

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, May 9, 2001 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            Earl Jones  
Richard Lucibella     Barbara Souther  
                                 Chairman Barlage

### III. APPROVAL OF MINUTES

#### A. March 14, 2001

Mr. Brown moved to approve the March 14, 2001 minutes, seconded by Mr. Jones.

Motion carried – Yea (5)

### IV. VARIANCE REQUESTS

- A. An application submitted by Gary Maresca, agent for the owners, Ray, Thelma, Phyllis, Janet and Ray (Jr.) Sohn, 29 Eleuthera Drive, 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)(b) Minimum 15’ Side Yard Setback Requirements, and Sub-Paragraph (5) Maximum 35% Lot Coverage and also Article XIV Nonconforming and Grandfathered Uses, Section 26-221; Grandfathered uses, lots and structures; Paragraph (e), Grandfathered Structures; Sub-Paragraph (1); alteration, extension, enlargement or expansion to permit the construction of a master bedroom and office addition that would encroach up to a maximum of 4.1’ into the east side yard setback and 4.65’ into the west side yard setback which would also exceed the maximum 35% lot coverage by 8.1% (this includes the 11% screened pool area), which would alter an existing grandfathered structure located at the above described address or legally described as Lot 29, Inlet Cay Subdivision.

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 was received.

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 exist because the applicant built the home in the 1967-1968 and since that time the home now has a serious lack of room. They added that they planned on keeping

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the current side setback the same, which was the permitted setback at the time the home was built. The applicant stated that granting the variance would not confer any special privileges to other land or buildings and would be the minimum needed. The applicant stated that they love the area and wish to spend more time here but there is a serious lack of room and they cited that homes up north have second floors, basements, attics, etc. They also stated that they had contacted several of their neighbors and to their knowledge they did not object to the request and cited that many have second floors with much more square footage. The applicant stated that the request would be in full harmony with the general intent and purpose of the ordinance and the appearance of the home would continue to look as it appears now and becomes an integral part of the current home. The applicant concluded by stating that the variance would not be injurious to the area and would definitely enhance the neighborhood and increase values.

Town Manager Dunham read his administrative comments, which included a brief summary of the request. He mentioned that when the home was built in 1967/68 the code required 10' side setbacks and therefore the home has become a grandfathered, non-conforming structure. He added that in 1989 the Sohn's requested a variance to extend 7' into the required 15' side yard setback on the east side, which would increase the lot coverage to 40% (5% more than permitted). He stated that the board granted a lesser variance so long as it maintained the existing 10' setback and thereby increasing the lot coverage to 38% instead of 40% (including the screened pool area). He stated that this current request would increase the lot coverage nonconformity from about 38% to 43%, which includes the 11% open screened pool area.

Town Manager Dunham's comments regarding the justification of application advised that special circumstances do not exist for the additions proposed at this location. Town Manager Dunham advised that the applicant is the original builder and they have already received one variance to enlarge the house. Town Manager Dunham stated that other property owners have the ability to build similar structures provided they meet the code or the variance process is used to approve similar requests. He stated that it is the staff's opinion that the applicant will be enjoying a special privilege, given the fact that one variance has already been granted to a non-conforming home. He advised that literal interpretation of the provisions of this chapter would not work unnecessary and undue hardship. In conclusion, Town Manager Dunham commented that he felt the request was not the minimum that would allow the most reasonable use of the land because the possibility exists that the applicant could build up instead of out and not increase the existing nonconformities. Town Manager Dunham stated that he felt that granting the variance would not be in harmony with the general intent of the ordinance because the applicant has a structure that is already nonconforming and has already been granted one variance increasing the nonconformity and its impacts on the neighbors. He added that the variance would be injurious to the area as they are increasing nonconforming land development issues that have a direct impact on their neighbors. Therefore, his recommendation was to deny the request for setbacks and lot coverage because the applicant has not met the criteria set forth in the Land Development Regulations and other opportunities exist to add onto the home without increasing the nonconformity.

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At this point Mr. Sohn, David Beasley, and Town Manager Dunham were sworn in. David Beasley, architect for Mr. Sohn, stated that he prepared the plans and reiterated that the applicant wished to square off the home and did not want to increase the nonconformity by encroaching further into the side setback. He stated that he believed there was a question as to whether the screened pool area, which is a rather large area, is to be considered as part of the lot coverage. Mr. Jones commented that Section 26-31 (c ) stated that swimming pools located at finished grade are not considered as part of lot coverage unless totally enclosed by a semi-opaque or opaque obstruction. Town Clerk Hancsak read the definition of building that includes anything attached to something permanently attached to the ground and also lot coverage that stated that all buildings on a lot are counted in the lot coverage. Town Manager Dunham stated this was an area where the code could be questioned. Mr. Beasley stated that some municipalities include screened areas and some do not. Town Manager Dunham stated that that is why he also included in his memorandum and the advertisement that 11% of the lot coverage was an open screened area and commented that the major concern was extending into a nonconforming area. Mr. Lucibella agreed that there are two issues concerning setback encroachment and lot coverage.

Mr. Jones questioned whether the air conditioning unit and pool mechanical equipment could be placed in the rear of the residence and out of any setback area. Mr. Beasley stated that both could be moved so that it was out of the rear setback.

Mr. Jones also inquired if calculations for drainage had been considered to which Mr. Beasley stated that they had not at this point. Town Manager Dunham stated that the drainage would be checked at the time of permit review.

Chairman Barlage questioned whether any consideration had been given to adding a second story, which would then comply with the code. Mr. Beasley stated that his client had not discussed that possibility and added that it would be more difficult for his client to maneuver upstairs.

Mrs. Souther stated that she was unclear what was cited as the hardship to which Mr. Beasley stated that this was tough to answer. He stated that the bedroom in the back is small for today's standards and he felt basically the only hardship was for the office, so that Mr. Sohn could conduct more work from Florida. Mrs. Souther asked how many occupants live in the residence to which she was advised Mr. and Mrs. Sohn and more when their children visit. It was determined that the total square footage would be 3,990 including the garage or 32% lot coverage (not including the screened pool area). Mr. Jones added that a 12,500 square foot lot could provide for a 4,500 square foot home so this request was well under the maximum. Mrs. Souther then asked if the garage could be converted to an office. She was advised that the garage houses two vehicles and there is an 8'x10' storage area that is currently utilized.

When asked if Mr. Sohn had any comment, he advised that he felt Mr. Beasley had addressed all the issues.

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There being no public comment, Chairman Barlage declared that the board would now go into executive session.

Town Clerk Hancsak ascertained that all five members had gone and reviewed the site but had not spoken with the applicant or agent.

Mr. Jones stated that he felt the home was nicely maintained and he favored a single story over a second story addition if all the mechanical equipment could be located in the rear of the residence but out of the setback area. He added that he felt this was a viable solution.

Mr. Brown commented that he did not feel a true hardship had been proven according to the code and that all the criteria had not been met. He added that the applicant could comply with the code if they build a second story.

Mr. Lucibella stated that he agreed with Mr. Jones that the house presents well and a preferable solution would be to keep the home a single story. However, he stated that he realized that this board was not a legislative body and therefore could not rewrite the ordinance or grant a variance on a personal preference. He also stated that he did not feel the applicant met the criteria for a, c, d, e, and f for the Justification of Application. He added that he felt this board should not overrule a previous decision made by the Board of Adjustment. He concluded by stating that if this variance was granted without an actual hardship then he feared that it would set a precedent for future requests.

Mrs. Souther stated that she did not see how the variance could be granted based on the hardship question citing she did not feel a hardship had been proven. She also stated that upon reviewing the site she noticed that there wasn't much room on the sides of the residence already and she added that she felt there were other alternatives.

Chairman Barlage stated that he did not feel that the mandatory criteria for proving a hardship had been met. He added that he felt that there was possibly room in the residence for the office.

Mrs. Souther moved to deny the variance based upon the applicant already being before a previous board and a portion of their request was denied and also because it does not meet the hardship criteria. Mr. Jones stated that he disagreed with including a previous boards' decision as being a reason to deny the request.

Mrs. Souther then moved to deny the variance request based on the additions infringing more onto the setback and that no hardship had been proven, seconded by Mr. Brown.

Motion carried – Yea 4 (Barlage, Brown, Lucibella, Souther)  
Nay 1 (Jones)

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

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V. Adjournment

The meeting was adjourned at approximately 9:10 A.M.

ATTEST:

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Town Clerk

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Chairman Barlage  
Richard Lucibella  
Earl Jones  
Barbara Souther  
Terry Brown