



# Board of Planning and Appeals

## BOPA Regular Meeting

~ Minutes ~

1065 Ridgewood Ave  
Holly Hill, FL 32117  
[www.hollyhillfl.org](http://www.hollyhillfl.org)

Liz Nelson  
386-248-9442

---

Monday, May 2, 2016

6:30 PM

City Commission Chamber

---

### 1. Call to Order

| Attendee Name       | Title         | Status  | Arrived |
|---------------------|---------------|---------|---------|
| Mike Myer           | Chairman      | Present |         |
| Christopher Via     | Vice Chairman | Present |         |
| Edward H Perkins    | Board Member  | Present |         |
| Dorothy Featherston | Board Member  | Present |         |
| Jim Legary          | Board Member  | Present |         |

### 2. Invocation

Invocation was given by Chairman Mike Myer.

### 3. Pledge of Allegiance

Chairman Mike Myer led the Pledge of Allegiance.

### 4. Minutes Approval

**Agenda Item (ID # 1323)**

Minutes

**DISCUSSION:** Approve Minutes of March 7, 2016 Board of Planning & Appeals Meeting

**FISCAL ANALYSIS:** N/A

**STAFF RECOMMENDATION:** Approve Minutes

**COMMISSION GOAL:** N/A

**MOTION:** As determined by the Board

COMMENTS - Current Meeting:

Minutes were approved as submitted.

## ATTACHMENTS:

- Minutes - March 7, 2016 (PDF)

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Christopher Via, Vice Chairman          |
| <b>SECONDER:</b> | Edward H Perkins, Board Member          |
| <b>AYES:</b>     | Myer, Via, Perkins, Featherston, Legary |

## 5. Agenda Item

### 1. Agenda Item (ID # 1318)

1103 State Variance Request A Request to Reduce the 250 Foot Setback from LPGA Boulevard to Zero to Allow Automotive Repair as a Business at 1103 State Avenue.

**INTRODUCTION:** The subject property lies in the Redevelopment District Overlay which prohibits automotive repair on properties adjacent to Ridgewood Avenue or LPGA Boulevard (Section 114-635). Adjacent is defined as the full depth of property fronting on LPGA Boulevard or 250 feet, whichever is less. While the subject property is addressed on State Avenue it abuts LPGA Boulevard on the south side. Our code defines both yards as front yards. The applicant is requesting a reduction of the 250-foot setback to zero to allow for the establishment of an automotive repair business at this location.

**BACKGROUND:** The subject property is located at the northeast corner of the intersection of State Avenue with LPGA Boulevard. As the property lies within the Redevelopment District Overlay, the prohibition against automotive repair businesses applies. The subject property was not always a corner property. At one time, there was an additional private property to the south of 1103 State, but this property was purchased and incorporated into the right-of-way of LPGA Boulevard. The added right-of-way is used for stormwater retention, sidewalk, landscaping and is available to support future intersection improvements. The change in ownership of the former corner parcel moved the right-of-way line making 1103 State the new corner parcel.

The property has been used for automotive repair in the past and has a lift on site to support automotive repair work. The applicant has a prospective tenant who would like to undertake an automotive repair business at this location, but the City is prevented from issuing a business license under the current code.

The 250-foot setback defining the limits of the automotive repair prohibition was added to the code to address properties such as Enterprise Court where one ownership extends well back from LPGA Boulevard and has multiple tenant spaces. The 250-foot limit places a restriction on the LPGA frontage that approximates the depth of most properties fronting on LPGA Boulevard. The subject property has a total depth of 105 feet and the applicant is requesting the 250-foot requirement be reduced to zero.

**DISCUSSION:** The applicant has submitted an application with his case supporting the variance request. A copy of the application is included with the agenda packet. The applicant notes that the surrounding area is industrial and heavy commercial in

character and backs up to commercial development fronting on Ridgewood Avenue. The applicant notes the building includes a lift and has been used for automotive repair in the past.

The one item in this case that makes the property unique when compared to other properties covered by Section 114-635 is that, in this case, the right-of-way of LPGA Boulevard was expanded to the subject property. Had the original parcel south of the subject property remained in private ownership, the City would have permitted the requested use at this site. This change was clearly not resulting from action of the property owner.

The subject property is designated as industrial along with much of the State Avenue frontage in this area. Zoning for the block is CC-1 Commercial Corridor, and the applicant has pointed out a number of industrial and heavy commercial uses established along the street. The addition of automotive repair would not be character changing for the area.

The City has had some code enforcement issues with the subject property. The anticipated tenant began work at the site without the proper business license, despite being advised that the site had limitations for automotive repair, and the tenant has twice removed stop work orders placed on the site. Any relief the Board may believe is warranted based on the facts of the variance case, should be conditioned upon full compliance with City codes.

**RECOMMENDATION:** Recommend the City Commission approve the requested variance to reduce the 250-foot setback requirement to zero to allow automotive repair at 1103 State provided the property owner and his tenants fully comply with the applicable City codes.

**COMMENTS - Current Meeting:**

Tom Harowski, City Planner stated that this request is for a reduction of the 250 foot setback from LPGA Boulevard to 0 to allow an automotive repair business. The property has been used for automotive repair in the past and the building is set up for that type of business. He pointed out that the property is located within the Redevelopment Overlay District which has a prohibition on automotive repair businesses on properties adjacent to Ridgewood Avenue or LPGA Boulevard. The term "adjacent" is defined as the full depth of the property fronting on LPGA Boulevard or 250 feet, whichever is less. This measurement was used to be able to accommodate the properties that are deeper than 250' (Enterprise Court).

He pointed out that this property at one time, did not front on LPGA Boulevard, that there was an additional private property to the south. That property was purchased by Volusia County for the expansion of the LPGA & Ridgewood Avenue intersection and used by the County for stormwater retention, sidewalk and to support any future intersection improvements.

Mr. Harowski, informed the Board that there has been some code enforcement issues with the property and that any relief the Board may warrant, should be conditioned upon full compliance with City codes. He further stated that he does recommend approval of the 250 foot setback relief.

John Oliva, Property Owner stepped to the podium telling the Board that all the surrounding areas are commercial uses and that his building is setup for an automotive repair business. He asked that the Board grant the variance to the set-back requirement and that he will bring the property into compliance with City codes.

Into the motion for approval of the variance request, the Board also added that the property must be brought into compliance with all City codes.

**ATTACHMENTS:**

- 1103 State Location Map (PDF)
- V-2016-01 Application 1103 State (PDF)
- V-2016-01 Survey (PDF)

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Christopher Via, Vice Chairman          |
| <b>SECONDER:</b> | Edward H Perkins, Board Member          |
| <b>AYES:</b>     | Myer, Via, Perkins, Featherston, Legary |

**2. Agenda Item (ID # 1319)**

Variance Request for 919 Newcastle A Request for a Variance of 12 Feet One Inch from the Required Front Yard Setback of 25 Feet and a Variance of 12 Feet Three Inches from the Required 30 Foot Rear Yard Setback to Permit Construction of a Garage.

**INTRODUCTION:** The applicant is proposing to add a garage addition to an existing two-family dwelling. The addition as proposed will encroach into the required front yard and the required rear yard. The applicant is requesting a variance of 12 feet one inch from the required 25-foot front yard setback and a variance of 12 feet three inches from the required 30-foot rear yard setback.

**BACKGROUND:** According to the Volusia County Property Appraiser Records, the existing two-family dwelling was built in 1977 and purchased by the current owner in 2011. The unit lies at the west of Newcastle Court at the end of the cul-de-sac. The abutting properties include the proposed Mirage development to the west and two-family dwellings to the north, east and south which are all part of the same subdivision development.

In the definitions section, the land development code identifies which yards are front yards, which are rear yards and which are side yards. The diagram defining these yards is attached.

When applied to the subject property, the diagram clearly shows that the yard adjacent to the street is the front yard while the two yards extending north and east from the rear corner are rear yards. The two yards extending south and west from the cul-de-sac are side yards. The property survey shows that the existing building as constructed met the rear yard requirement on the south but not on the west. The proposed garage addition to the north when constructed in line with the existing building will necessarily violate the rear yard setback requirement on the west.

The survey also shows that the existing building fails to meet the required front yard setback at both corners. As with the rear yard, the proposed garage addition when extended in line with the front wall of the unit will necessarily encroach in the required front yard setback. The applicant has submitted a sketch of the proposed development showing the location of the structure and the resulting front and rear yard setbacks. The proposed side yard setback exceeds the minimum requirement of the feet.

We do not have any reliable information on whether the setback requirements were changed subsequent to the construction of the units in 1977 or whether errors were made in the permitting review. The current zoning code underwent a major review in July 1993, but the adopting ordinance did not include information sufficient to identify specific changes.

**DISCUSSION:** The applicant has submitted an application responding to the questions posed for consideration of variances. A copy of the application is attached. The applicant notes that the proposed plan is to extend the building in line with current construction, and that the extension will have minimal impact on other properties. The property to the west is the retention pond for units already constructed in the Mirage development. The front yard placement of the proposed structure lines up with the driving lane of the cul-de-sac rather than impacting adjacent structures. The residence to the north is the closest structure and the placement of the proposed building will be the same distance from the neighboring structure as a building conforming to front and rear yard setbacks could be built. The minimum spacing between the side of the proposed garage and the front of the neighboring residence meets code requirements.

The applicant notes the following points in the application:

1. The need to seek a variance from the front and rear yard setbacks is generated by the placement of the building on the site such that it fails to meet the required setbacks as currently constructed.
2. The placement of the building was done in 1977 prior to the applicant purchasing the property.
3. The code typically allows garage parking. The site has one single-car garage, but does not have a garage for each unit. Some garage space was apparently converted to living area in the past.
4. Typically, homes are provided with the opportunity for covered parking.
5. The proposed addition is being done in-line with the existing structure. The depth of the proposed addition is 25 feet which is reasonable for a garage.
6. The proposed variance is in harmony with the comprehensive plan policies encouraging residential development. The modification from setbacks requirements will not impact light and air or general views from other properties.
7. As noted in the discussion above, the placement of the proposed addition would not impact adjacent properties

**RECOMMENDATION:** Given the condition of the site as developed and the minimal impact to adjacent properties, the staff recommends approval of the requested variances to the front and rear yard.

**COMMENTS - Current Meeting:**

Tom Harowski, City Planner explained the variance request is for 12'1" from the required front yard setback of 25' and a variance of 12'3" from the required 30' rear setback for the permitted construction of a garage. He stated that the property to the west is the retention pond for units in the Mirage development. The minimum spacing between the side of the proposed garage and the front of the neighboring residence meets code requirements.

Mr. Harowski, recommends approval of the requested variances to the front and rear yards, as there will be no adverse impacts to the surrounding properties.

The applicant Barbara Wolverton, 919 New Castle Court stepped to the podium to answer any questions the board may have. The motion was made and passed unanimously.

**ATTACHMENTS:**

- Yard Diagram from Section 78 (DOCX)
- V-2016-02 919 Newcastle Application Package (PDF)
- 919 Newcastle Proposed Development Plan (PDF)
- 919 Newcastle Survey (PDF)

|                  |                                         |
|------------------|-----------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>             |
| <b>MOVER:</b>    | Christopher Via, Vice Chairman          |
| <b>SECONDER:</b> | Dorothy Featherston, Board Member       |
| <b>AYES:</b>     | Myer, Via, Perkins, Featherston, Legary |

**3. Agenda Item 2016-9**

Food Truck Discussion Consideration of a Proposal to Allow Food Trucks to Operate Within the City of Holly Hill.

**INTRODUCTION:** The City Commission has requested a review of the options and opportunities related to food trucks operating within the City of Holly Hill. As this process will eventually call for consideration of amendments to the Land Development Code, the Board of Planning and Appeals is being requested to review the activity and provide a recommendation to the City Commission.

**BACKGROUND:** The City Commission is interested in the potential for a regular City-sponsored event that would be based on food trucks, and several merchants have inquired about the opportunity to have food trucks periodically sell food at their business sites as a means of generating additional customer traffic. The use of food trucks as part of special event activities has been established in the City through events such as the "Bike Week" and "Biketoberfest" and "Trunk or Treat" among other events. A City-sanctions special event based around food trucks would be somewhat different, but not a cosmic leap from past special events.

Outside of special events the City has not permitted food truck sales activity. We do approve commissaries which are bases of operation for food trucks, but we do not permit sales activity. In the literature on food trucks there are three basic types of vehicles that are discussed. A lunch truck serves pre-packaged food but does not cook on the vehicle. The food truck cooks on the vehicle, and the food cart serves foods but is not motorized. Some codes also identify a peddler which requires the food vendor to be in motion except when a sale is being conducted (like the traditional ice cream truck).

Food trucks have seen increased popularity in recent years through increased exposure through television such as the Food Channel and through other outlets such as social media. However, food trucks do not come without some issues. These are discussed below.

**DISCUSSION:** In looking at the programs from other jurisdictions, I have identified five areas of concern that are regulated in at least some communities along with some basic data that most communities require. The key areas of concern include:

**Health Compliance:** What standards are applied to ensure that food served from the truck is safe.

**Conflict with Brick & Mortar Restaurants:** In some cases, restaurants that serve from brick and mortar locations object to food trucks competing with them on what they regard is an unfair playing field.

**Cleanliness of the vending area:** If food truck activity is allowed, what standards are needed to ensure that trash and litter is controlled.

**Restrooms:** What restroom options are available for food truck patrons.

**Noise:** Some food trucks are equipped with speakers to play music, and in some cases live entertainment has been provided. What controls may be needed to regulate noise nuisances on other properties.

**Parking:** Most local governments do not require additional parking to support a food truck.

**Signage:** The rules should address what type of signage is permitted.

Staff reviewed a number of established programs in other communities. This review identified some responses to these issues that are currently part of regulations or which have been tried. The response that communities have offered to these issues are listed below:

**Health Compliance**

- Require a state certificate of inspection
- Require local business tax receipts
- No discharge of grease or other cooking waste is permitted

These requirements are typically standard for most jurisdictions. There is an established process through the Health Department for initial and regular inspections of food truck operations. In order to begin service, the City would want a copy of the most recent certification. The operations need to be self-contained so that no grease or cooking waste is left on the property once the food truck leaves.

The business tax receipt is a less certain requirement. Some guidance will be required from our legal advisor as to whether a BTR can be required for a temporary business site. If the sales site can be considered a branch site, it may be possible to require a BTR for a food truck operating out of another jurisdiction. The section we located from the State laws on business taxes are provided in an attachment to this report.

**Conflict with Brick & Mortar Restaurants**

- Limit the number of days a week a mobile vendor can open
  - Limit the number of days per year a mobile vendor can open
  - Spacing requirements from existing restaurants
  - Underlying zoning must permit restaurants
  - Limit the number of vendors that may be permitted at a given location
  - Limit areas in the jurisdiction where mobile vending is permitted
- (Note: When there is a restriction on the number of days a mobile vendor can be open, special event days do not count against the time periods.)

Established brick and mortar restaurants may have concerns about permitting food trucks as competition for their businesses when a food truck is not paying the same business operating expenses for rent, operating expenses and business taxes. The techniques some communities have used when responding to these concerns have been limitations on the number of operating days and limitations on locations. One community has a process where neighborhoods could file a request to allow food trucks in their area, while it is common to see communities declare exclusion areas where food trucks are prohibited. These tended to be traditional downtown areas and redevelopment areas where this technique is used.

Most communities limit food trucks to commercially developed areas, and they prohibit the use of vacant lots as food truck locations. The regulations are mixed when it comes to the use of right-of-way as a food truck business location.

**Cleanliness of the vending area**

- Require the vendor to provide trash receptacles
- Prohibit use of Styrofoam containers
- Require property owner to clean up area as well

Food trucks are typically required to provide trash containers and to remove all trash and debris once they close operations. Limiting food trucks to private property helps with maintaining clean areas as the property owner can be held responsible for the condition of the site.

**Restrooms**

- Not typically addressed
- Require owner to make accessible

As noted, this is an apparent issue, but not one that appeared in most regulations. As noted, the property owner can be made responsible to provide restroom facilities when needed.

**Noise**

- Prohibit amplified sound
- Have setback from residential areas
- Limit hours of operation

Noise has been an issue as with any outdoor activity. Food trucks have been known to include amplified music and even live music in some cases. Setbacks from residential areas are common as are limits on the hours of operation. Prohibition of amplified sound is also common.

**Parking**

The local government programs reviewed did not require additional parking be provided for a food truck. The assumption is apparently that the host business understands that it is surrendering spaces when they agree to allow the food truck on their site. There are some communities which prohibit the food truck from blocking parking spaces or drive aisles. Otherwise this topic is addressed through the site plan review process.

In many instances food trucks are located in high density commercial areas where there is a high volume of pedestrian traffic that would not require parking. The Board may want to consider a regulation or requirement with regard to parking.

**Signage**

The food truck menu board is typically placed on the vehicle. Communities offer additional signage options such as an a-frame sign that may be placed as a temporary sign on the host property advertising the presence of the food truck.

The applications require the same basic set of information about the business and the property location. The list below includes the most common conditions for operations in addition to time limits. The final list would depend on the specifics recommended and approved by the City Commission.

- Property owner approval
- Not allowed on streets or sidewalks
- Limited to commercial areas
- Not allowed on vacant lots
- Must be on paved surface (can't damage landscaping)
- Site plan of use area is required
- Some jurisdictions require general liability insurance
- Vendor contact data is required
- Photo of vendor and vehicle
- Business licenses

**RECOMMENDATION:** This item is provided for discussion and recommendation to the City Commission.

**COMMENTS - Current Meeting:**

Tom Harowski, City Planner summarized his staff report regarding a proposal to allow food trucks to operate within the City limits. The City Commission is interested in the potential for a regular City sponsored event that would be based on food trucks and several merchants have inquired about the opportunity to have food trucks periodically to sell food at their business sites. The use of food trucks as part of a special event activity has been established in the City. But outside of special events the City has not permitted food truck sales activities.

Mr. Harowski, explained the different types of food trucks that are operating around the area. He further stated what areas of concern that the City needs to look at regarding these trucks. Staff and the Board discussed the different concerns. Those being: health compliance, conflict with brick and mortar restaurants, cleanliness of the vending area, restrooms, noise, parking and signage.

After a lengthy discussion, Mr. Harowski, was directed by the Board to bring back a set of regulations for further discussion.

|                                  |
|----------------------------------|
| <b>RESULT:      PRESENTATION</b> |
|----------------------------------|

**6. Old Business**

None

**7. Board/Staff Communications**

There will be no June meeting due to the lack of requests.

The July meeting falls on July 4, 2016. The Board's consensus was to change that meeting date to July 18, 2016.

**8. Adjournment**

Meeting adjourned at 7:50 pm