

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, August 15, 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:

Geoff Pugh Earl Jones
Richard Lucibella Bernd Schulte
 Chairman Barlage

Town Clerk Hancsak introduced Charles Schoech, attorney representing the board.

Chairman Barlage requested that the agenda be modified to discuss Item V and VI immediately following approval of the minutes. He also requested that Item #VII regarding election of Vice Chairman be deferred to another meeting when the two regular members are present.

Mr. Lucibella moved to approve the amended agenda, seconded by Mr. Schulte.

Motion carried – Yea (5).

III. APPROVAL OF MINUTES

A. May 9, 2001

Mr. Lucibella request that the minutes be amended to clarify that Mrs. Souther's first motion was withdrawn prior to the second motion (bottom of page 4).

Mr. Lucibella moved to approve the minutes as amended, seconded by Mr. Pugh.

Motion carried – Yea (5).

V. REQUEST FOR SIX MONTH EXTENSION OF TIME FOR VARIANCE THAT WAS APPROVED January 17, 2001 at 18 HARBOUR DRIVE NORTH

Mr. Jones stated that the board might wish to consider changing the time frame from six months to one year for construction to commence. Chairman Barlage suggested discussing this as an additional item at the end of the agenda.

Mr. Pugh moved to approve the extension request as submitted, seconded by Mr. Jones.

Motion carried – Yea (5).

VI. REQUEST FOR SIX MONTH EXTENSION OF TIME FOR VARIANCE THAT WAS APPROVED FEBRUARY 14, 2001 AT 35 HERSEY DRIVE

Town Clerk Hancsak advised that a letter had been received from Attorney Jeffrey Kurtz, representing Patricia Pugliese, requesting an extension of their variance for six months after a DEP Notice to Proceed has been issued. She added that Attorney Kurtz was present to address the board.

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Attorney Kurtz advised that at this point in time the applicant has only received a Notice to Proceed Withheld from DEP, which means that there are several modifications that need to be submitted back to them prior to full approval. He added that once the modifications are submitted DEP has 90 days to review it and that is why he requested six months from the time of their approval.

Mr. Pugh questioned if he felt a nine-month extension would be sufficient. Attorney Kurtz commented that he could not guarantee when DEP would have final approval.

Mr. Lucibella stated he understood the request but he was concerned with giving a blanket control and then moved to approve a six-month extension and return to the board if necessary. Mr. Pugh seconded the motion.

Motion carried – Yea (5).

IV. VARIANCE REQUESTS

A. An application submitted by June Fox, President of Green Machine Development Corp., 200 MacFarlane Drive #405, Delray Beach FL 33483, requesting an appeal from the interpretation of the 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 at Appendix B, Subdivision Improvements, Section (b); Design Requirements; Paragraph (7) Lots; Sub-Paragraph (a) and Paragraph (10) Streets in that the Administrative Official interprets the code as providing that no lot may be created unless it has access from a street and if a new lot does not abut an existing street, then a new street must be created as a primary means of access and the design requirements are found in the Subdivision Improvement Regulations for two proposed homes at the southwest end of Hudson Ave. (25 Hudson Ave.) or legally described as the North 87.86' of Lots 15 and 16, less the west 65' of said Lot 16, Block 6, Boynton Beach Park Subdivision and Lots 15 and 16, less the North 87.86' thereof and less the west 65' of said Lot 16, Block 6, Boynton Beach Park Subdivision.

Chairman Barlage suggested that the Town Atty summarize what should be expected with an appeal request. Atty Spillias advised that there were two items on the agenda involving this property. The first is an appeal from the applicant on an interpretation by the Town Administrator concerning the reconfiguration of the lots and the requirement for a street. He added that the town and applicant argue the interpretation of the code and if the appeal were granted then a variance would not be necessary. However, the town could also appeal the decision of the board and if the town prevailed then a variance would be required and the board would then determine if the criteria was met for a hardship. Atty Spillias stated that he was advised that if the board upholds the Town Administrator's interpretation that the applicant would probably request a postponement on the variance request so that they may review the staff comments that Atty Palen just

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received yesterday. He added that the town would have no objection to a postponement. Atty Schoech advised the board that the comments made by Atty Spillias were correct.

Town Clerk Hancsak read the appeal application by title only and all persons giving testimony were sworn in.

Town Clerk Hancsak noted that all fees were paid and no additional correspondence was received.

Atty Schoech ascertained that all of the board members have visited the site but had not spoken with the applicant. Chairman Barlage advised that he had spoken with the Town Manager regarding an overview of the process for the meeting. Mr. Lucibella stated that he too questioned the Town Manager regarding general related questions.

Atty Spillias summarized the survey schematic (Exhibit #1 by the applicant) and the proposed plan to reconfigure the lots so that two homes would face east and west. He stated that the applicant was seeking a 20' access easement as a driveway to serve both lots and if this easement is determined permissible by the board the applicant would then be able to build the two homes.

Atty Spillias stated that it was the town's position that this can not be accomplished unless a street is built. He then read the definition of street and subdivision as contained in Section 26-240. Atty Spillias advised that typically three or more lots are considered a subdivision, however, if a developer is developing a new street then any division brings into the creation of a street to service a lot and triggers the subdivision requirements. He added that a 20' ROW does not meet the subdivision requirements and the applicant is seeking to avoid these requirements.

Mr. Jones questioned if the lots would meet all the other requirements if they were reconfigured. Atty Spillias advised that if any other requirements were not met other variances would have to be sought.

Mr. Lucibella questioned if Lot 16 is currently titled as a stand-alone lot. Atty Spillias stated that the history of this lot is that it was once a full size lot, however, in the 1930's the owner granted an 65' easement to the Army Corp. of Engineers. He added that in 1967 the owner conveyed Lot 15 and 16 without the 65' to a new owner and the present owner is now in the process of having the property conveyed to him. However, he stated that the 65' would not be considered in buildable area calculations.

Chairman Barlage questioned the difference between a road or street and easement. Atty Spillias advised that the applicant states that the code definition of a legal access, at least 20' in width, would allow this proposed use. He stated that a street is the physical facility one uses whether public or private as a ROW and the principle means of access. He then stated that an access describes the ability to get to property and a legal access allows access by way of an easement.

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Atty Schoech stated that a public street is a public ROW dedicated to the public or town and a private street is dedicated to the landowners within the development. He advised that an easement is either public or private and the property owner retains physical ownership but conveys rights to use to various people.

Mr. Jones questioned what the differences would be for a legal access vs. street to which Atty Spillias advised that a street triggers various requirements such as drainage improvements, full road ROW of 50 or 60' with 20' of pavement and swales, and a traffic analysis unless waivers are granted. Atty Spillias added that the subdivision requirements do not differentiate for smaller areas. Mr. Jones commented that many town streets do not meet the current code requirements, such as Hudson Ave. at 18' 10".

Mr. Lucibella stated that he felt this was not a problem created by the Town Manager and questioned if frontage is defined. Atty Spillias then read the definition of street and lot frontage. Mr. Lucibella then asked if an easement touching Hudson Ave. would meet the requirements. Atty Spillias stated that it would not because the easement would be for each lot owner and differs than a multi-family or duplex access.

Chairman Barlage inquired if the lots were joined by Unity of Title to which he was advised that they were not, however, they have been reconfigured.

Frank Palen, attorney representing the applicant, commented that Atty Spillias quite fairly described the facts, however, the basic issue is what a subdivision is. He stated that the staff's interpretation begins with a need for a street thereby falling under the subdivision regulations. He believes the interpretation begins with the definition of a subdivision, which this property does not fall under. He commented that Mr. Liddy, consultant for Green Machine Development Corp. would provide testimony of conversations that have taken place with town staff over the last couple of years. He also stated that Beryl Kruger, a land planner in the area, would provide testimony as an expert witness on other communities' codes regarding subdivisions.

Atty Palen read the definition of subdivision and stated the basic difference was that this was not a division into three lots, which would trigger a subdivision and his client did not believe this was a subdivision. He stated that years ago all streets were private and a question remains on whether the Commission intended to require a formal street be constructed if it meets all other codes. Mr. Lucibella commented that in the definition of subdivision the word "or" provides for the creation of a street. Atty Palen stated that he interpreted the code to mean that constructing a street is voluntary.

Atty Palen mentioned the minimal traffic flow for one single family lot and the fact that a fire truck could back out of the street as is done in other areas. He added that his client did not feel that the intent for this impact justifies the requirements.

Testimony was then given by: George Liddy, shareholder/consultant with Green Machine Management Corp.; Beryl Kruger, local Land Planner, Gregory Dunham, Town Manager; and Karen Hancsak, Town Clerk.

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Clerk's Note: A verbal transcript was completed by Tom Sevier, of Everman & Assoc., Inc. Reporting. The audiotapes have also been retained.

Atty Palen, in closing, commented that the code did not require a minimum frontage and if the town intended to deny the reconfiguring of lots then the code should have this requirement. He added that only the Planned Residential Developments contain this requirement. He also stated that his client felt the staff's interpretation was incorrect and this would actually be a method to improve the road system and finally the intent was not to impose this requirement. He concluded by stating that an easement is sufficient for one single family home meeting all other regulations.

Mr. Lucibella questioned if the lots were in separate ownership to which he was advised that there are separate titles, however, the companies owning the land are jointly owned. He stated that he felt the applicant was aware that the 2nd lot size was unbuildable and are now saying their hands are tied because they can not reconfigure the lots in such a manner to increase its marketable value.

At this point Atty Schoech clarified the Section 26-207(2) regarding the appeal brought before the board and advised that the board must either uphold the Town Administrator's interpretation or agree with the applicant, and added that the hardship issue applies to the granting of a variance.

Closing comments provided by Atty Spillias included the reading of Section 26-210(b) where it states that when there is a conflict the most restrictive interpretation shall apply. He also stated that the courts usually apply principle interpretations by the town as the persuasive authority because the applicant wants to maximize the code.

Public comment was provided by Steven Romanowski, 23 Hudson Ave., just east of the subject property. Mr. Romanowski stated that he could provide some history for the board in that he has met with Mr. Liddy a couple of times within the last couple of years. He stated that Mr. Liddy had discussed the possibility of purchasing his property and had shown him at least 3 proposed site plans. He stated that he was concerned with the proposed development and had contacted the town several times on whether a submittal had been received and he was advised each time that a notice would be sent out when a formal submittal was received. He added that he did not understand how the applicant could even put in a road west of his property when it was not platted that way and he would challenge the town if it were approved. He stated that the splitting of the deed is the applicants' problem and reiterated that he felt the homes had to front Hudson Ave. There being no other public comment the board announced that it was in executive session.

Mr. Lucibella stated that he did not feel a hardship existed concerning E or G of the justification criteria. He added that he did not feel that the town ever had intentions of allowing dead end streets.

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Mr. Schulte stated that the applicant stated that the property was proposed as a flag lot but Lots 15 and 16 were consistent with all the other existing lots. He stated that he felt the Town Administrator acted appropriately and could not give into the appeal request.

Mr. Pugh concurred and stated that he agreed with the staff interpretation of the code.

Mr. Jones stated that there are problems with the code that even the Town Atty acknowledges when stating that tomorrows code may be different from today. He added that other streets including Thompson, Corrine, and Hudson Ave. do not have 20' of road pavement. However, he read part of Section 14-74 (a) which states that no building permit or certificate of occupancy shall be issued without the construction and maintenance of an approved municipal street system, either on a dedicated public right-of-way or private road easement including the entire frontage of the subject property abutting the street. He added that although the Town Administrator used a different code he felt this section only re-enforces his interpretation and he therefore supports his interpretation.

Chairman Barlage stated that he felt the interpretation by the town was accurate and the Town Manager acted appropriately. He added that while the code may be hard to decipher the proposed intended use was different than the rest of the lots.

Mr. Jones moved to deny the appeal by the applicant and uphold the decision of the Town Administrator, seconded by Mr. Lucibella.

Motion carried – Yea (5).

- B. An application submitted by June Fox, President of Green Machine Development Corp., 200 MacFarlane Drive, #405, Delray Beach FL 33483, requesting a variance from the provisions of the Land Development Code, Appendix B; Subdivision Improvements, Section (b); Design Requirements; Paragraph (7) Lots; Sub-Paragraph (a), and Paragraph (10) Streets to permit access by an access easement to two proposed homes facing east and west along the Intracoastal Waterway at the southwest end of Hudson Ave. (25 Hudson Ave.) located at the described address or legally described as the North 87.86' of Lots 15 and 16, less the west 65' of said Lot 16, Block 6, Boynton Beach Park Subdivision and Lots 15 and 16, less the North 87.86' thereof and less the west 65' of said Lot 16, Block 6, Boynton Beach Park Subdivision.

Town Clerk Hancsak read the application by title only.

Atty Palen requested a 30-day extension so that he may review the staff comments.

It was agreed to postpone the meeting until Thursday, Sept. 20, 2001 at 8:30 A.M.

Mr. Jones asked whether he could question area residents regarding the variance request. Atty Schoech stated that while he could speak with them it is considered hearsay.

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VIII. DISCUSS LEGAL REPRESENTATION AT BOARD OF ADJUSTMENT MEETINGS

The board concurred that if a member felt legal representation was necessary after reviewing an agenda packet they could contact either staff or the chairman and request representation at the meeting. There was also some discussion regarding the staff investigating raising the fee in order to compensate some of the legal fee costs.

IX. DISCUSS TIME FRAME FOR DISTRIBUTION OF AGENDA PACKETS

The board concurred that the agenda packets should be distributed at least one week prior to the scheduled meeting.

The board also agreed that they would operate under Roberts Rules of Order and that each member would address the chairman with any questions so that he may document their questions in order.

Regarding the six-month time frame from which construction must commence after the granting of a variance, the board recommended that a first extension may be granted administratively and any subsequent requests before the Board of Adjustment.

Mr. Lucibella stated that he was concerned with the possibility that members may create a liability for the town with various comments they may make about the town while sitting in an official capacity. Chairman Barlage agreed.

X. ADJOURNMENT

The meeting was adjourned at approximately 11:15 A.M.

ATTEST:

Town Clerk

Chairman Barlage
Richard Lucibella
Earl Jones
Barbara Souther
Terry Brown