

**BOARD OF ADJUSTMENT MEETING MINUTES  
THURSDAY, APRIL 7, 2011, 5:00 P.M.  
CITY COMMISSION CHAMBERS**

A regular meeting of the City of Delray Beach Board of Adjustment was called to order by Acting Chairperson, Mr. Jess Sowards, in the City Commission Chambers at 5:02 p.m. on Thursday, April 7, 2011.

**1. ROLL CALL SHOWED:**

Present:	Mel Pollack	Absent:	Sigurdur Hardester
	Jess Sowards		Bryce Newell
	Jose Herrera		
	Isabelle Alarie		

Also Present: Brian Shutt, City Attorney  
Al Berg, Assistant Director, Community Improvement  
Gary Eliopoulos, G.E. Architecture  
Joseph Pike, Envirodesign Associates  
Tom Le Downey

**2. APPROVAL OF MINUTES:**

Mr. Pollack made a motion to approve the minutes of January 20, 2011, seconded by Mr. Herrera. Said motion passed unanimously.

Mr. Shutt advised the applicant that four (4) concurring votes are needed in order for the variance request to be approved. Being that only four (4) Board members are in attendance, Mr. Shutt asked the applicant if he wanted to proceed.

Mr. Eliopoulos wanted to know when the request will be presented again if postponed at this time.

Mr. Shutt suggested scheduling the next meeting on a date certain.

Mr. Eliopoulos decided to proceed with Petition No. 999. However, he postponed Petition No. 1000.

Mr. Pollack made a motion to amend the agenda to postpone Item 3B. The motion was seconded by Mr. Herrera and passed unanimously.

At this time, Mr. Sowards reviewed the quasi-judicial rules.

Deputy City Clerk, Lanelda Gaskins, swore in those individuals who wished to give testimony.

There were no ex parte communications by any member.

Mr. Pollack stated that he spoke to Mr. Tom Le Downey but this particular petition was not mentioned.

Mr. Sowards stated that he spoke to Mr. Gary Eliopoulos this morning.

### 3. PUBLIC HEARING:

- A. Applicant: Ian Devine PETITION NO. 999  
Premises: 1153 Lowry Street  
Request: Requesting a variance to the base flood requirements of 7 ft where 8 ft is required in order to construct four new homes on the subdivided property.

Mr. Berg advised that in January 2011 an Ordinance was passed which would discount the cost of flood protection for the residents in the AE flood zones. The City attempted to obtain additional credits by passing the Ordinance as there is an incentive for flood insurance when higher elevations are maintained. The proposed property consists of two lots adjacent to the other. One is developed and one is not. The applicant would like to unify the two properties and construct them into four (4) homes. The current home will be demolished. The surrounding elevations are very low. The minimum floor elevation by FEMA's standards is 7 feet. The new City Commission adopted Ordinance requires 8 feet as minimum floor elevation. Drainage is an issue in that area even at FEMA's standards of 7 feet.

Mr. Sowards asked for the existing finished floor elevations of the surrounding homes.

Mr. Berg stated that most are relatively lower than what is proposed as they are much older homes. The surrounding homes may be improved but they cannot improve more than 50% of the value of the structure.

Ms. Alarie asked for the current finished floor of the existing house.

Mr. Berg stated that the finished floor elevation is 7 feet.

Mr. Eliopoulos stated that the project is in the process of being replatted. He voted in favor of the new Ordinance as a City Commissioner. At the time, lower rates were taken into consideration as being a positive change for the City. However, there are areas that have low elevations and should be addressed by variances. Homes were built in the 1940's at approximately elevation five. The relationship to the surrounding properties should be taken into consideration. There are currently historic homes at a low elevation and new homes are being constructed on the east side. The proposed homes will be approximately 3,000 square feet on large lots. The homes will blend in with the community. Drainage will always be an issue and proper drainage will be provided for the site. He noted that the current home will not be demolished but will be moved to another location. The intent of the Ordinance was to have a positive impact for Delray Beach. However, each home was not taken into consideration. The 7 foot elevation has been set for over thirty years. Mr. Eliopoulos stated that there has been some conversation regarding the applicant not meeting certain Land Development Regulations. The lot depth relating to lot number two is the only area not in full compliance. This is being reviewed by Planning & Zoning. The applicant is at 104 feet and the minimum is 100 feet. This issue is reviewed during a Land Development replatting. The frontage does meet the Code requirements. A low retaining wall will be maintained to address drainage issues. At this time, Mr. Eliopoulos spoke of older homes with elevations at 5 feet stating that building at higher elevations result in high retaining walls that will run along properties where houses are looking down at the historic low elevations. He does not believe that the Ordinance took into consideration all cases and he believes that projects should be reviewed on a case by case basis.

Mr. Joseph Pike stated that the new Ordinance is insurance driven and he is concerned that there will be future problems if new homes are required to be one foot above the minimum FEMA criteria. A higher elevation and higher level of flood protection can be achieved by elevating the home but at the expense of the lower elevated homes. The City Code provides that a certain amount of drainage should be held on site. The drainage goes everywhere except for the finished floor of the home. Consequently, the area that is livable is what is protected. Other parts of the home outside can be under water in the event of a storm.

The home is raised to be protected but the yard is raised as well and more volume is being sacrificed as the areas are needed to stack the water. The more elevated the home is, the more at risk the lower homes are going to be. He asked that the 7 foot elevation be considered because it is more befitting to the neighborhood. If the variance is granted, the floor elevation will still be approximately twelve to eighteen inches higher than neighboring homes. If the 8 foot elevation remains, the effect will be larger retaining walls. Raising the house pads and site would create a hardship on the neighborhood as maintaining an 8 foot elevation may result in cracking of the structure. The applicant would like to use the former finished floor of 7 feet.

Ms. Linda Wemyss, 101 Seabreeze Avenue, stated that she is adjacent to the proposed property and voiced her concern about rain fall and storms. She is concerned about the drainage as she does not want to be affected by any changes and hopes there is a retaining wall.

Ms. Vicki Poole, a resident in the area, addressed the need for a retaining wall. She stated that there is a greater chance for runoffs due to the size of the land and wanted to know how the existing homeowners are going to be protected. She asked about the discount mentioned due to the Ordinance change. She then mentioned transformers that are being blown as the neighborhood grows.

Mr. Shutt asked the Board members to address the criterias as set forth in Section 4.5.3(e)(5) of the Land Development Regulations.

Mr. Berg advised that a letter was submitted by Mr. John Bennett, 137 Seabreeze Avenue, Delray Beach. Mr. Bennett objected to the variance request.

Mr. Pike stated that if the variance is granted, the retaining wall would vary from 12 to 18 inches in height. The new residential sites are required to hold 3.2 inches of rainfall. At 7 or 8 foot flood elevation, the proposed property would hold 15 inches of rainfall. However, a 7 foot flood elevation would be to the benefit of the neighborhood.

Mr. Eliopoulos stated that there will be a retaining wall. The applicant is attempting to minimize the retaining wall so as not to affect neighboring homes.

Mr. Pollack stated that an Ordinance was passed for an elevation of 8 feet and he feels that the 8 feet should be abided by. He feels that grating this variance would confer a special privilege.

Mr. Shutt explained that the granting or denial of the variance should be based upon Section 4.5.3(e)(5) of the Land Development Regulations.

Mr. Herrera stated that the Ordinance was passed as a benefit to the City for insurance purposes and not due to public safety.

Mr. Shutt stated that there is a variance procedure. However, in this situation there are different criterias that should be addressed for approval or denial of the variance.

Mr. Sowards stated that an 8 foot elevation would be acceptable if the other homes were at a 7 foot elevation. However, the older homes are at elevation 2. Therefore, he understands that each case should be looked at individually.

Mr. Eliopoulos stated that the new Ordinance allows for insurance ratings. There are procedures that allow the Board members to address any issues that surface. Due to the historic elevations, a variance request can be approved if a hardship will not be caused to the area.

Mr. Pollack feels that the Ordinance needs to be abided by.

Mr. Eliopoulos stated that there would be a visual impact.

Mr. Pike stated that they would be taking flood protection from neighboring homes at an elevation of 8 feet. Relief can be sought if criterias are met. Mr. Pike feels that the Ordinance should be revisited.

Mr. Sowards asked for more information about the credits that the City would receive. He also asked about the bond rate and the future auditing impact based upon decisions made by the Board of Adjustment.

Mr. Berg advised that approving the variance will not look favorable to FEMA. He advised that the discount is based upon a point system being 0-500. Credit is given for installing storm sewers and most importantly for obtaining elevation certifications. If the minimum required by FEMA is not abided by, other credits will not be considered. Elevation 8 allows for an additional credit to the City and anyone who purchases flood insurance.

Mr. Herrera made a motion to table the applicant's request for Petition No. 999, seconded by Mr. Pollack. Said motion passed unanimously.

Mr. Pollack made a motion to remove Item 3B from the agenda, seconded by Mr. Herrera. Said motion passed unanimously.

**4. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:**

A. Board Members

None

B. City Attorney

There being no further business, Acting Chairperson, Mr. Sowards, declared the meeting adjourned at 6:09 p.m.

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Venice Cobb, Executive Assistant/Board Liaison

The undersigned is the Secretary of the Board of Adjustment of Delray Beach and the information provided herein is the minutes of the meeting of said Board of April 7, 2011, which minutes were formally approved and adopted by the Board on \_\_\_\_\_.

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Venice Cobb, Executive Assistant/Board Liaison

NOTE TO READER: If the minutes you have received are not completed as indicated above, this means they are not the official minutes of the Board of Adjustment. They will become official minutes only after review and approval, which may involve some amendments, additions or deletions.