




INTEROFFICE MEMORANDUM FROM THE DEVELOPMENT SERVICES DEPARTMENT

DATE: July 9, 2020

TO: Board of Adjustment

FROM: Andrew Pinney, AICP, Senior Planner 

RE: Culver's Restaurant Administrative Appeal

Staff acknowledges that administrative appeals are a seldom occurrence in the City of Margate, and therefore has prepared this memo in order to offer clarity in the proceedings for the July 14, 2020 special meeting of the Board of Adjustment. The item before the Board is an appeal of an administrative order issued via Department of Environmental and Engineering Services (DEES) Permit# 19-00200205.

The Board of Adjustment is duly authorized by the Code of the City of Margate to hear such appeals. Copied into this memo are Sections 2-76, 2-78(a), 2-80(a), 23-13, and 23-27, with a brief explanation following each section.

Sec. 2-76. - Created; appointment; terms; officers; advisors.

A board of adjustment for the city is hereby created and established consisting of five (5) members who shall be qualified as board members as provided by law. The board members shall be appointed by the city commission and shall serve without compensation and at the pleasure of said city commission. All appointments shall be for a one-year period. The members of said board shall elect a chairperson, a vice-chairperson, and a secretary from its membership. **The city manager, city building inspector, city attorney and such other officers and officials of the city as the board may require shall be considered as advisors to the city board of adjustment and may be called upon from time to time to meet with said board.**

Section 2-76 of the Code of the City of Margate establishes the Board of Adjustment as a legitimate body of the City. This Section also authorizes the Board to call upon city staff from time to time, as needed, to advise the Board on matters within the Board's purview. In this particular instance, DEES is charged with enforcing the tree preservation ordinance and is thereby authorized to issue

permits for such, making that particular department appropriate to advise the Board on the Culver's Restaurant administrative appeal application.

Sec. 2-78. - Powers and duties.

(a) The board shall have the following powers:

(1) **To hear and determine appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning regulations of the city.**

(2) To hear and grant or deny such variances from the terms of any zoning ordinances of the city. To hear or deny such variances from the Code of the city as will not be contrary to the public interest or the general purposes sought to be accomplished by the zoning ordinances and where, owing to special conditions, a literal enforcement of the provisions of the zoning ordinances will result in unnecessary hardship in the use of the property involved.

Section 2-78 of the Code of the City of Margate describes the Board of Adjustment's initial powers and duties, as provided in the enabling legislation of the Board. All zoning regulations are provided in Appendix A of the Code of the City of Margate, also known as the Margate Zoning Code. This memo will explain how and when these powers are applicable beyond zoning matters.

Sec. 2-80. - Proceedings on applications for variances or other appeals.

Upon the filing of an application for a variance or other appeal in proper form and the payment of the appropriate costs to the City of Margate the procedure to be followed shall be in accordance with the following appropriate regulations:

(a) **If the appeal is from a decision of an administrative officer in the enforcement of zoning regulations, said appeal shall be filed within thirty (30) days of the administrative officer's decision.** A copy of the appeal shall be furnished to the administrative officer who shall within two

(2) days prepare a statement in writing of points involved and his interpretation of the ordinances or regulations governing same and his ruling thereof and shall furnish copies of such statement to the board of adjustment and to the manager of the city.

Section 2-80 of the Code of the City of Margate provides codified direction from the City Commission as to how the Board and staff shall process regular business matters. In this section, appeals of the *enforcement of zoning regulations* are given a specific window of time in which an applicant may file an appeal. As stated above in this memo, all zoning regulations are provided in

Appendix A of the Code of the City of Margate, also known as the Margate Zoning Code. Thus, an appeal to the provisions of a landscape regulation found outside of the Zoning Code is not subject to the 30-day time limit described in this Section.

Chapter 23 Landscaping of the Code of the City of Margate is provided in the general Code of Ordinances. This Chapter is not considered to be zoning regulations, because it is not found within the Margate Zoning Code. Chapter 23 Landscaping consists of two articles. Article I In General of Chapter 23 Landscaping provides general landscape requirements for the installation and maintenance of landscaping, and charges the Development Services Department with enforcing the provisions provided therein. Article II Preservation and Protection of Trees of Chapter 23 Landscaping provides regulations meant to preserve trees, and charges the Department of Environmental and Engineering Services with enforcing the provisions therein. Article II is a requirement mandated by Broward County. Both Article I and Article II provide code sections that duly authorize the Board of Adjustment to hear such matters arising from the enforcement of this Chapter.

Sec. 23-13. - Adjustments of standards.

Application for the adjustment of landscaping requirements provided herein shall be filed with the board of adjustment pursuant to the procedures provided for said board.

Section 23-13 of the Code of the City of Margate is found within Article I of Chapter 23 Landscaping, and authorizes the Board of Adjustment to hear requests for the adjustment of landscaping requirements provided in that Article. This section, in all practical purposes, authorizes the Board to hear what is essentially a variance request for general landscaping requirements. If a variance is to be granted, an applicant must demonstrate a hardship such that the property would be practically unusable under a strict application of Code. This Section was added in order to offer a relief mechanism of landscaping regulations, and this process needed a separate and distinct section to do so because landscaping regulations are not considered zoning regulations due to the organization of the Code of the City of Margate.

Sec. 23-27. - Preservation as grounds for variance; appeals from administrative decisions.

(a) The preservation of any tree may be considered as the basis for the granting of a variance from the literal application of the provisions of the city's zoning or subdivision regulations. If, in the determination of the city manager or his designate, the sole basis for the request for a variance is to preserve any tree which would otherwise have to be removed, he may direct the required variance fee to be waived.

(b) **Any person or party aggrieved by an administrative decision or order of city personnel in the implementation and enforcement of the provisions of this article may appeal to the board of adjustment,** setting forth the facts and reasons why they feel such administrative decision or order

is not reasonable or in the public interest, according to the spirit and intent of this article.

Section 23-27 of the Code of the City of Margate is provided within Article II of Chapter 23 Landscaping, which is specific to the subject to tree preservation, including tree removal permits. A tree removal permit is the subject of the appeal before the Board. Two very different concepts are covered in paragraphs (a) and (b) of Section 23-27 of the Code of the City of Margate.

Paragraph (a) of Section 23-27 of the Code of the City of Margate provides an additional criterion for the Board of Adjustment to consider when tasked with hearing a variance request that is seeking relief from a zoning regulation. If deviation from the Zoning Code is necessary to preserve any tree which would otherwise have been removed, then the Board is authorized to approve said variance. As an example, if a given property is lucky enough to have a very large specimen tree on it that is in the way of where a building would normally be situated on the property, the Board would be duly authorized to approve a setback variance in order to preserve said specimen tree. This paragraph also authorizes the City Manager to waive an application fee for a variance

Paragraph (b) of Section 23-27 of the Code of the City of Margate provides that any person or party aggrieved by an administrative decision or order of city personnel in the implementation and enforcement of Article II Preservation and Protection of Trees, of Chapter 23 Landscaping, of the Code of the City of Margate may appeal to the Board of Adjustment. Further, this paragraph provides no time limit dictating when an application must be filed. Mr. Eric Pierce of Culver's Restaurant is an aggrieved party regarding the administrative order provided via DEES Permit# 19-00200205 issued under the implementation and enforcement of Article II Preservation and Protection of Trees, of Chapter 23 Landscaping, of the Code of the City of Margate. As this is a matter pertaining to landscaping regulations, it is not an appeal of the enforcement of zoning regulations, and therefore not subject to the 30-day window established under Section 2-80 of the Code of the City of Margate. Considering all of the code sections cited and the facts of this application, staff finds the application was appropriately received and processed, and that the Board of Adjustment is duly authorized to hear the item. The Board must now review the appeal under the applicable criteria provided in paragraph (b), and determine whether the administrative order provided in Permit# 19-00200205 is reasonable and in the public interest, according to the spirit and intent of Article II Preservation and Protection of Trees.