once granted, ever expires.
- The plat of the Lake Conway Park subdivision shows that the Lot was platted as a 70-foot wide lot in 1922. Apparently at some point, the Lot and an adjoining lot at 7210 Seminole Drive were aggregated into a single lot by operation of Section 54-2(a) of the City Code. In 2003, however, the aggregated lot reverted to its prior status of two 70-foot wide lots through the lot split granted by Orange County. There is no existing record that a variance was granted as a pre-condition to obtaining the lot split in 2003.
- The variance granted on May 13, 2013, was solely for the purpose of confirming that the Lot was buildable for a single family residential unit. Mr. Fusilier purchased the Lot and the adjoining lot on which a triplex had been constructed only after receiving confirmation from the Board that both lots in their existing configurations were legally buildable lots for their as-zoned uses and in reliance on that confirmation. No appeal of the Board's decision was filed, and the decision became final on May 28, 2013.
- When the purpose of a variance is linked to a proposed lot split, the variance cannot be voided for the lot owner's failure to obtain building permits within a set period of time. No permit is required to effectuate a variance that is granted for the purpose of merely confirming or reducing a lot dimension to support a lot split. In addition, there is no requirement for any lot, once created, to be developed within a specific time frame--or ever.

- It would be reasonable to include time limits on variances linked to some type of construction. This would be the case where a variance was requested to build a fence or to build a structure that encroaches into a setback. In those cases, a construction permit would be needed to use the variance. However, no permits are required to use a variance that merely reduces a lot dimension. The variance itself is the “permit” that allows the smaller lot size. Similarly, a lot split stands alone and does not need additional permits to effectuate it. A lot split merely creates new property boundaries. It does not require anything to be built on the reconfigured lot that would generate the need for a permit of any kind.
- The variance granted on May 13, 2013, merely confirmed the substandard lot dimensions that supported the lot split granted in 2003. It did not start a time clock for using the lot configuration that dated back to 1922 and was re-established in 2003 by the lot split. If use of a legally created lot were contingent upon subsequently obtaining a variance for use of the lot, the City could be faced with a “taking” claim if the variance were not granted, because the lot would be left without any permitted use to satisfy invested-backed expectations based on the zoning classification applicable to the lot.
- In addition, Section 54(c) of the City Code states:

When a lot or parcel of land has a frontage which does not conform with the requirements of the district in which it is located, but has sufficient lot area and was a lot of record on January 1, 1992, then such lot or parcel of land may be used for a single family dwelling in any residential district provided the minimum required setbacks are maintained.

The Lot is vested for development of a single family residence under the plain language of this Code provision irrespective of any intervening circumstances that occurred between January 1, 1992 and today. Clearly the Lot had a 70-foot lot width in 1992 and has that same lot width today. The Lot also satisfies the lot area requirements of the R-1-AA zoning district. The minimum required setbacks will be maintained when the Lot is developed as a single family residence.

Conclusion:

- The City is estopped from taking the position that no single family residence can be built on the Lot because the variance granted on May 13, 2013 to confirm the lot split has expired. Mr. Fusilier has spent a significant amount of money in reliance on the lot split and on the confirmation the Board granted on May 13, 2013 that the Lot he proposed to purchase was buildable for a single family home. Moreover, Section 54-2(c) of the City Code makes clear that the Lot is a vested, non-conforming lot because of its existence as a platted lot of record as of January 1, 1992 and it having the same, legally created lot dimensions today. This Code provision

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makes no exception for intervening events that may have temporarily changed the lot configuration.

I would be happy to discuss this letter with you. I would like to receive written confirmation that the City will (i) recognize the vested non-conforming status of the Lot; (ii) not take any action to require approval of a new variance related to lot width; and (iii) allow construction of a single family home on the Lot that satisfies all setback and building permit requirements whenever plans for such construction are presented to the City.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Miranda F. Fitzgerald". The signature is fluid and cursive, with the first name being the most prominent.

Miranda F. Fitzgerald

MFF/jdr
Attachment

c: Mr. Steve Fusilier

Chairman Woods opened for public comment.

- Jodi Zgura homeowner who resides in the home in front of the property said she has no objection to the proposed request.
- Jayne Abbott resides on the East side of Peninsula and has no objection to the proposed request.

There being no further public comment Chairman Woods closed for board discussion.

Chairman Woods noted that there are two issues to be granted. He noted, due to the size of the structure, if the request is granted, that the setback has a normal building setback of 7.5 feet instead of the 5 feet as required by code.

Boardmember Fouraker moved that the request for a variance be granted, that the criteria of Chapter 42, Article III, Section 42-64(1) of the Belle Isle Land Development Code has been met to allow a variance from LDC, Chapter 50, Article IV, Sec. 50-102(a)(2) which prohibits accessory buildings in the front yard and Chapter 50, Article IV, Sec. 50-102(a)(5) for an accessory building (storage building) to exceed the maximum 600 sq ft limit, totaling 1020 sq ft. at 1524 Hoffner Avenue, Belle Isle, FL 32809 also known as Parcel ID#18-23-30-5120-01-710.

Boardmember Templin amended the motion to request a 7 ½ ft setback.

Boardmember Tatum seconded the motion as amended which passed unanimously.

Chairman Woods noted that the applicant should not start any construction prior to 15 days to allow for any appeals.

Public Hearing Case #13-05-002

Applicant John Michael Crosby Trust, property owner of Parcel I.D. #29-23-30-4389-04-040 on Seminole Drive and Parcel I.D. #29-23-30-4389-04-050 on 7210 Seminole Drive, Belle Isle, FL 32809 request a variance to allow construction of a single family residence on a substandard lot.

Steve Fusilrer, potential buyer for the property, stated that he would like to build two single family homes on each lot and remove the triplex that is currently on the property.

Chairman Woods noted that the only substandard portion of the property is the width. He said that this variance request falls under Chapter 8 of the Ordinance. If the garage was not on the property the applicant will not need a variance and would have been exempt.

Chairman Woods opened for public comment.

- John Crosby owner of 7210 Seminole Drive said that the garage was built in the 1950's. He further noted that he is excited that the potential buyer will be enhancing the property and making it modern.

There being no further public comment Chairman Woods closed for board discussion.

Chairman Woods said the lots are maintained and plotted as separate lots on the Orange County Property Appraisers records. They only non confirming position is the width; zoning

requires an 85ft width and the lots are 70ft lots. The setbacks are such that it will have no shortage of space; however, one of the side yard setbacks is one foot shorter of what is required by code. A consideration to the motion may be to maintain a 15ft separate between the houses. In addition, the applicant also provided a statement that the triplex will be removed and replaced with a quality conforming residence.

After Board discussion, Boardmember Templin moved that the request for a variance be granted, that the criteria of Chapter 42, Article III, Section 42-64(1) of the Belle Isle Land Development Code has been met to allow a variance from LDC, Chapter 54, Article I, Sec. 54-2 to allow construction of a single family residence on a substandard lot at 7210 Seminole Drive, Belle Isle, FL 32809 also known as Parcel ID#29-23-30-4389-04-050 and Parcel I.D. #29-23-30-4389-04-040 on Seminole Drive .

Boardmember Bateman seconded the motion which passed unanimously.

Chairman Woods noted that the applicant should not start any construction prior to 15 days to allow for any appeals.

Other Business

Chairman Woods informed the Board, as per their direction at a previous Board meeting; that he will have the opportunity to present to Council at the next workshop using lake level criteria for controlling the length of docks.

Boardmember Tatum said that he is not in agreement with the philosophy.

After Board discussion the consensus was to present to Council at the next workshop with two perspectives; one from a scientific lake level point and the other from an aesthetic standpoint.

Adjourn

There being no further business the Board motioned to adjourn at 7:25pm.

Yolanda Quiceno
City Clerk

RESOLUTION # 19-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, DETERMINING THE PROPERTY AT 7208 SEMINOLE DRIVE HAVING ORANGE COUNTY TAX PARCEL IDENTIFICATION NUMBER 29-23-30-4389-04-040 TO BE A LEGALLY NON-CONFORMING LOT; PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, Seminole Investments 7208, LLC (“Owner”) is the current fee simple owner of that certain approximately 0.44 +/- acre property located at 7208 Seminole Drive, Belle Isle, Florida, having Orange County Tax Parcel Identification Number 29-23-30-4389-04-040 and legally described in that certain deed recorded in Official Records Instrument #20180099086, Public Records of Orange County, Florida (“Lot”); and

WHEREAS, Owner has requested the City of Belle Isle (“City”) for a determination that the Lot is legally non-conforming and may be developed in accordance with its R-1-AA zoning without a lot width variance; and

WHEREAS, the Lot is 70 feet in width and does not meet the minimum lot width requirements of the R-1-AA zoning district which require 85 feet in width; and

WHEREAS, along with the Owner’s request for a determination, the Owner has presented evidence of the creation of the Lot by Orange County in 2003 and subsequent actions of the Owner and the City including an approval by the Planning and Zoning Board in 2013, which support a finding that the Lot is a legally non-conforming lot; and

WHEREAS, the City Council is vested with comprehensive planning and zoning authority and with authority to render interpretations of the City’s land development regulations and to issue determinations on legal non-conforming status of a lot as requested by the Owner.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA:

SECTION 1: RECITALS. The foregoing recitals are confirmed as being true and correct and are hereby made a part of this Resolution.

SECTION 2: DETERMINATION. The City Council hereby determines that the Lot is a legally non-conforming lot that is developable subject to compliance with the performance standards (except the minimum lot width) and permitted uses of the R-1-AA zoning district.

Provided that the Lot shall remain in its existing configuration and dimension, a variance to the 85 foot lot width requirement of the R-1-AA zoning district is not required.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, word or provision of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.

SECTION 4. CONFLICTS. In the event of a conflict or conflicts between this Resolution or and any other resolution or provision of law, this Resolution controls to the extent of the conflict, as allowable under the law.

SECTION 5. EFFECTIVE DATE. This Resolution shall become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

ADOPTED this ____ day of _____, 2019, by the City Council of the City of Belle Isle, Florida.

CITY COUNCIL
CITY OF BELLE ISLE

Nicholas Fouraker, Mayor

ATTEST:

Yolanda Quiceno, City Clerk

Date