

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, August 18, 1999 at 8:30 AM in the Town Hall meeting chambers.

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

Terry Brown                      Dr. Victor Martel  
Chairman Barlage

- I. An application submitted by Phyllis Carey, 2150 South Ocean Blvd., Apt. 6-E, Delray Beach FL 33483, 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)(b) 15’ side yard setback and (2)(a) 25’ front yard setback (as per Section 26-13(d)(6)) and also Article XIV Nonconforming and Grandfathered Uses, Section 26-221; Grandfathered uses, lots and structures; Paragraph (d), Grandfathered Uses of Land, Sub-Paragraph (8) Extension of Use, Sub-Paragraph (1); alteration, extension, enlargement or expansion to permit the connection of Unit 10 and Unit 11 of 6880 North Ocean Blvd. (Maisonettes North), by constructing a 710 sq ft TV room, laundry room and bathroom addition between the two residences thereby altering a grandfathered status and now requiring a variance for the existing setbacks of 2’8” from Lot 11 and an existing 9’10” side setback for Lot 10 in 15’ required side setbacks and also an existing 7’ or less encroachment into the required 25’ front yard setback located at the above described address or legally described as s Lot 10 and Lot 11, North Maisonettes (an Unrecorded Plat), said plat being a part of Lots F, G, H, and I as shown on the plat of Addition No. 1 McCormick Mile, together with those parcels shown as not included on said plat lying between said Lots G and H, according to the plat thereof as recorded in Plat Book 25, Page 181 of the Public Records of Palm Beach County, FL.

Town Clerk Hancsak read the variance application by title only.

Town Clerk Hancsak noted for the record that all fees had been paid and no additional correspondence received.

Town Manager Dunham and James Ballerano, Esq. were sworn in.

Chairman Barlage and Town Clerk Hancsak read the justification of application and responses for the requested variance. The applicant stated that special conditions and circumstances are not the result of the applicant because the structures and buildings were constructed prior to the codification of the Town’s zoning code and have been existing without material modification since their initial construction. They stated that the connection of the two units will not further encroach on the setbacks and will maintain the same architectural design integrity as that of the original project. They added that the underlying land is all under common ownership, in that the Cooperative Corporation

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owns fee simple title to the property and therefore the ordinary requirements applicable to separately owned parcels should not pertain to this application. The applicant stated that granting the variance would not confer any special privileges to the homeowner and added that the planned improvements will not make the completed structure any less conforming and will not encroach on setback requirements any further than the existing structure does currently. The applicant stated that the literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant. They stated that the improvements to the property are required so that the applicant may enjoy the two combined residences as one single family home as intended at the time of her purchase, lowering the impact on density within the zoning district. The applicant plans to reside in the residence year-round and the units were not originally constructed on that basis. The applicant stated an undue hardship would occur if she were required to go outdoors and exit one unit to access the other unit. The applicant stated that the variance granted is the minimal variance and would have minimal impact to the property or neighboring properties because there is no other way to configure the improvements without jeopardizing the harmonious nature of the community. They added that the improvements will barely be noticeable from the street or adjacent property owners. The applicant stated that the variance would be in harmony with the area without being injurious to the neighborhood or the town because of the design integrity and the lowering of the density of the property (by creating one unit from two), the non-existence of any impact on any neighboring properties and the maintenance of the architectural harmony.

Town Clerk Hancsak read the administrative comments from Town Manager Dunham. His comments started by advising that the Maisonettes North were built in 1966 as part of the Ocean Club development and is much like a PRD under our land use code but was built prior to such code. He advised that the Town Commission will ultimately have to approve the joining of the two properties through a Unity of Control, however, this variance must be considered first. Thus, the variance is to request relief from the side setbacks, front setback, and for altering a grandfathered structure. He added that the request actually decreases the setback nonconformities because two sides that were previously nonconforming would be joined together and would have no setbacks as the two lots would now be one lot. He added that per the application, the owner would meet the LDR requirements for buildable area allowed and for the floor area ratio.

Regarding the question if special circumstances exist which are peculiar to the land, Town Manager Dunham noted that the setback requirements apply to all properties regardless of their ownership and all the units in this area were built with minimal size. He added that the applicant bought the two properties with the knowledge that they were separate properties and did not believe that special circumstances exist. Mr. Dunham stated that all of the units in the Maisonettes are confined with little room to expand, therefore, no other owners enjoy any more rights than the applicant and he added that the owner understood when the properties were purchased that they were separate and would require going outside to access one house to the other. He concluded that he could not agree that this would be the minimum variance required to join the units and would not

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be in harmony with the general intent of this chapter. He added that the connection would not be harmony with the area because it would create a single-family residence twice the size of any other in the neighborhood. He concluded that he did not feel the request for a variance met the criteria set forth in the Land Development Regulations.

At this point James Ballerano, attorney representing Ms. Carey and who also represents Ocean Maisonettes and Ocean Ridge Management, stated that Ms. Carey is the owner of a leasehold interest in a cooperative property and that the underlying property was under common ownership. He reiterated the request to join the two small units located at the end of the block, thereby eliminating some of the setback issues. He stated that the units were never intended for year-round residents. He also stated that the Town Commission has made favorable comments regarding the request and hoped that this board considered it favorably.

Chairman Barlage questioned whether the cooperative by-laws or documents needed to be amended for this proposed change. Atty Ballerano stated that the by-laws required consent of the board (which was submitted in the packets) only and that for all assessment purposes the property would still be considered as two lots so that the shares are not reduced. He added that the Town Commission would still have to approve a Unity of Control, which would disallow the property being sold separately without the addition being removed, citing it was similar to a Unity of Title.

Dr. Martel inquired whether this board should only be addressing the setback issue to which Town Manager Dunham stated that while the Unity of Control would have to be authorized by the Town Commission this board still needed to know how this change would affect the neighboring properties. Atty Spillias advised the board that if they granted the variance it should be contingent on the Unity of Control being granted by the Town Commission.

Mr. Brown questioned whether this request has already been brought before the Town Commission. He was advised that the applicant appeared before the Commission for the granting of the Unity of Control, however, no official action was taken because questions were raised on which board the request should be heard. Atty Spillias stated that it was determined that since the applicant would be altering a grandfathered property and structure it would be necessary to obtain a variance prior to the Unity of Control.

Dr. Martel stated he still did not understand why it was not necessary to amend the by-laws and was concerned that the other property owners may not be aware of this request. Chairman Barlage agreed and commented that possibly a cooperative is somehow different. Atty Ballerano stated that the cooperative must still also be a party in the Unity of Control. He also reminded the board that notices were mailed to all the property owners within 300' and no objections were received either by the town or through Ocean Ridge Management.

Regarding this request being brought before the Town Commission, Town Manager Dunham stated that the Unity of Control was discussed amongst the Commission and

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also the process by which the applicant should proceed. He added that he was unaware whether they actually spoke favorably to this request. Mr. Brown clarified though that Mr. Dunham was not recommending that the variance be granted.

Chairman Barlage stated he did not feel that this request meets the minimum variance to which Atty Ballerano advised that the variance being requested was to keep the existing structure. Town Clerk Hancsak stated that the request was also to alter a grandfathered structure to which Atty Spillias added that by altering the structure the grandfathered status is lost.

Chairman Barlage questioned what the actual hardship was to which Atty Ballerano advised that Ms. Carey would have to exit one unit in order to enter the other unit. Dr. Martel responded that Ms. Carey was aware of these conditions when she purchased the property. Atty Ballerano advised that his client had optimistic eyes when she purchased the property citing that the board members did not object to joining the units. Dr. Martel stated that he was concerned that additional requests may be received in the future. Atty Ballerano commented that these two units are unique in that they are already almost in touching distance to each other.

Town Manager Dunham stated that he had difficulty in accepting that a 710 sq ft addition was the minimum variance to fulfill the request. At this point Atty Ballerano showed a larger copy of the proposed drawings.

Virginia Courtney, Interior Designer for the applicant, was sworn in and advised that the hardship was also that Unit 10 never had a laundry room or office and also that the bathroom in Unit 11 could only be accessed by walking through one of the bedrooms.

Chairman Barlage advised that since there were no other questions or public to make comments the board was now in executive session.

Atty Spillias advised that the Town Manager had raised a question whether it would truly be an enlargement if use of only a breezeway was constructed. Town Clerk Hancsak advised that according to the definition of a building a breezeway would still be considered a structure thus requiring the same variance. She also reminded the board of what Ms. Courtney had stated regarding the additional hardships for the bathroom, TV/Office room and laundry room. Atty Ballerano stated that his client would still prefer the addition as requested, however, she would consider a breezeway with no expansion of living or air-conditioned space. He added that his client was under a time constraint to complete the proposed addition by November 1<sup>st</sup>.

Mr. Brown questioned whether the board could approve a breezeway without specific plans. Atty Spillias stated he would not recommend approval without plans. Atty Spillias stated that if the board was in favor of a breezeway in lieu of the addition they could postpone the meeting to a date certain in order to allow the applicant to submit a new drawing or they could request that the Commission hear the Unity of Control request first and then go back to this board.

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All three board members concurred that they did not feel a hardship had been established for either the addition or breezeway to enlarge or alter this grandfathered structure.

Mr. Brown moved to deny the variance request as submitted citing the lack of a hardship, seconded by Dr. Martel.

Motion carried – Yea (3)

Town Clerk Hancsak advised that a letter to the applicant would be forthcoming.

II. Adjournment

The meeting was adjourned at 9:50 AM.

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Chairman Barlage  
Terry Brown  
Dr. Martel

Attest:

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Town Clerk