

**BOARD OF ADJUSTMENT MINUTES
THURSDAY, DECEMBER 18, 2008, 5:38 P.M.
ENVIRONMENTAL SERVICES TRAINING ROOM**

A regular meeting of the City of Delray Beach Board of Adjustment was called to order by Board member, Mr. Jess Sowards, in the City Environmental Services Training Room at 5:38 p.m. on Thursday, December 18, 2008.

1. ROLL CALL SHOWED:

Present:	Sigurdur Hardester	Absent:	Clifton Miller
	Jess Sowards		
	Bernard Federgreen		
	Dale Miller		
	Bryce Newell		

Also Present: Brian Shutt, Assistant City Attorney
Al Berg, Assistant Director, Community Improvement
Jason Mankoff, Weiner & Aronson
Barbara Finizio
David Gold
James Wright
Doris Wright

2. ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

Mr. Bernard Federgreen nominated himself for Chairperson.

Mr. Newell made a motion to approve Mr. Federgreen's nomination for Chairperson, seconded by Mr. Sowards. Said motion passed 4-0.

At this time, Mr. Sigurdur Hardester arrived at the meeting.

Mr. Federgreen made a motion to nominate Ms. Dale Miller for Vice Chairperson, seconded by Mr. Sowards. Said motion passed 4-0 with Ms. Miller dissenting.

3. APPROVAL OF MINUTES:

Mr. Sowards moved to approve the minutes from the meeting of June 26, 2008, seconded by Mr. Federgreen. Said motion passed unanimously.

At this time, Chairperson Bernard Federgreen reviewed the quasi-judicial rules.

Board Liaison, Venice Cobb, swore in those individuals who wished to give testimony for Petition No. 982.

There were no ex parte communications by any Board member.

4. PUBLIC HEARING:

- A. Applicant: Casa Lay Playa PETITION NO. 982
Premises: 1855 South Ocean Boulevard
Request: Requesting approval to reduce the side setback from 15 feet to 10 feet to construct a second floor addition to all units on the property.

Mr. Al Berg, Assistant Director of Community Improvement, stated that the applicant is seeking approval to reduce the side yard setback from 15 feet to 10 feet where 15 feet are required for a side setback for construction of a second floor. The property is 101 feet by 350 feet deep. The property is located in the RM residential section which is classified as multi-family. The application concerns all units with the exception of unit 2 for which a variance was already granted approximately one year ago. Mr. Berg presented pictures of two story properties to the north and south of the subject property. Staff feels that the request is consistent with the neighborhood and that that the variance should be granted.

Mr. Sowards asked about the properties to the north and south of the subject property.

Mr. Berg advised that the homes to the north and south of the subject property are two story multi-family homes zoned RM.

Mr. Hardester inquired about the height limit in the vicinity.

Mr. Berg stated that the height limit is 35 feet.

Mr. Jason Mankoff, Attorney at Weiner & Aronson, P.A., advised that the staff report state that the subject property is classified as consisting OF eleven condominium units but they do not appear to be condominiums. He noted that a variance would not be needed if the units were not considered to be condominiums. Unit 2 was already granted a variance. Mr. Mankoff noted that the homeowners could build up to 35 feet but only up to 28 feet is being requested as building any higher is not in the best interest of the neighborhood. He went on to explain that the setback is not being increased because the current setback is 10 feet. He feels that the granting of the variance will allow the homeowners to adapt their homes to more practical and useful units. Mr. Mankoff noted that some of the units may not currently meet the current minimum square footage and are non-conforming because the requirements have now changed.

At this time, Mr. Mankoff addressed the findings as stated in Section 2.4.7(A)(3) of the Land Development Regulations. He concluded that all requirements for the approval of the variance have been met. He stated that the Planning & Zoning Director, Mr. Paul Dorling, concurs and supports the variance. A 10 foot setback already exists and the footprint of the building will not be modified. The request is that the second story be allowed to remain at the existing setback. He then noted that a non-conformity may be eliminated because the units will now likely meet the minimum square footage requirement. The granting of the variance will not convey special privileges because similar variances have been approved in the past. Mr. Mankoff noted that after the residents of Casa La Playa saw the plans for the initial request, they felt that a variance for all the properties would be beneficial. Lastly, Mr. Mankoff referred to Land Development Regulations Section 4.4.6(F)(1) explaining that although the side interior setbacks for properties in the RM zoning district are 15 feet, the

provisions for the R-1-A district applies for single family detached dwellings located in the RM zoning district which requires a setback of 7.5 feet. Casa La Playa resembles a single family home and a side setback of 7.5 feet should apply.

Mr. Hardester wanted to know why all the units were not considered when the initial variance for Unit 2 was requested.

Mr. Mankoff stated that the applicant was an individual homeowner who wanted to build a second story onto his home. After seeing the plans, neighbors wanted a second floor added to their homes as well.

Mr. David Gold voiced his objection stating that adding a second story to the units potentially has an adverse affect on his property located at Goodison Park Estates. He noted that he did not need a variance when he added a second story to his home. He advised that there are coastal construction lines that require certain setbacks. Mr. Gold feels that adding a second floor will affect the view and possibly the property value of the homes to the north and south of their property. He is concerned that the residents may construct at different times and there would be no completion date for all eleven units.

Mr. James Wright agreed with Mr. Gold's statements and objects to the variance as well.

Ms. Doris Wright stated that she objects to the variance because the construction of a second story will impede her side view. She then asked if the properties will be used as rentals because this may increase the occupancy.

Mr. Mankoff stated that the owners of the community have property rights. He noted that Goodison Park Estates consists of single family homes which is why they did not need a variance. He then stated that the property owners could construct up to 35 feet. He then noted that any units subject to the costal construction lines will have to get required approvals deemed by the State.

Mr. Federgreen inquired as to whether consideration has been given to a timeframe as to when possible construction will take place.

Mr. Mankoff stated that everyone was very anxious to start construction a year ago. However, a timeframe has not been established due to the state of the economy.

Mr. Federgreen wanted to know whether or not any conditions that may be imposed will follow new owners.

Mr. Mankoff stated that any conditions will run with the land.

Mr. Hardester asked if there have been any responses to the Public Notice regarding the variance.

Mr. Berg advised that a telephone call was received from someone who did not have any objections after the application was explained.

Ms. Barbara Finizio advised that she discussed the coastal construction lines with the City of Delray Beach prior to purchasing the home and was advised that there would not be a problem if they wanted to construct a second floor.

Mr. Newell wanted to know if the property that may be subject to the coastal construction lines could be separated from the other units in terms of the granting of the variance.

Ms. Terrill Barton, Assistant City Attorney, advised that the coastal construction lines is not a matter to be addressed by the Board of Adjustment.

Ms. Miller asked if there have been any environmental studies done being that unit 1 is east of the coastal construction lines.

Mr. Mankoff advised that proper procedures regarding the coastal construction permits will be addressed with the State whether or not the variance is granted.

Ms. Miller wanted to know the height of the adjoining properties north and south.

Mr. Gold stated that Goodison Park Estates consists of two story homes at 28 feet in height.

Mr. Sowards wanted to know how the construction would be handled with a 10 foot setback.

Mr. Mankoff advised that discussion will take place with the construction company.

Mr. Sowards is concerned that the buildings could be combined in the future creating a massive wall being that they are not free standing single family homes.

Ms. Barton stated that the owners would have to get approval to combine the buildings even if the variance is approved. She added that the issue would have to be addressed by the Site Plan Review and Appearance Board as a condition of approval.

Mr. Sowards moved to approve the request for a variance based upon positive findings pursuant to Sections 2.4.7 (a)(5)(A-F) in the Land Development Regulations for the City of Delray Beach, seconded by Mr. Hardester. Said motion was passed 4-1 with Mr. Federgreen dissenting.

5. REVIEW THE RULES OF THE BOARD OF ADJUSTMENT

Mr. Hardester made a motion to approve the rules of the Board of Adjustment, seconded by Ms. Miller. Said motion passed 5-0.

6. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

A. Board Members

None

B. Assistant City Attorney

None

There being no further business, Mr. Federgreen, Chairperson, declared the meeting adjourned at 6:40 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 December 18, 2008, which minutes were formally approved and adopted by the Board on _____.

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.