Meeting of the Board of Adjustment of the Town of Ocean Ridge held on July 8, 1998 at 8:30 AM in the Town Commission chambers of the Town Hall.

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

Bob Cunningham Victor Martel
Barbara Souther Luis Vinas
Phil Barlage

1. An application submitted by William Bak, 6740 N Ocean Blvd., Ocean Ridge, FL 33435, requesting a variance from the provisions of the Land Development Code, Article II; District Regulations, Section 26-10; Single-Family Residential Districts, Paragraph (e); RSF – Single-Family Residential Property Development Regulations; Sub-Paragraph (2); Minimum Yard Setback Requirements, Sub-Paragraph (b) 15' sideyard setback and also Article XIV; Non-conforming and grandfathered uses. Section 26-221; Grandfathered uses, lots and structures; Sub-Paragraph (e), Grandfathered Structures; Sub-Paragraph (1); alteration, extension, or enlargement or expansion to permit conversion of 22' X 22' garage into a master bedroom/bath which currently encroaches 2'8" into the required 15' sideyard setback altering a grandfathered structure located at the above described address or legally described as Lot 44, McCormick Mile Subdivision.

Town Clerk Hancsak read the variance request by title.

Town Clerk Hancsak advised that there was no additional correspondence and that all fees had been paid.

Chairman Barlage and Town Clerk Hancsak read the justification of application. The justification of application stated that the existing garage encroaches 2'8" into the sideyard setbacks and no additional encroachment is being requested. It explained that additional living space is needed due to a recent marriage and newly acquired extended family. It advised that other properties in the area enjoy spacious living area and that his request was the minimum which would make reasonable use of the land.

Town Clerk Hancsak read the administrative comments from Town Manager Lanker. He advised that similar permits were previously approved without the need for a variance. He stated that he did not feel the granting of the variance would be injurious to the area and that it would be in harmony with the general intent and purpose of the code. He recommended approval of the variance.

Mrs. Souther disclosed that she had looked at the property at 6740 N Ocean Blvd.

William Bak stated that he would appreciate the Board granting this small variance to him because he really needs the space.

Mrs. Souther asked how this variance would change the exterior of the house to which Mr. Bak advised that the garage door would be changed which would include two windows and a small planter would be added which compliments one already placed in front of the house.

Chairman Barlage advised that he was confused as to the dimensions of the garage to which Mr. Bak explained that it was 22' X 22' without the existing closet. Chairman Barlage stated that the dimensions were irrelevant, as they would not change the encroachment of 2'8".

There was no public comment.

Dr. Martel advised that he had no problem with the variance request.

Mr. Cunningham concurred commenting that the only exterior change would be from a garage door to windows.

Mrs. Souther also commented that she approved of the request.

Dr. Martel moved to approve the request as submitted, seconded by Mr. Cunningham.

Motion carried – yea 5.

2. An application submitted by John and Virginia Azzato, 46 Bimini Cove Dr, Ocean Ridge, FL 33435, requesting a variance from the provisions of the Land Development Code, Article VI, Marinas, Docks and Bulkheads, Section 26-93; Location and Height of Docks, Paragraph (b); no dock shall project more than 5' into any waterway line or established bulkhead line, or extend closer than 10' to the lot line of any adjacent lot to permit a dock that was already constructed that currently encroaches 3.5" into the required 10' setback to the lot line at the above described address or legally described as Lot 46, Inlet Cay Subdivision.

Town Clerk Hancsak read the variance request by title.

Town Clerk Hancsak advised that all fees had been paid.

Town Clerk Hancsak read the correspondence from Joe and Elaine Piantedosi, 31 Spanish River Drive, who support the Azzato's request citing that 3.5" is such a small distance, no one could be inconvenienced. She also read a cover letter from Joel Nagelman, 47 Spanish River Drive, which advised that he and his wife did not object to the original dock variance request, but the dock was built differently than Mr. Azzato had represented it to them. He advised that he was against this variance request which violates the setback line from his property. It was noted that the correspondence from Mr. Nagelman was quite lengthy and that each board member had a complete copy.

Mrs. Souther disclosed that she had visited this property also.

Chairman Barlage and Town Clerk Hancsak read the justification of application from the Azzato's. The justification cited that following the approval of a final inspection by the Town, an encroachment of 8" was discovered through a complaint by a neighbor. Corrective action was taken which reduced the encroachment to 3.5". The fact that a discrepancy was found between the Azzato and Nagelman's survey was also cited as a factor in the misplacement of the piling. It stated that it is widely recognized by Courts that variances may be granted for de minimus violations if the violation was unintentional and where the inconvenience of correction of the violation far outweighs the benefits to the public resulting from the correction. It concludes that this applies to his situation.

Town Clerk Hancsak read the administrative comments from Town Manager Lanker. He stated that he felt there are several examples in the Town of pilings which encroach into the setback through this literal interpretation of the code. He explained that the applicant has already modified the walking surface of the dock to conform to the code and that relocating the piling would be contrary to normal construction good sense. He recommended approval of the variance request.

John Azzato advised that this situation has caused him a lot of grief adding that although Mr. Nagelman feels he was misled, that was not the case. He distributed a sketch of the dock and a letter from Boca Dock & Seawall as Petitioner's Exhibit's 1 and 2, respectively. He stated that he had instructed the contractor to make sure that they did not encroach into the setback on Mr. Berger's side of the property where the first variance was granted and that the extra caution may have caused the dock to extend too far on Mr. Nagelman's side. He explained that while Mr. Berger's fence is right on the property line, Mr. Nagelman's is not and this may have added to the confusion on the part of the contractor.

Mr. Azzato explained that they had removed part of the dock on Mr. Nagelman's side in order to reduce the encroachment, but that it would not be easy to move a piling 3.5". He stated that to make this slight correction would necessitate rebuilding 25' of the dock which, when splitting the cost with the contractor, would still cost him between two and four thousand dollars.

Mr. Azzato stated that Mr. Nagelman contends that the placement will impede the navigation of his vessels from his floating dock. Mr. Azzato advised that he has offered to fully fund moving the floating dock so that Mr. Nagelman could drive straight into his dock and to place bumpers on the dock, but Mr. Nagelman never responded.

Mr. Azzato added that he had also offered to place facia board on the edge of his own dock in order to dress up what the neighbors will see.

Mr. Azzato advised that to move the piling, it would be necessary to hire a carpenter, electrician, plumber and pile driver for the work. He stated that he thought the issue to be closed when the building permit was approved by the building official and showed the signed permit as Petitioner's Exhibit #3.

Referring to the letter form Boca Dock & Seawall, Dr. Martel asked for clarification that the contractor believes it would not be possible to move the dock 4", but rather would be forced to move it at least 18". Mr. Azzato replied that was true because if it were placed any closer than 18" the piling would eventually "walk over" and fill into the first hole driven.

Mrs. Souther asked what the distance was between the pilings to which Mr. Azzato explained that it is 10'.

Mr. Cunningham questioned the intention of the code which requires docks to conform to a 10' setback. Town Manager Lanker explained that he could not reply as to the intent, but that other communities allow docks to the property line.

Dr. Martel questioned if the setback for docks has ever been less than 10' to which Town Manager Lanker replied that he did not believe so.

Mr. Cunningham asked if the problem arose from the discrepancy in the surveys to which Mr. Azzato replied that it did. Town Manager Lanker explained that there would be a violation when using either survey adding that the Nagelman's survey would make the violation more severe.

Town Manager Lanker explained that he signed off on the permit and told Mr. Azzato that approval was contingent upon everything being in the right location. He added that he had also informed Mr. Azzato, after the discrepancy was discovered, that any additional work done would be at his own risk.

Chairman Barlage questioned a letter written by Town Manager Lanker dated March 11, which stated that the responsibility belonged to Boca Dock & Seawall to make the repairs. Town Manager Lanker explained that after writing the letter and reviewing the permit application, he discovered that the permit was pulled as an owner/builder permit and; therefore, the responsibility falls on the owner.

Atty Nicoletti explained that a variance request, which was very diminutive, required only a diminutive cause. He stated that the hardship includes the ability to sight pilings, which is very difficult, since survey marks can not be placed on the water.

Chairman Barlage questioned if it was typical for a piling to shift from its intended location when being installed to which Town Manager Lanker replied that they do often miss the intended location. Chairman Barlage commented that knowing this, the contractor should have erred on the side of caution adding that perhaps the responsibility is theirs. Mr. Azzato reiterated that as a result of pulling an owner/builder permit, he has the responsibility.

Public Comment

Mr. Nagelman advised that Mr. Azzato did offer to help move his dock and install bumpers, but that he did not offer to place facia at the end of his dock. He commented that he would like to have Mr. Azzato place facia board at the end of his dock so that he is not looking at the underside of a dock. He explained that he would have liked to have the original commitment as conveyed to him by Mr. Azzato honored in the construction of the dock for the first variance.

Dr. Vinas questioned how moving the piling 4" would help to which Mr. Nagelman replied that it would not. He added that had the dock been installed where it was originally supposed to be according to what he was told by Mr. Azzato, everything would have been fine.

Dr. Vinas asked Mr. Nagelman if he had a problem with the first variance. Mr. Nagelman explained that the dock was placed 3.5' from where he was led to believe it was planned to be.

Mr. Azzato explained that the original variance request was for a 2'8" width extension into the water which was granted on only one side of the dock.

The Board went into executive session.

Mr. Cunningham stated that moving the piling 4" would not effect anyone although adding the facia board to the edge of the dock would improve the view for the neighbors.

Dr. Martel commented that he feels Mr. Azzato has done as much as he can to rectify the situation. He concurred that moving the piling 4" would not make any difference adding that Mr. Nagelman is also in agreement with that. He suggested that the issue of floating docks and why they are allowed in the setback be addressed.

Mrs. Souther agreed adding that she hoped this situation would not come between the friendship of the neighbors.

Mr. Cunningham moved that the variance be approved with the contingency that facia board be added to the edge of the dock, without causing further encroachment, to be done within the next thirty days, seconded by Dr. Martel.

Motion carried – yea 5.

Adjournment

The meeting was adjourned at 9:55 AM.

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Phil Barlage

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Bob Cunningham

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Victor Martel

Attest By:

_____
Barbara Souther

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Town Clerk

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Luis Vinas