



Legislation Text

File #: 19-1397, **Version:** 2

REQUEST TO APPEAL THE BOARD OF ADJUSTMENT DECISIONS PERTAINING TO RESIDENTIAL ZONING VARIANCES FOR THE PROPERTY LOCATED AT 9020 NW 21ST STREET, FROM MR. JASON FERNANDEZ:

- A) ZV(R) 2019-19 - TO ALLOW 51.5% (33.5') TOTAL WIDTH OF EXISTING DRIVEWAY, INSTEAD OF ALLOWED 40% (24') TOTAL WIDTH;
- B) ZV(R) 2018-20 - TO ALLOW A ZERO (0') FOOT EAST SIDE YARD SETBACK FOR EXISTING DRIVEWAY, INSTEAD OF THE REQUIRED FIVE (5') FOOT SIDE YARD SETBACK;
- C) ZV(R) 2018-21 - TO ALLOW A ZERO (0') FOOT WEST SIDE YARD SETBACK FOR EXISTING DRIVEWAY, INSTEAD OF THE REQUIRED FIVE (5') FOOT SIDE YARD SETBACK;
- D) ZV(R) 2018-22 - TO ALLOW A 62% TOTAL FRONT YARD LOT COVERAGE WITH EXISTING DRIVEWAY/WALKWAY, INSTEAD OF ALLOWED MAXIMUM 35%;
- E) ZV(R) 2018-23 - TO ALLOW A 2.8 FOOT REAR YARD SETBACK FOR A SHED ON SLAB, INSTEAD OF THE REQUIRED FIVE (5') FOOT REAR YARD SETBACK.
- F) ZV(R) 2018-24 - TO ALLOW A 2.25 FOOT EAST SIDE YARD SETBACK FOR A SHED ON SLAB, INSTEAD OF THE REQUIRED FIVE (5') FOOT SIDE YARD SETBACK

1. On September 4, 2019 the Board of Adjustment (BOA) heard an application for multiple residential zoning variance requests from Mr. Jason Fernandez pertaining to the property located at 9020 NW 21st Street.

2. Mr. Fernandez requested the following residential variances:

ZV(R) 2019-19 - To allow 51.5% (33.5') total width of existing driveway, instead of allowed 40% (24') total width;

ZV(R) 2018-20 - To allow a zero (0') foot east side yard setback for existing driveway, instead of the required (5') foot side yard setback;

ZV(R) 2018-21 - To allow a zero (0') foot west side yard setback for existing driveway, instead of the required (5') foot side yard setback;

ZV(R) 2018-22 - To allow a 62% total Front Yard Lot Coverage with existing driveway/walkway, instead of allowed maximum 35%;

ZV(R) 2018-23 - To allow a 2.8 foot rear yard setback for a shed on slab, instead of the required (5') foot rear yard setback.

ZV(R) 2018-24 - To allow a 2.25 foot east side yard setback for a shed on slab, instead of the required (5') foot side yard setback.

3. The variance requests and resident statement are attached to the agenda item.

4. Planning and Economic Development staff, including the City's Zoning Administrator, do not make recommendations on variance requests. Therefore, there is not a recommendation from staff on the resident's request.

5. After hearing testimony, reviewing the application as well as the statements from the applicant, the

Board of Adjustment voted to deny all six residential zoning variance requests.

A summary of the votes are as follows:

- ZV(R) 2019-19 - Motion to Approve - Failed 0-4
- ZV(R) 2019-20 - Motion to Approve - Failed 0-4
- ZV(R) 2019-21 - Motion to Approve - Failed 0-4
- ZV(R) 2019-22 - Motion to Approve - Failed 0-4
- ZV(R) 2019-23 - Motion to Approve - Failed 1-3
- ZV(R) 2019-24 - Motion to Approve - Failed 0-4

6. Per Section 32.037 of the City of Pembroke Pines Code of Ordinances decisions of the BOA are subject to appeal to the City Commission in accordance with the process and procedures set forth in § 32.083.

7. Section 32.083 APPEAL OF BOARD DECISIONS states the following:

(A) Decisions of the Board of Adjustment in quasi-judicial proceedings are subject to appeal to the City Commission by either the city, petitioner, or an AFFECTED PERSON as defined in § 37.02 based on lack of competent and substantial evidence to support the Board's ruling.

(B) Any person seeking to appeal must file a written request to appeal with the Director of Planning and Economic Development, or his or her designee, no later than noon on the seventh calendar day following the meeting at which the Board of Adjustment has rendered a final decision.

(C) The person filing the appeal shall submit a written statement to the Director of Planning and Economic Development no later than eight days before City Commission meeting at which the appeal shall be heard. This written statement shall state with specificity why the appellant believes that the Board's decision was not based on competent and substantial evidence. This written statement shall be included in the agenda for the Commission meeting at which time the appeal shall be heard.

(D) The person filing the appeal shall bear the cost of all advertising and notice requirements associated with the appeal.

(E) The appeal shall be presented to the City Commission as soon as practicable, subject to the notice requirements and procedures set forth herein, for a final determination as to whether or not there was competent and substantial evidence to support the Board's ruling.

(F) Hearings before the City Commission are not trials de novo but rather appellate in nature. Appeals shall be limited to the written record and new additional evidence shall not be presented. For purposes of this subchapter, COMPETENT AND SUBSTANTIAL EVIDENCE shall mean evidence shall be deemed competent to the extent that it should be sufficiently relevant and material so that a reasonable person would accept it as adequate to support the conclusion reached. Evidence shall be deemed substantial if it will establish a substantial basis of fact from which the fact at issue can be reasonably inferred, or such relevant evidence as a reasonable mind would accept as adequate to support the conclusion.

8. Consistent with code requirements, the applicant, Mr. Fernandez, has submitted the required documentation to appeal the BOA decisions to the City Commission. See attached Intent to appeal dated September 5, 2019 meeting the required deadline of September 12, 2019 and Request for Appeal letter dated September 29, 2019.

9. The applicant, requests City Commission action regarding the BOA decision to deny Residential Zoning Variance Requests ZV (R) 2019-19, ZV (R) 2019-20, ZV (R) 2019-21, ZV (R) 2019-22, ZV (R) 2019-23 and ZV (R) 2019-24.

10. Although there is one applicant and one application, should the City Commission decide to consider the request for appeal and take action, motions should be made on each item as the Board considered the items individually.

FINANCIAL IMPACT DETAIL:

- a) **Initial Cost:** None
- b) **Amount budgeted for this item in Account No:** Not Applicable.
- c) **Source of funding for difference, if not fully budgeted:** Not Applicable.
- d) **5 year projection of the operational cost of the project:** Not Applicable.
- e) **Detail of additional staff requirements:** Not Applicable.