

BOARD OF ADJUSTMENT MEETING MINUTES
THURSDAY, MAY 9, 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 5:04 p.m. on Monday, May 9, 2011.

1. ROLL CALL SHOWED:

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

Absent: None

Also Present: Brian Shutt, City Attorney
Al Berg, Assistant Director, Community Improvement
Gary Eliopoulos, G.E. Architecture
Lula Butler, Community Improvement Director
Joseph Pike, Envirodesign Associates
Tom Stanley, McMillan & Stanley
Chris Zimmerman, CPZ Architects
Mary Renaud, Beach Property Owners Association
Joe Colome', Colome' & Associates Inc.
Tom Le Downey
Tom Sand
Debbie Kaiser

2. APPROVAL OF MINUTES:

The approval of the minutes was deferred.

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

Board Liaison, Venice Cobb, swore in those individuals who wished to give testimony.

Regarding Petition Number 1001, Mr. Sowards disclosed that his firm was the original architect for the project. However, he has no financial ties with the project.

Regarding Petition Number 997, Mr. Pollack advised that he lives within 500 feet of the property. Mr. Pollack also walks and rides his bike by the property on a daily basis.

There were no other ex parte communications by any member.

3. PUBLIC HEARING:

- A. Applicant: Marina C. Kaiser PETITION NO. 997
Premises: 708 North Ocean Blvd.
Request: Requesting a variance to allow a new single family residence to be built which does not meet the side setback requirements for multi-story structures by the Beach Property Owner's Design Manual.

Mr. Berg advised that the applicant is appealing Section 4.4.3(F)(G) to allow a second story without the additional side yard setback as required in the Beach Property Owner's Development Manual. The property is approximately 103X170 feet deep in the R-1-AAA land use district. The applicant is proposing to construct a 8,900 square foot home. The overlay district was adopted to prevent structures from overshadowing the other, provide light and open space. The manual speaks of 5 foot setbacks for two story structures. The setback would be for the second story. Drainage is a concern due to the contour of the land. There is a continuous wall that travels down the contour of the property. There are 12 foot silver buttonwoods on the property but does not help provide screening. The applicant has not advised of any special conditions that exist and the regulations do not deprive the applicant of building a new home. However, the 5 foot setback is required for the second floor.

Mr. Pollack asked if the reason for the 5 foot setback is to avoid masking the existing homes.

Mr. Berg stated that the reason for the setback is to reduce the mass of homes to allow light and open airspace as required in the design guidelines.

Mr. Stanley stated that he has had numerous meetings with staff regarding the project and have tailored the design to meet the standards in the Code. The second story north wall is what needs to be addressed. The balance of the project meets all aspects of the Code. Land contour, topography and drainage does not have any relevance to the variance request. A complex drainage plan was submitted to the engineering department. The continuous wall is not a part of the variance request as it meets all requirements of the Code. The landscape plan is not a part of the variance request as it is reviewed by Planning & Zoning. There are letters of support from the adjacent property owners, Mr. and Mrs. Edwin B. Boss, 1127 Crestwood Drive. Mr. and Mrs. Mike Howell, 728 N. Ocean Boulevard also supports the project. The square footage of the property is 7,620 total square feet and 7,070 square feet under air. The applicant is requesting a variance for the 5 foot setback on the north elevation.

Mr. Zimmerman stated that the property is on a corner lot and the design manual only addresses corner lots in a small paragraph. The applicant is asking not to set back 5 feet for the second story. All other setback requirements have been met. A 20 foot setback for the entire building has been provided where the property slopes which is 8 feet more than required. Changes have been made to comply with the Code and meet the intent. The surrounding neighbors are in support of this project. The property will not block the view of the neighbors. A variance is being requested for the two small areas on the north side of the property which is minor in the overall scheme of the house. The Code presents a hardship as it does not address corner lots nor does it give incentives that are given to other properties.

Mr. Sowards asked if the applicant has spoken to the homeowner at the northwest corner of the property.

Mr. Stanley stated that he has not spoken to that property owner.

Mr. Hardester asked for the original square footage and the revised square footage.

Ms. Kaiser stated that there is a 1,300 square foot difference. The staff report overstated the square footage.

Mr. Sowards asked to see the section in the Code that speaks about corner lots.

Mr. Zimmerman stated that corner lots have to set back 17 feet instead of 12 feet. The applicant could construct a vertical flush wall two to three stories high. However, does not feel that is in the best interest of the neighborhood.

Mr. Tom Sand stated that he lives in the community and several homes have undergone remodeling. None of the homes had to have a variance as the owners abided by the Code. Mr. Sand would like the applicant to abide by the Code. He does not feel that the applicant has demonstrated a special need or a hardship that warrants approval. He went on to state that the proposed property is not compatible with the adjacent properties.

Ms. Renaud stated that several years ago the Beach Property Owners Association (BPOA) worked diligently with staff in establishing design guidelines for new construction. The purpose of the design guidelines is to guide construction design that would be harmonious to the neighborhood and to reduce massing of large structures. Limits were not placed on the size of a particular house if the land area was sufficient to accommodate the required setbacks. The applicant is asking for a variance of 5 feet to the second floor on the north side of the property which would apply to 100 feet. By granting the variance, the reduced massing of the design manual would be eliminated to this project and future construction. The proposed lot is large and allows for a large multi-story home that would meet the requirements of the design manual. Ms. Renaud asked that the design guidelines be enforced.

Mr. Stanley stated that the 8,000 square foot house directly south of the proposed lot was built prior to the regulations. The project is compliant with the BPOA except for the variance request.

Mr. Zimmerman stated the applicant has the ability to build onto the home two or three stories but that granting the variance reduces the massing and is harmonious with the community. He then noted that it is difficult to evaluate the site with the Code because corner lots are not addressed.

Mr. Sowards stated that the architect did well massing the building in relationship to the surrounding homes. He is concerned that there may be an issue if the neighbor would like to do any future changes to the home. Mr. Sowards feels that corner lots are unique.

Mr. Pollack moved to adopt the Board Order therefore denying the request for the variance based upon positive findings pursuant to Sections 2.4.7. (A)(5) in the Land Development Regulations for the City of Delray Beach. The motion was seconded by Mr. Newell and passed 5-0.

B. Applicant: Ian Devine PETITION NO. 999
Premises: 1153 Lowry Street
Request: Requesting a variance of 7ft where 8 ft is required in order to construct four (4) new homes on the sub-divided property.

Mr. Berg stated that the applicant is appealing 4.5.3(D)(a)-(m) of the Land Development Regulations to allow construction of four (4) new homes on the site without the minimum Code requirement for floor elevation. The elevation required by FEMA is 7 feet, however the City recently enacted an Ordinance stating that the elevation should be 12 inches. There is a very low elevation throughout the property.

There has been prior testimony regarding some flooding in the past. The City will possibly change the Ordinance to allow the variances to be more flexible. Mr. Berg stated that staff has to conduct research regarding the flows which should be taken into consideration when approving or denying the variance request.

Mr. Eliopoulos stated that there is a hardship for the surrounding property. As the height is increased, there will be less drainage for other sites. An ordinance can be changed after being implemented due to certain circumstances. Mr. Eliopoulos stated that he believed that the new ordinance would allow for variances being that there are existing homes with historically low elevation at which time would be discussed on a case by case basis. It was understood that staff would work with the engineering department regarding the flows and then discussed with the City Commission. Staff mentioned two components that did not meet the Code. A presentation was made before the Planning & Zoning Board and the applicant was given approval for the project. The minimum lot depth is 100 feet. The project is at 87 feet. The Planning & Zoning Board felt that the project was in compliance because the average frontage of the property is at 107 feet. There are typically low buildings in the neighborhood. New buildings have been constructed which have caused higher elevation retaining walls which impedes the drainage. Drainage on site has to be maintained. The applicant can comply with 7 or 8 foot elevation but feels that a 7 foot elevation will benefit the neighborhood.

Mr. Pike stated that the Code was implemented to allow for better flood protection and keep insurance rates low. Neighborhoods consisting of older homes with lower elevations and newer homes with higher elevations were not taken into consideration. He stated that the City should revisit the Code and make accommodations for the areas that should not be addressed in that manner. Mr. Pike feels that the Code provides a hardship to the neighborhood and does more harm than good.

Mr. Le Downey stated that he feels although the intent was well founded, the ordinance was approved prematurely without a lot of thought. The project has received the approval of the Planning & Zoning Board. A hardship waiver to increase density was requested. The project will meet the drainage standards at 7 or 8 foot elevation. However, the applicant is asking that the ordinance be modified to eliminate the need for a variance in the future.

Mrs. Butler advised that the ordinance is in the process of being modified and will be presented to the City Commission. The City Engineer was not originally consulted. The City Engineer is now involved and has advised that the new ordinance will have an impact on a lot of properties within the barrier island where there are low lying properties.

Mr. Hardester asked for a timeframe.

Mrs. Butler stated that the process will be complete within one month. These types of waivers will be addressed by City staff in the future and will not be presented to the Board of Adjustment.

Mr. Hardester wanted to know the advantage or disadvantage to the City or applicant if the variance is approved or denied.

Mr. Berg stated that increasing the elevation from 7 to 8 feet is a dramatic change for the City. The developer can conform to either elevation level. Mr. Berg suggested the item be tabled until the new ordinance is in place. He then noted that it is important to meet FEMA's requirement of 7 feet.

Mr. Eliopoulos stated that the project will not be in violation at 7 feet as it will be in compliance with FEMA's requirement.

Mr. Pike stated that tabling the item would leave the applicant in a precarious position. He stated that the City would have to account for historic and neighboring flows regardless of the elevation level.

Mr. Sowards stated that when the ordinance was written those involved were unsure as to what would happen as a result of the change. The property is in a very low lying area and it causes a disparity when the elevation increases from 7 to 8 feet while others are at 3 feet. Mr. Sowards is not in favor of tabling the item.

Mr. Sowards moved to adopt the Board Order, therefore, granting the request for the variance based upon positive findings pursuant to Sections 4.5.3. (E)(5) in the Land Development Regulations for the City of Delray Beach. The motion was seconded by Mr. Newell and passed 4-1. Mr. Pollack dissented.

C. Applicant: Robert Caine PETITION NO. 1000
Premises: 301 Palm Trail
Request: Requesting a variance of 7ft where 8 ft is required in order to construct a new addition and three-car garage to the existing house.

This petition was withdrawn by the applicant.

C. Applicant: Audrey Wolf PETITION NO. 1001
Premises: 100 N. Congress Avenue
Request: Requesting a variance to replace six (6) light poles at a height of 35 feet.

Mr. Berg stated that the applicant is seeking an appeal to Section 4.6.8(A)(1) which relates to light fixtures and height requirements. The height limitation is 25 feet. The applicant is proposing installation of six (6) dual head lights and two (2) single head lights. An additional 10 feet is needed to accommodate the height of the existing sable palms which obscure some of the existing lighting at 25 feet. Staff recommends approval of the applicant's request as the additional height will provide better visibility of the parking area.

Mr. Joe Colome' stated that the subject property is unique. He also mentioned that there is a Florida Power & Light Distribution pole approximately 40 feet high along Congress Avenue.

Ms. Alarie asked if there would be any impact on surrounding properties.

Mr. Colome' advised that there would be no impact on surrounding properties.

Mr. Pollack moved to adopt the Board Order therefore approving the request for the variance based upon positive findings pursuant to Sections 2.4.7. (A)(5) in the Land Development Regulations for the City of Delray Beach. The motion was seconded by Mr. Newell and passed 5-0.

4. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

A. Board Members

None

B. City Attorney

None

There being no further business, Acting Chairperson, Mr. Sowards, declared the meeting adjourned at 6:28 p.m.

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 May 9, 2011, which minutes were formally approved and adopted by the Board on _____.

Venice Cobb, Executive Assistant/Board Liaison

Analogy

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.