

**BOARD OF ADJUSTMENT MEETING MINUTES  
MONDAY, AUGUST 23, 5:30 P.M.  
FIRST FLOOR CONFERENCE ROOM**

A regular meeting of the City of Delray Beach Board of Adjustment was called to order by Chairperson, Allen Kilik, in the First Floor Conference Room at 5:32 p.m. on Thursday, August 23, 2012.

**1. ROLL CALL SHOWED:**

Present: Harvey Starin                      Absent:                      None  
          Allen Kilik  
          Mel Pollack  
          Michael Park  
          Dale Miller

Also Present: Brian Shutt, City Attorney  
                  Al Berg, Assistant Director, Community Improvement  
                  Steve Tobias, Building Official  
                  Thomas Mullin, Attorney  
                  Roger Cope, Architect  
                  Randall Stofft, Architect  
                  Tom Sand  
                  Mark Fix  
                  Michael Feit  
                  Diane Feit

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

**2. APPROVAL OF MINUTES:**

Ms. Miller made a motion to approve the minutes from July 14, 2012, seconded by Mr. Pollack. Said motion passed unanimously.

**3. PUBLIC HEARING:**

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

There were no ex parte communications reported by any Board member.

PETITION NO. 1012

A.     Applicant:     Lauri Merten  
          Premises:     1010 Del Harbour Drive  
          Request:     Requesting a side yard setback of 5 feet where 10 feet are required for a side yard setback for a sheer descent and 14'x6' pool.

Mr. Berg stated that the applicant is appealing Section 4.6.15(G)(1) to allow a side yard setback of 5 feet where 10 feet are required for a pool. Section 4.6.15(G)(4) provides for a 5 foot side yard setback for pools. The applicant indicated that she hears a lot of noise from the Linton Bridge and wishes to install a 48 inch wall with a waterfall into the pool to block the noise.

Staff recommends approval of the variance. Mr. Berg noted that there were no objections from the neighbors that were notified.

The applicant stated that she wishes to block the noise from the bridge and received support from the county commissioners.

Mr. Cope expressed his support for the applicant's request.

At this time, Mr. Shutt read the criteria that have to be met in order for the variance to be approved.

Ms. Miller moved to approve the request for the 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. The motion was seconded by Mr. Pollack and passed 5-0.

There were no ex parte communications reported by any Board member.

PETITION NO. 1013

B. Applicant: 1207 Hammond LLC.  
Premises: 1207 Hammond Road (Lot C)  
Request: Requesting a front yard setback of 24 feet where 35 feet are required for a front yard setback in order to erect a new swimming pool.

Mr. Berg stated that the applicant is appealing 4.6.15(G)(1) of the Land Development Regulations to allow a front yard setback of 24 feet where 35 feet are required to erect a new swimming pool. Section 4.3.4(K) of the Code requires a 35 foot front yard setback for all structures in the R-1-AAA zoning district. Section 4.6.315(G)(1) does not allow pools in the front yard setbacks. This property is undeveloped, approximately 127 feet by 111 feet by 111 feet and has been approved by the Planning & Zoning Department and the City Commission. Mr. Berg stated that the boundaries were obscure and pointed out the property lines. He then mentioned an existing wall that has been developed along the property line that was erected some time ago to assist with drainage problems. There is an existing draining easement around the property. The applicant will have to meet the requirements of the Urban Design Studio. The aforementioned pool will not be obtrusive and will be above ground. Therefore, staff recommends approval.

Mr. Stofft advised that any draining issues will be addressed. He noted that there are no other suitable locations for the pool. He spoke of the lot being awkwardly shaped. He also mentioned a dead end hammer head used by the fire department. The structure will meet code requirement and there will be heavy landscaping. The buildable footprint is 10 feet back so there is not much yard area which is the reason for the request to relax the setback requirement.

Mr. Sand from 1216 Crestwood Drive stated that his home is closely located to the applicant's property. Therefore, he will be directly impacted. He is concerned about the drainage as there has been a history of drainage problems. Mr. Sand noted that he has had no opposition to the request after meeting with the engineering department and had discussions with the community improvement department.

Mr. Fix from 790 Andrews Avenue stated that this exception is not necessary as the lot was designed the way it is. He also stated that this is a blank lot. He then noted that the setback

being asked for is smaller than the smallest setback allowed on the smallest lot in the City. He does not recommend approval of the variance request.

Mr. Stofft stated that the request is the minimum. The home fills up the buildable footprint and there is no other suitable location for the pool. He then noted that he has been made aware that there are drainage issues and the contractor will correct the problem.

At this time, Mr. Shutt read the criteria that have to be met in order for the variance to be approved.

Mr. Pollack moved to approve the request for the 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. The motion was seconded by Ms. Miller and passed 5-0.

PETITION NO. 1014

There were no ex parte communications reported by any Board member.

C. Applicant: Albanese – Stofft at Ocean Breezes, LLC  
Premises: 1207 Hammond Road (Lot D)  
Request: Requesting a front yard setback of 22.5 feet where 35 feet are required for a front yard setback in order to erect a new swimming pool.

Mr. Berg stated that the applicant is appealing 4.6.15(G)(1) of the Land Development Regulations. The Code, Section 4.3.4(K) requires a 35 feet front yard setback. Mr. Berg stated that this property has drainage issues and is much like the aforementioned property in petition number 1013. The only difference is that there is a spa at this property which may be an obstruction as the height is unknown. Staff recommends an approval of the variance.

Mr. Stofft stated that he is willing to keep the spa leveled with the pool. He advised that both properties were designed together and the pool was pushed to the north away from the neighbors which will allow more opportunity to correct any drainage issues. He added that Mr. Joe Pike did the original drainage engineering and is working with the City to correct any issues occurring.

Mr. Pollack asked if raising the spa would have any impact on staff's recommendation.

Mr. Berg advised that raising the spa would have an impact on this recommendation. The spa would be above ground as it would be more of an obstruction. A structure that is ground level would not affect lighting and open space.

Mr. Stofft advised that the spa would be at pool level and would not be raised.

Mr. Shutt suggested that the motion contain a condition that the spa not be raised.

Mr. Sand stated that due to the history of water problems he feel it important that the engineer, City staff and the builder work together to ensure that the impact lessons the flow of water to his home rather than increase it and that work that was to be done previously be completed and inspected. He does not oppose the variance and assumes that the parties involved have good intentions and will address the problems.

Mr. Kilik asked if Mr. Sand has had issues with drainage recently.

Mr. Sand advised that there was a severe flooding problem in October. The City advised that this was a onetime event. However, there have been continuous water problems for many years. These problems have not yet been completely corrected.

Mr. Fix stated that this exception is not necessary as the structure was designed on a blank lot. He does not feel that the variance should be approved.

At this time, Mr. Shutt read the criteria that have to be met in order for the variance to be approved.

Ms. Miller moved to approve the request for the 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 subject to the condition that the spa will not be raised higher than pool level. The motion was seconded by Mr. Pollack and passed 5-0.

PETITION NO. 1015

D. Applicant: Robert and Karen Roe  
Premises: 140 Venetian Drive  
Request: Requesting a side yard setback of 10.37 feet where 15 feet are required to construct a two-story addition to an existing building.

The applicant is appealing Section 4.3.4(K) to allow a side yard setback of 10 feet where 15 feet are required for an addition to a one room apartment. The existing setback on the north side of the property is 10.37 feet. A setback of 15 feet is required for any new structure. A metal shed is already located in the setback but is not a part of this variance. Staff recommends denial of the applicant's request. Nothing has been submitted which would meet the standard for a variance request. There is nothing peculiar to the land. The building was built in 1963 but that is not a reason to allow a new addition. The addition would be substantial to any of the existing one-story building. Simply to minimize cost is not a reason to grant a variance. The setbacks apply to everyone. There are no special conditions and a special privilege would be granted if approved as they would be able to take advantage of older setbacks. Reasonable use of the land can be made and there is ample area for development of the property. The granting of the variance is not within the general purpose of the existing regulations and it seeks to expand a non-conformity. Staff recommends that the applicant restudy the application and submit a plan that utilizes the area available to them. The elevation indicates a second story. However, the site plan does not detail any stairs for access to a second story. If a second story is proposed, it should be submitted. Staff recommends denial of the applicant's request.

Mr. Kilik asked about tabling the item to allow the applicant to revise and submit a new site plan.

Mr. Berg stated that the plan was submitted as is for consideration.

Mr. Shutt suggested hearing the applicant's presentation. The applicant would advise whether or not they would prefer to table the item.

Mr. Cope stated that there are existing non-conforming issues everywhere. The setbacks in 1963 are not the same as they are today. He entered into the record, a package including two

letters supporting the variance. He went on to say that the duplex has a 15 foot side yard setback. The gross square footage of the applicant's home is 1275 square feet and an additional 124 feet of front porch. The applicant is requesting relief to the side yard setback. The total added square footage is 225 square feet. The variance request is for 70 square feet. The applicant's lifestyle has changed and they need more livable space. He also spoke of a hedge that separates the applicant's property from the neighbor's property.

Mr. Kilik asked for the location of the hedge and gate.

Mr. Cope advised the location explaining that the hedge belongs to the neighbor. He added that the gate will be moved 8 feet further eastward. He went on to note that a second floor will not be constructed. He advised that the applicant does not want to build up to two-stories with the property. The Code allows 35 feet of height limitation.

Mr. Mullen representing Mr. and Mrs. Feit spoke in opposition of the variance. He stated that they would be the most impacted resident if the variance is approved. He noted that there are bathroom and bedroom windows that will look directly into the bedroom proposed for the addition. He went on to state that the addition does not comply with the criteria or the findings. Approving the variance would set precedence for all the existing non-conforming structures.

Mr. Feit stated that other individuals including had to comply with the setbacks and the applicant should as well. He then noted that the applicant could expand on the home if the variance is approved. He also mentioned a precedence being set where a neighboring property could build onto the back of their home. He feels that everyone should build within the City's existing guidelines.

Ms. Miller asked about the impact on privacy for Mr. Feit.

Mr. Feit pointed out the bedroom and bathroom window that would be impacted on the floor plan.

Mr. Cope stated that the neighbor will not be able to expand on his home as Mr. Feit stated. He then presented an elevation with current windows and added that they will minimize the fenestration on the elevation if this will make the application more supportable.

At this time, Mr. Shutt read the criteria that have to be met in order for the variance to be approved.

Mr. Park moved to approve the request for the 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. The motion was seconded by Mr. Pollack and denied 5-0.

PETITION NO. 1016

E. Applicant: David Stevens  
Premises: 428 NE 8<sup>th</sup> Avenue  
Request: Requesting a side yard setback of 7.5 feet feet where 10 feet are required for construction of a new home.

Mr. Cope requested that this item be postponed.

Ms. Miller made a motion to postpone the item, seconded by Mr. Starin. Said motion passed unanimously.

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

A. Board Members

None

B. City Attorney

None

There being no further business, Chairperson, Mr. Pollack, declared the meeting adjourned at 6:54 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 on August 23, 2012, 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.