

BOARD OF COUNTY COMMISSIONERS  
APPEAL & PUBLIC HEARING ON BOARD OF  
ZONING ADJUSTMENT DENIAL OF VARIANCE  
*September 20, 2016*

*Presented by:*

Nicole Turcotte  
of



## *Background*

- Applicant's property is zoned R-CE; single family residence
- Applicant began construction prior to receiving permit or approval of plans
- June 17, 2015: Notice of Violation
  - Addition without zoning approval or building permit
- July 15, 2015: Code Enforcement Board Hearing
  - Applicant ordered to correct violation by October 13, 2015
  - Case is still open
- April 7, 2016: Set for hearing before Board of Zoning Adjustment
  - Case was continued
- May 5, 2016: Board of Zoning Adjustment Hearing
  - Variance Denied
- May 24, 2016: BZA recommendations before the BCC
- July 12, 2016: BCC public hearing was continued



# Background

- Applicant is requesting a **80%** reduction in variance from property line (from 10 feet to 2 feet)
- Applicant requests a variance to validate unpermitted construction of a second floor addition a mere 2 feet from the west property line



# Background



## *Criteria for Variance – County Code*

- Section 30-43, Orange County Code, provides the criteria that must be met for a variance to be granted:
  - Special conditions and circumstances must exist which are peculiar to this land, structure, or building
  - Literal interpretation of Code must deprive the applicant of rights commonly enjoyed by other properties in the same district
  - The special conditions and circumstances cannot result from actions of the applicant; in other words, they cannot be self-created
  - Granting a variance cannot confer on the applicant any special privilege that is denied under the zoning Code to other lands, structures, or buildings in the same district
  - Any variance granted must be the minimal possible variance necessary
  - Variance must be in harmony with intent of zoning ordinance and may not be injurious to neighborhood
- Variance should not be granted unless all criteria are met.

## *Criteria for Variance - Response*

- In response to Section 30-43, Orange County Code, in this case:
  - Special conditions and circumstances
    - No special conditions or circumstances exist which are peculiar to this land, structure, or building
    - This condition is not tied to the land
    - For example, as the BZA noted, the lot is not irregularly shaped
  - Rights commonly enjoyed by others
    - Literal interpretation of County Code does not deprive Ms. Rogers of rights commonly enjoyed by others
    - BZA observed applicant can still use her property as a single family home
  - Special conditions and circumstances cannot be self-created
    - In this case all circumstances are self-created and result from actions of the applicant

## *Criteria for Variance - Response*

- In response to Section 30-43, Orange County Code, in this case:
  - No special privilege
    - Granting this request will absolutely confer on the applicant a special privilege that is denied by the County Code to other lands, structures, or buildings in the same district
  - Must be the minimal variance
    - The variance requested is not the minimum possible variance
    - Other options on the property or in the house have not even been professionally evaluated
  - Must be harmonious
    - This variance is not in harmony with intent of zoning ordinance
    - Variance may be injurious to neighborhood



## *Criteria for Variance - BZA*

- Orange County Board of Zoning Adjustment Found:
  - Applicant's request for an 80% reduction in setback is extreme.
  - Applicant did not meet all of the requirements required for the Board to grant a variance as those requirements are spelled out in the County Code.

## Conclusion

- On behalf of Applicant's neighbors, David and Nancy McDonald, we respectfully request the BCC UPHOLD the findings of the Board of Zoning Adjustment and DENY the variance request.
- Speakers from the neighborhood will now address their specific concerns relating to applicant's failure to meet the criteria for a variance listed in County Code that I briefly outlined.
- Thank you.