

PUBLIC HEARING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF OCEAN RIDGE  
TO BE HELD ON JANUARY 7, 1997 AT 10:00 AM IN THE OCEAN RIDGE TOWN HALL.

The meeting was called to order and roll call was answered by the following:

Bob Cunningham	Phil Barlage
Stephen Vance	Pat Frick

Town Clerk Hancsak read the hearing notice into the record.

A hearing of an application submitted by Emmett Pace, 5550 N Ocean Blvd., #103, Ocean Ridge FL 33435, requesting an appeal from the decision of an administrative official from the provisions of the Land Development Code, Article VIII; OTHER DEVELOPMENT REVIEW AND ADMINISTRATIVE PROCEDURES, Section 26- 207(2); Variances and Appeals from Decision of Administrative Official, Section 26-221; Grandfathered Uses and Structures, SubParagraph (d) Grandfathered Uses of Land, SubParagraph (e) Grandfathered Structures & SubParagraph (f) Grandfathered Lots, Structures and Uses in Combination relating to approved Building Permit #6715 to permit a roof modification and loft addition at 21 Tropical Drive or legally described as Blk A, B & Z P B Shore Acres, E 100' of W 660" of Lot 16, Blk A.

Town Clerk Hancsak advised the Board of the Public Notice and that all fees had been paid. Attorney Nicoletti inquired of the Town Clerk if Proof of Publication had been received. Town Clerk Hancsak advised that she expected to receive it within the next few days. Atty Nicoletti requested that it be added to the Town's Exhibits when received.

Town Clerk Hancsak read into the record the single piece of correspondence that was received on this issue from Brian King, owner/manager of Twin Palm Apt at 11 Tropical Dr.. Mr. King's letter stated that he was in favor of the improvements being made to this property. He further stated that he did not feel "that the height of the construction is offensive in any way as it is lower than the Condominium to the east, and the private home to the west."

Town Clerk Hancsak read into the record the letter from Kenneth A. Treadwell, Attorney for Mr. Emmett Pace, dated December 18, 1996 that accompanied the copies of Mr. Pace's signed Appeal form. The letter specified the sections of the code that Mr. Treadwell felt outlined the necessity for a variance for such a modification which included Section 26-207(c), Section 26-221(d)(1), Section 26-221(d)(2), Section 26-221 (d)(3), Section 26-221(d)(8), Section 26-221(d)(9), Section 26-221(d)(10), Section 26-221(d)(11), Section 26-221(d)(14), Section 26-221(e)(1), Section 26-221(e)(2), Section 26-221(e)(3), and Section 26-221(f)(1).

Chairperson Pat Frick announced that the hearing was a quasi-judicial proceeding, which meant that all testimony must be sworn, and that documents, tapes and any other physical evidence must be "accepted" into evidence to be considered.

Mrs. Frick asked if the Board members had any ex parte communications to disclose. Mrs. Frick advised that she had examined at the property. Bob Cunningham announced that he had driven by the property. Phil Barlage and Stephen Vance advised that they had (independently) looked both inside and outside the structure.

Mrs. Frick asked all attorneys present to make their appearances. Paul Nicoletti advised that he was present representing the Town. Roger Saberson stated that he was representing Chris O'Hare and Shelly Childers, the property owners. Kenneth Treadwell announced that he was representing Emmett Pace.

Mrs. Frick asked if there were any stipulations as to facts or law to be entered.

Attorney Nicoletti asked that items 1-11 be entered as stipulations. They are as follows:

1. A Building Permit Application for a new roof was received by the Town on October 17, 1996 from Chris O'Hare as co-owner of the property at 21 Tropical Drive, Ocean Ridge, Florida, also described as: Lot 49, Blue Ocean Subdivision (an unrecorded plat) and PCN: 46-43-45-34-05-001-0530. Building Permit No. 6715 was issued by the Town on October 18, 1996.
2. The subject property is located within the RMM-Medium Density Multiple Family Residential District.
3. The property is 100' (east to west) and approximately 84.75' (north and south), and is located on the north side of Tropical Drive between State Road A1A and Old Ocean Boulevard.
4. The existing building consists of eight (8) dwelling units and this use conforms to the RMM Land Development District.
5. The lot area is approximately 8,475 square feet, which is non-conforming.
6. The structure is nonconforming, because the minimum setbacks are exceeded, and the minimum dwelling size is not met.
7. Construction under the Building Permit began on or about

October 18, 1996.

8. Emmett Pace is the owner of real property contiguous on its eastern boundary to the subject property, and is an interested party and is considered to be an "aggrieved party" as provided in the Town Code.
9. The Town hereby waives the requirement for a "probable cause" determination, as provided in the "Appeal Addendum" to the Board of Adjustment Application.
10. Plans submitted with the building permit application were prepared by Arthur L. Bromley, P.E., sheets No. S-1 through S-4 and signed and sealed by Mr. Bromley on October 14, 1996.
11. No code variance was sought as a result of the building permit application herein.

Atty Nicoletti requested that #4 be amended to delete everything after "units."

Atty Nicoletti requested that a copy of the Land Development Code be entered as Town's Exhibit #1. He stated that there was a copy of it at the podium if anyone needed to use it as a reference.

Atty Nicoletti advised that the plans that were submitted with the application (outlined in Stipulation #10) should be marked as Town Exhibit #2.

Building Permit 6715 (outlined in Stipulation #1) was marked as Town's Exhibit #3.

Atty Saberson requested that it be stipulated that under the RMM district that Multi-Family apartment use is permitted. Everyone agreed this to be entered.

Atty Nicoletti advised that he has a videotape prepared by the Town Manager that he would like entered as evidence. All stipulated to admit the videotape.

Atty Saberson advised that he wanted to enter Owner's Exhibits 1-7 which were dated pictures that correctly represent the structure on those dates. He added that he had three additional pictures as Owner's Exhibits 10, 10A, and 11 that also reflect condition of project on October 21, 1996 (Owner's Exhibits 10 and 10A) and October 26, 1996 (Owner's Exhibit 11). Everyone concurred that these be entered.

Atty Saberson stated that he also had a copy of a survey of the property dated June 12, 1996 to be

entered.

Atty Treadwell advised that he was missing a copy of Atty Nicoletti's letter of December 13, 1996. Atty Nicoletti stipulated that the letter was attached to Ordinance 489 which was entered as Town Exhibit #4.

The attorneys were asked to give brief opening statements.

Atty Treadwell thanked everyone for attending on such short notice. He stated that the question that needed answered by the Board of Adjustment was not whether a variance would have been granted in this case, but rather whether or not a variance should have been required for the roof modification and loft addition. He proceeded by stating that the Code requires that a modification which increases a non-conforming use have a variance. He added that a variance is also required when a structure in the RMM district encroaches into a certain space by way of the roof line which he believed this modification to do, thus violating the setback requirements.

Atty Nicoletti stated that he felt this was a simple issue for the Town. The modification was approved as a grandfathered structure that was not increasing the non-conformity. He added that the work should be permitted to continue without interruption.

Atty Saberson explained that his concerns were that the code states that a modification can be made to a non-conforming structure that does not increase the non-conformity. He explained that a 100% flat roof was being changed into a 100% pitched roof. He stated that his client got approval on October 18, 1996 to begin work and had already expended over \$88,000 before the appeal was applied for and that it would cost \$92,000 to make the roof flat again. He advised that Case Law states that an individual can not wait until improvements are made on a structure and then appeal.

At this point, Town Clerk Hancsak swore in everyone who would be a witness in this hearing.

Testimony was then given by Emmett Pace, Gary Lanker, Chris O'Hare, Paul Nicoletti, and John Gunlack with examination and cross-examination given by all three attorneys present. There was also brief testimony from two members of the public, Vera Klein of 7 Sailfish Lane and Felix Zajac of 9 Tropical Drive both stated that they believed the improvements enhanced the neighborhood.

Clerk's Note: A verbal transcript was taken by Laura Tiderman, Knipes-Cohen Court Reporting. The audio tapes have also been retained with the exhibits and stipulations.

The attorneys gave brief closing statements.

Atty Saberson summarized that according to his client Emmett Pace had seen the property on October 26, 1996 where the height of the roof was clearly shown. He distributed the Case Law that determined that an appeal had to be applied for in a timely manner when the appellant sees that

construction is already under way or they lose their right to assert arguments.

Atty Nicoletti summarized that by adding a pitched roof where there was formerly a 100% flat roof does not add to the non-conformity of the structure.

Atty Treadwell stated that the Code is clear in that the modifications proposed are an increase in the non-conformity of the structure which would require variance approval by the Board of Adjustments. He stated that Mr. Pace learned of the construction around Thanksgiving and moved promptly to get his appeal filed with the Town.

Mrs. Frick advised that the Board needed to decide if the Town Manager/Building Official exceeded his authority by approving the permit if the modification in fact required a variance.

Mr. Cunningham stated that he believed there was a need for an interpretation of the Code in this case and that the Building Official is paid to make these types of interpretations. He advised that he felt that this modification enhances all the property around it. He stated that Mr. Lanker made his decision under the circumstances that no new living space was being created as evidenced by the fact that the loft would have solid walls surrounding it, no air conditioning, and access only with a pull down staircase. He summarized that he felt Mr. Lanker made the right decision and that no variance was necessary.

Mr. Barlage stated that since the loft area was sealed off, he did not see it as adding living space, but as a positive improvement. He explained that he felt the issue regarding the grandfathered setbacks was difficult, but since it did not encroach any further it could not be seen as a violation. He concluded that he agreed with Mr. Lanker's decision.

Mr. Vance advised that although he did not like the modification architecturally, he agreed with Gary Lanker's decision that a variance was not necessary.

Mrs. Frick stated that she also agreed with Mr. Lanker's decision.

Mr. Cunningham moved that the appeal be denied, seconded by Mr. Barlage.

Motion carried - Yea 4.

The meeting was adjourned at approximately 1:55 PM.

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Chairperson Pat Frick

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\_\_\_\_\_  
Bob Cunningham

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Phil Barlage

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Stephen Vance

Attest by:

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Town Clerk