

**BOARD OF ADJUSTMENT MINUTES  
WEDNESDAY, JULY 8, 2009, 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 Board Liaison, Venice Cobb, in the First Floor Conference Room at 5:32 p.m. on Thursday, July 8, 2009.

**1. ROLL CALL SHOWED:**

Present:	Sigurdur Hardester Jess Sowards Clifton Miller Bernard Federgreen Dale Miller	Absent:	None
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Also Present: Brian Shutt, Assistant City Attorney  
Al Berg, Assistant Director, Community Improvement  
Jim Forgner  
Dan Sloan

**2. APPROVAL OF MINUTES:**

Mr. Sowards moved to approve the minutes from the meeting of February 19, 2009, seconded by Mr. Miller. Said motion passed 5-0.

Board Liaison, Venice Cobb, swore in those individuals who wished to give testimony for Petition No. 984.

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

There were no ex parte communications by any Board member.

**3. PUBLIC HEARING:**

A.	Applicant:	Marco and Kandil Silvestri	<u>PETITION NO. 984</u>
	Premises:	3582 Ensign Circle	
	Request:	Requesting approval for a room enclosure which was built without permits in the rear yard setback.	

Mr. Al Berg, Assistant Director of Community Improvement, advised that the applicant is appealing Section 4.3.4(K) to allow a rear setback of 6.3 feet where 10 feet is required. The property is 80 feet wide and 100 feet deep, located in the Pelican Harbor subdivision. The building is located on a zero lot line development. The applicant is asking for a structure to be approved that was built without permits which extends into the setback and a 10 foot utility easement. A 10 foot utility easement is very common and is not excessively restrictive. There is an extensive landscape buffer and a wall along the rear property line which hides the structure from the rear view. Mr. Berg noted that this is a small unobtrusive structure and that the proposal has been approved by the Pelican Harbor Homeowners Association.

Mr. Federgreen asked if there have been requests of this type in this subdivision in the past.

Mr. Berg stated that no requests of the same nature have been made in the past four years.

Mr. Federgreen wanted to know who was responsible for the construction of the rear addition. He also wanted to know if the applicants are the original owners.

Mr. Jim Frogner of Frogner Consulting, LLC stated that the applicants are not the original owners but they are responsible for the rear addition.

Mr. Federgreen wanted to know who completed the construction.

Mr. Frogner advised that a neighborhood handyman completed the construction, as well as, several others alike in the neighborhood.

Mr. Federgreen asked if the Homeowners Association is aware that permits were not obtained for the addition.

Mr. Berg stated that he assumed that the Homeowners Association is aware.

Mr. Federgreen is concerned about setting precedence.

City Attorney, Brian Shutt, advised that the Board's decision should have no bearing on the fact that each individual should obtain permits for performing work in Delray Beach.

Ms. Miller asked about the permitting process after the work has been done.

Mr. Berg stated that a licensed contractor would have to obtain a permit and licensed professionals would conduct inspections and certify that the work was done according to code. Changes would have to be made if the construction does not meet the City's code.

Mr. Frogner stated that there is a code violation because the property encroaches into the side setback. If the variance is approved, a licensed architect will be hired to create the proper drawings which will be submitted to the City. If sufficient, the permit will be issued. Construction of the development began in 1984. The houses consist of a circle which includes a 10 foot utility easement in the front and rear of the property. The rear utility easement equates to 1,100 square feet of space. Florida Power and Light and other utility providers were contacted and the companies have no objections to construction in the easement. There was also no objection from the Homeowners Association. Because the lot is pie shaped, there is only a 30 foot wide frontage. The City's code requires 40 feet of frontage. City staff allowed a 30 foot entry possibly because the building is in a planned residential development. Of the 1,100 square feet utility easement which impacts the rear of the lot, the closet is only 76 square feet. The applicant is asking for a variance of 3 feet and 8 inches. The City Code allows sheds, greenhouses and gazebos in the back and side yard. This particular development has a side yard but no back yard. There are no drainage problems that are known. There are seven letters of support from residents living on the street. No one knows the addition exists due to the 6 foot wall and landscaping.



around the front and sides of the property which will make it impossible to view the structure. Staff recommends approval of the variance.

Mr. Dale asked about an existing carport to be enclosed mentioned in the staff report.

Mr. Berg stated that the carport is an existing legal structure.

Ms. Miller questioned the location of the proposed structure.

Board Liaison, Venice Cobb, swore in those individuals who wished to give testimony for Petition No. 985.

Mr. Dan Sloan stated that the applicant would like to have a visible entry feature. The home is completely horizontal with a pitched roof and has no discernable entryway. The location chosen for the entryway is closest to the air conditioned portion of the home. Mr. Sloan spoke of the design of the gazebo which includes posts and wood columns that replicate the tapered design of the columns supporting the carport, as well as, simulated coral rock paving on two of the columns.

Mr. Sowards asked if moving the entryway would cause problems with the existing beams.

Mr. Sloan stated that relocating the entryway will cause problems with the existing beams.

Ms. Miller is in favor of the request. She noted that she feels that it is a wonderful element and would change the entire façade of the home.

Mr. Sowards is in favor of the applicant's request.

Mr. Hardester asked if there was any input from the neighbors.

Mr. Berg stated that notification was mailed and there were no letters of objection.

Ms. Miller asked if the pitched roof was common for the time period the home was built.

Mr. Sloan stated that those types of roofs were very popular in that time period.

Mr. Hardester wanted to know the character of the other homes in the neighborhood relative to the setbacks.

Mr. Berg stated that the subject property was built with a 35 foot setback. He noted that there are other homes with carports that are closer to the street.

Mr. Miller 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, with a condition that the current landscaping be maintained. The motion was seconded by Ms. Miller. Said motion was passed 5-0.

**4. 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 6:27 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 July 8, 2009, 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.