

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, June 12, 2002 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 Geoff Pugh
 Chairman Barlage

III. APPROVAL OF MINUTES

A. March 13, 2002

Mr. Jones requested that page 3, 2nd paragraph be reviewed because he felt there was contradicting sentences. Town Clerk Hancsak advised she would review the memorandum supplied by Greg Dunham and make any necessary changes.

Mr. Lucibella moved to approve the March 13, 2002 minutes with any change to that paragraph necessary, seconded by Mr. Pugh.

Motion carried – Yea (5)

IV. VARIANCE REQUESTS

- A. An application submitted by Gregory and Bettina Young, 15 Hudson Avenue, Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development Code, Article III; Supplemental Regulations, Section 26-33; Fences, Walls and Hedges; Paragraph (c) maximum height of 6' in the side and rear yard shall be measured on either side of the wall or fence from the top of wall or fence and shall not exceed six feet in height from the lowest grade opposite such point of measurement. The variance is to permit construction of a 5' high side yard fence and a 5' high side yard wall measuring 6.4' to 7.7' in lieu of the 6' maximum allowed, for a maximum variance of 1.7' as measured from the neighbors grade on the east side of the property which is located at 15 Hudson Ave. or legally described as Lot 10, Block 6, Boynton Beach Park Subdivision

Town Clerk Hancsak read the variance application by title only and advised that the advertisement had a typographical error in that the word Park was omitted in the subdivision name. Atty Spillias advised that after review he believed the error to be unsubstantial since the address and remainder of the legal description was correct and added that the boards counsel agreed.

Town Clerk Hancsak noted for the record that all fees had been paid and no additional correspondence had been received. She added that she had been advised from Commissioner Willens that the Young's neighbor, Mrs. ODaly, had expressed that they

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were not opposed, however, no direct conversation or correspondence was received from Mrs. ODaly.

At this point all the board members disclosed that they had reviewed the site and had spoken to the property owner.

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 grade of the subject property is higher than the adjacent grade of the neighboring property to the east, the finished floor elevation is substantially higher than the grade of the land along the boundary of the neighboring property and the overall size of the subject property and the new residence warrant a higher wall. The applicant advised that these conditions do not result from actions of the applicant because the codes for new construction by various agencies require that the finished floor elevation and the grade of the subject property should remain close to the present, contemplated height. The applicant stated that granting the variance would not confer any special privileges to other land or buildings inasmuch as, other properties in the neighborhood have similar elevation differences from those properties neighboring them and other properties in the area have side walls or fences measuring higher than the 6' code limitation. He cited a recent variance on the same street where a variance was granted for up to 6' from grade of the subject property. The applicant stated that the request is the minimum needed to make reasonable use of the land when considering the elevation grade changes and area where the wall and fence will be located. They added that the wall constructed to code limits would not promote visual screening, protection, privacy, safety and noise abatement generally available to and desired by other neighboring properties. He added that literal interpretation of the provisions of the ordinance would deprive him and the neighbors the rights commonly enjoyed by other homeowners because the hardship runs with the land considering the grades. The applicant stated that he believed the general intent of the ordinance is to allow a fence or wall to be constructed at a height of 5' from grade and allowing this request would not be detrimental to the public welfare and would actually improve safety, privacy, and security, visual screening and noise abatement in the general area.

At this point all individuals that planned on providing testimony were sworn in.

Interim Town Manager and Town Clerk Hancsak read her administrative comments, which included a brief summary of the request. He mentioned that the code would allow a maximum of 3' to be built on top of the +/- 3' retaining wall.

Interim Town Manager Hancsak's comments regarding the justification of application reflected that special circumstances could exist to other lands, however, they are unintended consequences of the Town's current codes and the applicant did not create this special condition. However, he stated that the application will confirm the applicant a special privilege that is denied other property owners because his fencing will be 7.7 feet tall as measured from the east side neighboring lot. He advised that literal interpretation of the provisions of this chapter would not work unnecessary and undue hardship because

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the code is written so that the height is measured from the lowest side of the wall. He added that the request is not the minimum variance and staff believes that a 4' fence above the +/- 3' retaining wall would be sufficient for pool barrier screening and the County approves this height for Ocean Ridge. In conclusion, Interim Town Manager Hancsak stated that he felt that granting the variance with a 4' height would be in harmony with the general intent of the ordinance. He added that the variance of 4' would not be injurious to the area. Therefore, his recommendation was to deny the variance as requested and consider a motion to approve a variance to permit a 4' high wood fence west of the +/- 3' retaining wall on the east side of the property line.

Mr. Young, 15 Hudson Ave., advised that his wife, Bettina, architect and contractor were present to answer any questions. He added that he was an attorney with Edwards & Angell, in West Palm Beach. Mr. Young reiterated the information located in his justification of application and added that the variance request was actually less than originally advertised. He commented that the neighboring properties had finished floor elevations of 9.75' (13 Hudson Ave.) and 9.5 to 10.6' (17 Hudson Ave.) as shown in records on file with the Town and the survey company.

Mr. Young distributed a revised drawing for the site wall elevation showing that a variance was not necessary for the wall and only a maximum of 8" was needed at one section of the wall. Mr. Jones questioned where the new measurements were taken from because he felt it appeared higher in person. Mr. Young and Joe Bush, architect, commented that the retaining wall has not been back filled yet and also the neighboring fence was approximately 6-8" into the ground and the actual grade is lower because dirt has built up along the fence. Mr. Young reminded that the height is based on the applicant's side; however, they also took the height off their grade. Atty Schoech commented that if the applicant took the measurement at the property line then the intent is to use at that line. Mr. Jones also questioned the way the code was written and asked if the applicant placed the fence one foot into the property whether a variance would be necessary at all. Mr. Lucibella also questioned the code requirement. Atty Schoech stated that the code only says "lowest grade opposite such point of measurement" and the applicant could accomplish the height by placing the fence 2-3' into the property. He added though that he did not feel this was the intent of the code.

Mr. Young stated that comments by staff regarding the minimum 4' height meeting code were true but there was also an issue of safety and privacy. The applicant further stated that he had conversations with the neighbor, Mrs. ODaly, and even provided her with a set of plans and she verbally advised him that they had no objection to the variance.

Mr. Jones clarified that the fence would have a step down effect. Mr. Young stated that the pool is located at 8 1/4' elevation and approximately two steps down from the residence and the property gradually slopes to approximately 5'.

Mr. Lucibella stated that this variance was similar to the last request and he did not feel a variance was necessary based the verbiage in Section 26-33. He added that the code may have been written for the applicants view. Mr. Young commented that he would not

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want his Certificate of Occupancy possibly held up for an item such as this. Atty Spillias commented that the interpretation that has been utilized all along in the Town was that the measurement be taken from the lowest side for the benefit of the neighbor. He acknowledged that there was a problem with the interpretation of "either" in the code. He also stated that heights within the setback also come into play. The board all agreed that Section 26-33 should be revised in the code re-write because the current code was probably written when it was believed that all the properties would remain flat and now retaining walls are becoming more common.

Atty Schoech reminded the members of this board various items were brought before them because it is their duty to apply reasonable interpretation of the code.

Public comment was given by George Bierlin, 26 Hudson Ave. He advised that he too had been advised by Mrs. ODaly that they had no objection to the variance. He added that he was present on behalf of Mark Marsh, 14 Hudson Ave., to relate his concern that over time larger homes will be built with more retaining walls and felt this needed to be addressed in the code re-write.

At this time the board went into executive session.

Mr. Jones commented that at the beginning of this meeting he felt that the variance was more for an aesthetic purpose. However, since they have received the revised drawing and the request is for a maximum of 8" he would recommend approval of the variance.

Mr. Pugh agreed with the maximum 8" variance because of the code regarding drainage and fencing requirements and he therefore recommended approval of the variance.

Mr. Brown agreed with Mr. Jones and Mr. Pugh and advised that he was happy that it would be a wood fence.

Mr. Lucibella commented that he still not feel that a variance was necessary based on the way the code is written and asked if could abstain. Atty Schoech advised that he could not.

Chairman Barlage agreed that Section 26-33 needed to be addressed in the re-write and he also felt that a hardship had been proven and agreed with Mr. Jones.

Mr. Jones moved to approve the variance request to allow a fence at the 5' level provided it does not exceed more than 6'8" from the neighbors' property. Mr. Pugh seconded the motion.

Motion carried – Yea (5)

Atty Spillias suggested that Chairman Barlage write a letter on behalf of the board requesting copies of the next draft so they too can review the re-write.

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Mr. Brown suggested that the staff notify applicants that they should sanitize information in their application regarding any personal information such as Social Security Numbers.

Mrs. Hancsak advised that a letter would be forwarded regarding the motion for the variance.

VI. ELECTION OF VICE CHAIRMAN

Town Clerk Hancsak advised that Mrs. Souther would be gone for the summer and they may not want to defer this item any longer.

Mr. Brown nominated Mr. Jones for Vice Chairman, seconded by Mr. Pugh. There being no other nominations it was placed before the board in the form of a motion.

Motion carried – Yea (5).

V. Adjournment

The meeting was adjourned at approximately 9:40 A.M.

ATTEST:

Town Clerk

Chairman Barlage
Terry Brown
Earl Jones
Richard Lucibella
Geoff Pugh