

Douglas K. Gartenlaub
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July 11, 2023

VIA EMAIL AND FEDERAL EXPRESS

Development Services
Seminole County Planning and Development
1101 East First Street
Sanford, Florida 32771

**Re: 6037 Cecilia Drive, Apopka, Florida 32703, Board of Adjustment file No. 2023-699,
Permit 20-9808**

To Whom it May Concern:

Please take this as formal Notice of Appeal of the June 26, 2023 Board of Adjustment decision with regarding to Permit/Project 20-9808, with regard to property 6037 Cecilia Drive, Apopka, Florida 32703, Case No. 2023-699 to the County Commission.

Attached are the required Notice of Appeal form, \$1000.00 appeal fee and a copy of the prior Notice of Appeal of the Board decision with supporting documentation as Exhibit "A." Also submitted are photographs of the subject property.

Sincerely,

Douglas K. Gartenlaub

Doug Gartenlaub

DKG/ll

Enclosures

EXHIBIT “A”

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March 1, 2023

VIA EMAIL AND FEDERAL EXPRESS

Development Services
Seminole County Planning and Development
1101 East First Street
Sanford, Florida 32771

Re: 6037 Cecelia Drive, Apopka FL 32703 - Permit 20-9808

To Whom it May Concern:

Pursuant to Seminole County Ordinance ("SCO") Section 40.245, please take this as Notice of Appeal of the decision of Mary Moskowitz as Division Manager, Development Services, Planning and Development with regard to that certain Permit No. 20-9808 for the Property at 6037 Cecelia Drive, Apopka FL 32703. A copy of Seminole County Appeal of Decision form is attached as **Exhibit A**.

Request for an opinion under SCO 40.245 was made on January 12, 2023. A copy of that letter to Desmond Morrell, County Attorney is attached as **Exhibit B**. Ms. Moskowitz responded by e-mail dated February 2, 2023. A copy is attached as **Exhibit C**. Ms. Moskowitz letter sets out the Seminole Planning Department's position on why the ADU destination and setback apply but ignores the most important issue regarding Seminole County's failure to comply with SCO Section 40.71. Section 40.71 requires that all zoning decision must occur before the construction permit was issued. Here these issues were not even raised until construction was complete and 700,000 dollars has been expended by the Shaw's on their renovation. SCO 40.71 is intended to prevent this exact circumstance.

The parties originally met to attempt to resolve this issue on April 25, 2022. Following that meeting, Counsel for the Shaw's, at the urging of the County attorney, conducted careful research into historical records of the property. Additional research was done into the history of how the support that forms the basis of Ms. Moskowitz's opinion extending the setback was also done. This information was provided in by letter dated September 9, 2022. This letter expands on the Shaw's position and provides supporting documentation for that position.

Development Services, Esq.
March 1, 2023
Page 2

The Shaw's hereby Appeal the decision and Ms. Moskowitz' opinion as outlined in her e-mail and her refusal to address the County failure to follow SCO Section 40.71.

Also enclosed is the appellate fee of \$1,000.00. Request is made for a hearing before the Seminole County Board of County Commissioners. If the Board requires any additional information, please contact my office.

Sincerely,

Douglas K. Gartenlaub

Doug Gartenlaub

DKG/II

Enclosures

From: RAHN shaw <famdoc@msn.com>
Sent: Thursday, June 29, 2023 3:34 PM
To: Gartenlaub, Douglas <dgartenlaub@burr.com>
Subject: Photos

[EXTERNAL EMAIL]







Sent from my iPhone

EXHIBIT “B”

BURR::FORMAN LLP
results matter

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January 12, 2023

VIA EMAIL AND US MAIL

Desmond Morrell, Esq.
Seminole County Planning and Development
1101 East First Street
Sanford, Florida 32771

Re: Permit 20-9808

Dear Mr. Morrell:

This letter is in response to your email of October 21, 2022. On April 25, 2022, the parties met to discuss the issues in this matter and my client believed, based on the representations made at that meeting, that we were close to a resolution. At that meeting, Seminole County asked for additional information regarding the two primary issues. First, was evidence that the additional residential structure that became the pool house existed on the property before Seminole County's Auxiliary Dwelling Unit ("ADU") ordinance was enacted. Second, was the history of the additional supports for the cantilevered roof of the pool house

At your suggestion, I contacted the Property Appraiser's Office. I learned that there was an pre-existing residential structure on the property prior to the ADU Ordinance. I provided you with that documentation. There was no discuss of meeting the formal requirement of a non-conforming use. IT was in fact clear the pre-existing structure had already been altered when I was added to the main house as part of the Shaw's initial renovation. It was my understanding from our meeting however, that proving this information would help address the issue whether of whether or not my client's pool house would be subject to the ADU requirement. A determination that is within the Planning Director's discretion since it is not use as a separate dwelling.

Seminole County is apparently now set on imposing the ADU requirement despite clear evidence the Pool House is not an ADU and its origin predated the ADU Ordinance. To attempt to impose such requirements, at this late date, when only a final electrical and CO inspection remains is a clear violation of the letter of the Section 40.71 and my client vested rights to rely on the prior permit approvals.

A vested right is created when a citizen has reasonably and detrimentally relied upon existing law or an interpretation thereof, creating the conditions of estoppel. *Equity Resources, Inc. v. County of Leon*, 643 So. 2d 1112 (Fla. 1st DCA 1994); *City of Lauderdale Lakes v. Corn*, 427 So. 2d 239 (Fla. 4th DCA 1983). As held by the Second District Court of Appeal in *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975):

Stripped of the legal jargon which lawyers and judges have obfuscated it with, the theory of estoppel amounts to nothing more than an application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances or commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds.

Seminole County's Code of Ordinance Section 40.71, specifically states that no permit should have been issued in this matter for installation of the improvements at issue ***until all set back and zoning requirements were met***. There is a very compelling policy behind this requirement. My client should have been entitled to make a determination of what change if any to make to his residence during the application process with full knowledge of whether that would require them to come into compliance with the ADU and other zoning requirements. To attempt to retroactively impose these requirement violates my client vested rights and Seminole County Code.

The second issue is that Seminole County has now changed its interpretation of how set backs will be applied to my client property. A plain reading of Seminole County Municipal Code §30.1343, Measurement of Setbacks, clearly states that "setbacks shall be measured perpendicular to the property line from the property line to the first vertical plane which intersects any portion of the structure other than a nominal roof overhang..." Here that remains the rear wall of the Pool House and at no time during the reapplication process for the cantilevered roof or the later added supports on the Pool House was an issue raised regarding setbacks. As we discussed at the meeting, Seminole County *after the improvement was already installed*, mistakenly attempted to apply an unwritten policy on the use of the patio to vary the plain meaning of the ordinance. Your e-mail now for the first time asserts a new position. That the vertical surface within the meaning of §30.1343. This for the again time raises the issue of a post plan/permit approval change in zoning interpretation and approval in violation of 40.71.

Florida law is clear that the plain meaning of a statute or ordinance will control. See, *GTC, Inc. v. Edgar*, 967 So.2d 781, 785 (Fla. 2007) ("when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning"). To the extent Seminole County is now attempting to assert a new verbal interpretation

or policy, my clients' right the original approval of its permit and plans would be vested or grandfathered. See, *Sarasota City v. National City Bank*, 902 So.2d 233 (Fla. 2nd DCA 2005).

You refer in your email to a decision(s) by Moskowitz. My client has never received such a ruling. This would represent yet another change in Seminole County's position. Further, it does not address the most important issues in this matter. Specifically, Seminole County's Code of Ordinance Section 40.71. As more explained above specifically states that no permit should have been issued in this matter for installation of the improvements at issue until all set back and zoning requirements were met.

Not only was the original permit issues without the ADU or Setback issues being raised, but at Seminole County's request a full resubmittal of my clients' plans with blue and red call-outs for the additional elements was made.. Copies of the letter of submittal and revised plans with submittal date was provided with my prior letter. This was done in February 2021. It was approved and passed a formal permitting process including comments. At no time were ADU or setback issues raised before my clients proceeded with the requested changes, which Seminole County required my client to add, you now claim create a setback issue.

At no time during permitting were they informed of the setback or ADU issue until October 2021 when for the first time Planning and Zoning raised these issues after over \$700,000.00 in construction was complete.

Demand is made that Seminole County either permit my client to proceed with their final inspections. If Seminole County is unwilling to comply with its own Code and allow these inspections to proceed, then take this as a formal request pursuant to Section 40.245 that the Seminole County the Director of Planning and Development issue a ruling regarding the following issues.

1) Why Section 40.71 does not prevent Seminole County from for the first time issuing a retroactive decision that the ADU requirements apply to the structure at issue after multiple approvals of the Shaw's Permit for the construction at issue; and

2) Why Section 40.71 would not similarly prevent a retroactive application of setbacks requirement under Section 30.1343 for the vertical surfaces required and approved by Seminole County during permitting.

Desmond Morrell, Esq.
January 12, 2023
Page 4

I attempted to contact you prior to responding to your e-mail to discuss this matter but received no response to my voicemail or electronic mail. Should you wish to discuss this matter further I am available to do so.

Sincerely,

Douglas K. Gartenlaub

Douglas K. Gartenlaub

DKG/ll

EXHIBIT “C”

Loving, Lee

From: Moskowitz, Mary <mmoskowitz@seminolecountyfl.gov>
Sent: Thursday, February 2, 2023 3:44 PM
To: Gartenlaub, Douglas
Cc: Hammock, Rebecca; Morrell, Desmond; Chipok, Paul; Loving, Lee
Subject: RE: Permit No. 20-9808

[EXTERNAL EMAIL]

Mr. Gartenlaub,

In response to your letter to Mr. Desmond Morrell, Esq dated January 12, 2023, per the Seminole County Land Development Code Section 30.42(b) of the Code, questions of interpretation and enforcement shall first be presented to the Planning Manager. My interpretation of the code related to LDC Section 30.1343 is that that the setback shall be measured from the posts supporting the roofline, as these posts would be considered the first vertical planes that intersect with any portion of the structure in accordance with the Code. In order to resolve the setback issue, your client may apply for a Variance from the Board of Adjustment (BOA), the application for the variance can be found [here](#). If your client may also file an appeal of my interpretation to the BOA, the application for the appeal can be found [here](#).

For the pool house, the structure is consider an Accessory Dwelling Unit (ADU) and is a nonconforming use under LDC Section 30.1348. Per the Seminole County Land Development Code, the nonconforming building may be repaired, but not expanded or enlarged. Since the building permit shows a newly stove and 220 volt outlet, this would be considered an expansion. The resolution for this would be to remove the stove and outlet in order to maintain the nonconforming structure.

Failure to take the steps outlined in this letter, may result in code enforcement action by Seminole County.

We seek to help you reach compliance with the Seminole County Codes.

Regards,
Mary



Mary Moskowitz, AICP, CPM
Division Manager
Development Services | Planning & Development
O: (407) 665-7375
1101 E. 1st Street, Sanford, FL 32771
mmoskowitz@seminolecountyfl.gov
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From: Loving, Lee <lloving@burr.com>
Sent: Thursday, January 12, 2023 2:34 PM
To: Morrell, Desmond <dmorrell@seminolecountyfl.gov>
Cc: Gartenlaub, Douglas <dgartenlaub@burr.com>
Subject: Permit No. 20-9808

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Please see the attached correspondence from Douglas Gartenlaub.

Thank you.

Lee Loving
Legal Practice Assistant



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Orlando, Florida 32801

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Web

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