

**BEFORE THE CITY COUNCIL
BELLE ISLE, FLORIDA**

**REQUEST FOR REINSTATEMENT OF VARIANCE RELATED TO PROPERTY
LOCATED AT 6820 SEMINOLE DRIVE**

Historical Background:

- On December 1, 2016, Daryl Carter filed an application with the City (the “Carter Application”) pertaining to a parcel owned by Judy Douglas located at 6820 Seminole Drive. The request in the Carter Application stated: “We would like to proceed with a lot split which would result in a lot width of 70.06’. We would like a variance from the minimum lot width.”
- On January 24, 2017, the Planning and Zoning Board (the “Board”) approved the lot split and also approved the variance that allowed the reduced lot width conforming to the previously platted lot dimensions. The transcription from that hearing shows that nearly all of the discussion at the hearing related to the lot split. It was very clear that Mr. Carter had a contract to purchase the property and would not do so unless he was assured that the lot could be split and a home could be built on each of the two proposed lots.
- During the Board hearing at which the variance and lot split were approved, Richard Wiensier, who lives at 6824 Seminole Drive, immediately next door to lots that were the subject of the Carter Application, spoke in favor of the lot split and the variance. He stated:

The lot that I’m on is the same size only because the same thing, the lot I bought was actually split the same way. And so I had a 70-foot lot which I built a very nice house on and it’s improved along the way, and I really have no problem with the other lot [inaudible] that sort of fits right in with the rest of the area. That they’re all the single lots, one 70 feet wide, you can build a very nice house on it. . . . But as far as the way the ordinance is read and related to asking for the variance, I really have no problem with it at this time.

- Each of the other residents who spoke at the public hearing on the Carter Application was in favor of both the variance and the lot split.
- At the close of the public portion of the hearing, two of the Board members stated they also had no problem with the lot split. The Chairman then said: “I kind of fall within the same category. But if we were to stick to the requirements of allowing the variance, it says that all of these criteria—all four of these criteria need to be met. The alternative, of course, is to appeal to the Commission and let them allow the split if we were to follow the strict reading of the rules.” One of the Board members then said he had a different opinion: “We’re a Board and we can do whatever we want. . . . Seriously, I mean these are guidelines. And if

we approve something, it's up to the City Council to say no, if they don't like what we do. . . Or neighbors have 15 days to appeal." Another Board member then said: "So if we want to give them a split and make everything 75 feet on there, we can."

- After a little more discussion on the lot split, and not on the variance, the following Motion was made: “

I am moving to approve. I move that the criteria of Chapter 42, Article III, Section 42-641 of the Belle Isle Planned Development Code has been met to approve their request for a variance from Section 54-2(a) substandard lots of record to allow for each individual lot, lot 4 and 5, that comprises the currently developed parcel to be redeveloped as individual lots instead of being required to be aggregated as one tract and allow for the reduction from Section 50-73, site and building requirements for the R-1-AA required minimum lot width of 85 feet in anticipation of a lot split request on the subject parcel that would result in each lot respectively retaining their historical Substandard lot width of 70.06 feet on the property described as 6820 Seminole Drive, Belle Isle, Florida 32812, also known as Parcel number 29-23-30-4389-02-040.

The Motion passed unanimously.

- No appeal was taken from the Board decision, and both the lot split and the variance became final 15 days later.
- By letter dated March 3, 2018 (one year and 37 days after the variance was approved), the City Manager sent a letter to the owner of the two lots stating that the variance approved on January 24, 2017 was now void because of failure to obtain building permits and complete construction within the one-year time period allowed under Section 42-67 of the City Code. The Lowndes firm was then contacted to determine how best to reinstate the variance. The undersigned is a shareholder in the law firm and lead counsel in this appeal.
- After Lowndes was engaged to assist with this matter, an associate with the firm exchanged emails with the City Manager regarding the best method to remedy the situation. She was advised that because there was no opposition to the variance previously granted, a new variance request should be applied for and should be easily obtained. Following this suggestion, the property owner asked our firm to re-apply for the variance. We followed the City Manager's direction and re-submitted an application for the identical variance that the Board had approved for Mr. Carter on January 24, 2017.
- On July 24, 2018, the Board held a hearing on the re-submitted variance application and unanimously denied the variance request. The Board took no action on the lot split that had previously been approved.
- Several of the residents who appeared at the Board hearing in support of the Carter Application attended hearing on the re-submitted variance application and vocally opposed

granting the exact same variance for the exact same proposed uses, primarily because Mr. Carter had assigned his purchase contract to 6806 Seminole Drive, LLC, an entity controlled by Chris Comins, and the Comins' entity was the owner of the property at the time the Board considered the re-submitted variance application.

Argument in Support of Reinstating Variance:

- Any property owner is entitled to a level playing field in land use matters. It is clear from the transcriptions of the Board hearing on the Carter Application and the Board hearing on the re-submitted variance application that the essential difference between the two applications in the view of the opposing residents was the change in the applicant from Mr. Carter to an the entity controlled by Mr. Comins.
- The Carter Application included both the request for a lot split and the request for a variance. Because the Board has jurisdiction to make final decisions on both lot splits and variances, unless the decision is appealed, there was no need for the Mr. Carter to file subsequent application for the lot split.
- Even though the City Code sets a time limit for variances, there is no provision that a lot split, once granted, ever expires.
- 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. No permit is required to effectuate a variance that is granted for the purpose of merely reducing a lot dimension to allow a lot split. In addition, there is no requirement for any lot, once created, to be developed within a specific time frame--or ever. In this case, it was very clear at the hearing on the Carter Application that the pending sale of the property was contingent on the lot split being granted, and the property was subsequently sold only because of the lot split approval.
- Even if it could be argued that somehow a building permit was required to either effectuate a lot width variance or to retain a lot split, the time limitations on variances as stated in the Code could not reasonably have been intended to apply when a variance is linked to a lot split. Section 42-67 of the Code states that all permits necessary for utilization of the variance must be obtained within six months after Board approval of the variance or the variance expires. This Code section also states that the variance will expire one year after the issuance of the last permit necessary for utilization of the variance, if all construction associated with the variance has not been completed. It would have been impossible to demolish the existing house on the lot, remove the two concrete foundations under the existing house, remove the leaking septic tank, develop construction plans for two homes of the size and quality proposed by Mr. Carter, pull permits for and complete construction of the two homes within one year following issuance of the variance.
- By way of comparison, it would be reasonable to include time limits on variances linked to some type of construction. This would be the case where the variance was requested to build a fence or building that encroaches into setback. In that case, a construction permit would be needed. However, no permits are required for use of 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.

- If, however, it is the City Council’s view that the time limits established for variances apply to variances linked to lot splits, then principles of equitable estoppel require the variance to be reinstated. After the appeal period expired for the lot split and the variance, Mr. Carter assigned his purchase contract to the current property owner, an entity controlled by Mr. Comins. Shortly thereafter, the lots were purchased from Ms. Douglas, and the Comins’ entity began site work on the lots to remove a failing septic tank, demolish the existing house on the lots, remove two concrete foundations that were beneath the house and grade the lots in preparation for the construction of two new homes. Mr. Comins, through the entity that owns the lots, spent more than \$100,000 in this demolition and site clean-up effort. It would be entirely inequitable if the City does not reinstate the variance and confirm the lot split.

Conclusion:

- The City Council should approve the pending appeal and overturn the Board’s July 24, 2018 denial of the variance under either of the following approaches:
 1. Determine that a variance linked with a lot split application cannot reasonably be time-limited based on permit issuance and completion of construction because absolutely no permits are required for use of a variance related to a lot split. The fact that the construction of a home on each of the two lots was discussed during the hearing on the lot split did not impose any time frames or construction requirements as a condition of retaining the lot split.
 2. Treat the appeal of the July 24, 2018 variance denial as an appeal of the City Manager’s determination that the previously issued variance had expired and reinstate the variance on grounds of equitable estoppel (i) due to the property owner’s detrimental reliance on the prior approval of the variance and the lot split; and (ii) due to reliance on direction received from the City Manager regarding filing a new variance application.

Respectfully submitted,
LOWNDES, DROSDICK, DOSTER,
KANTOR & REED, P.A.



Miranda F. Fitzgerald
As attorneys for 6806 Seminole Drive, LLC

Dated: October 24, 2018