

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, September 11, 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
Mark Hanna Geoff Pugh
 Chairman Barlage

III. APPROVAL OF MINUTES

A. June 12, 2002

Mr. Jones moved to approve the June 12, 2002 minutes, seconded by Mr. Brown.

Motion carried – Yea (5)

Town Attorney, Ken Spillias, suggested considering the second variance first because the first applicant was not present and may withdraw the application.

All individuals were sworn in that planned on providing testimony.

IV. VARIANCE REQUESTS

- B. An application submitted by submitted Dennis P. Koehler, 1280 N. Congress Ave., #104, West Palm Beach FL 33409, representing the owners, Mr. and Mrs. Richard Sullivan of 6015 N. Ocean Blvd., Ocean Ridge, FL 33435 requesting a variance from the provisions of the Land Development Code, Article II, District Regulations, Section 26019; Single Family Residential Districts; Paragraph (g) Floor Area Calculations that provides that the second floor shall not exceed 75% of the first floor – to permit construction of a 1,078 sq. ft. second floor addition over the garage thereby increasing the second floor to 100% of the first floor. The structure is located at the above described address or legally described as Lots 1,2, and 3 (less S 43.02') Block 5 & N 116' of Muck Lot 38 (exact legal description available in the Clerk's Office)

Town Clerk Hancsak read the variance application by title only and advised for the record that all fees had been paid and additional correspondence by Atty Koehler had been received and distributed to the members yesterday.

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

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Chairman Barlage and Town Clerk Hancsak read the justification of application and responses for the requested variance. Due to the length of the responses a copy has been attached for the record.

Town Clerk Hancsak read the administrative comments prepared by her and the Town Manager, which included a brief summary of the request. The comments regarding the justification of application reflected that special circumstances could exist to other lands; however, they did acknowledge that the property is surrounded by 3 streets and is situated at an odd angle making it difficult to extend any ground floor living space without destroying existing structures and facilities and the applicant did not create this special condition. Even though the FAR is below the maximum requirements, staff believes that the application will confirm the applicant a special privilege that is denied other property owners because it would allow for 100% second floor coverage and the 75% second floor requirement was in effect prior to the applicant obtaining ownership. Staff advised that they did not believe that literal interpretation of the provisions of this chapter would deprive them rights commonly enjoyed by other properties in the same zoning district. Staff is unsure how not adding a second floor family gathering room would decrease their security or otherwise promote acts of vandalism or fandom violence and added that there is not factual basis to conclude that adding a second floor would either help or hinder the security of a household. Staff added that the request is not the minimum variance that will allow the most reasonable use of the land. In conclusion, staff stated that granting the variance would not be in harmony with the general intent of the ordinance because the applicant would be granted something that is currently not permitted to other property owners. Staff added that the variance would not be injurious to the area because of the way the structure is located on the property. Staff did not believe the applicant met all the criteria for a hardship. Therefore, the recommendation was to deny the variance as requested.

Mr. Jones commented that he felt there were other homes in the area, such as 6017 Old Ocean Blvd. and 6277 North Ocean Blvd. did not meet the 75% criteria. Atty Spillias advised that the plans were approved with 75% second floor coverage and if they were not it would have been done during construction; however, building inspections are completed by the County. Atty Schoech advised Mr. Jones that an argument could be made to the Commission on whether the code was possibly ignored for others; however, other approvals could not be used as precedence. He added that the granting of the variance was based on justifying the criteria.

Atty Koehler, representing Dick Sullivan, introduced Jim Borsos and Joe Lelonek from Land Design South and Mike Trotto, General Contractor for the property. He stated that they would each be providing a short presentation in support of the variance. He then asked if any of the staff had changed their recommendation based on the additional correspondence received yesterday and distributed to the board members to which he was advised that it did not.

Following a power point presentation of the existing area and surrounding homes and various options for the property provided by Mike Trotto, Mr. Jones commented that

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where the roof line comes off the peak it appears to be a large mass and stated that if the roof was dropped it would lose 1 – 2' of overhang. Mr. Lelonek stated that suggestion could be taken into advisement; however, the house is located behind vegetation and can barely be seen. Mr. Jones commented that he was concerned with the appearance from Old Ocean Blvd. not SR A1A.

Mr. Trotto, general contractor for the applicant, stated that he has been directly working on the residence for approximately 1 ½ years. He commented that the property owner wanted to get the highest ceiling possible but they could possibly cut the ceiling or covered patio roof without changing the roof line. Mr. Jones again suggested cutting down the height a couple of feet which would change the roof line. Atty Schoech counseled that the board could discuss the design but they need to keep in mind that they are discussing the variance itself. Mr. Jones stated that the 75% ruling was adopted because of the massing and he suggesting ideas to reduce that. Mr. Lelonek stated that if the board felt the change in the roof line would meet the intent of the code they can condition approval on that modification.

At this point Mike Trotto explained three other options to add additional square footage to the residence. The first option depicted an addition to the northeast side of the existing residence, the second was to the southeast side of the existing residence and the third included expanding to the first floor to accommodate the 75% second to first floor ratio. These options were explained in the additional correspondence distributed to the board prior to the meeting and are part of the permanent file.

Mr. Pugh and Mr. Jones suggested reducing the size of the proposed second floor addition and both stated that they felt the safety issue did not justify the hardship. Mr. Trotto mentioned the incident when the Sullivan's were burglarized and the fact that they were on the second floor at the time. Atty Koehler commented that it was common sense that it is safer on the 2nd floor than a 1st floor.

Mr. Sullivan, property owner, commented that his children sleep on the 2nd floor. He added that when he purchased his home he didn't review the rule regarding 2nd floor coverage and he did not believe that the proposed addition would impede anyone else. He stated that he realized that the board and staff needed to consider the intent of the law of the town but he asked that the board consider why they considered the variance request a safety issue. He added that economically it doesn't make sense to reduce what has already been done. He also stated that they are now Florida residents and their children go to school here. He concluded by asking the board to consider that on an economic standpoint the location for the proposed addition was appropriate and also that the safety issue be considered.

Atty Koehler commented that the purpose of a variance is to allow flexibility when the code causes an unnecessary and undue hardship. He stated that he believed that there was an undue hardship and believes the staff's recommendation was based on the Town rules. He then respectfully requested that the board vote favorably and added that they could work on the roof line. Atty Koehler mentioned that if the cabana could be

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considered as first floor then the entire outlook for the variance is possibly changed. He stated that the prior Town Manager had advised that the cabana could not be used in the calculations.

Atty Spillias commented that the staff had no interest or desire to obstruct proposed plans for residents; however, they need to determine if plans comply with the code or meet the criteria for a variance. He added that he believed Mr. Jones was correct on his statement that the current 2nd floor was not totally 75% of the 1st floor. He also stated that he did not believe the cabana could be used as area for the 1st floor based on the intent of the code. He asked that the board keep in mind that the criteria must be met for the safety hardship, and he did not believe all the criteria had been met and therefore suggested that the staff recommendation be upheld. He concluded by stating that if the board allowed this request then the possibility exists for many similar requests in the future.

There being no further public comment, the board went into executive session.

Mr. Brown commented that he agreed with Atty Spillias' comments and he did not feel the applicant met the hardship requirement.

Mr. Pugh stated that he was sympathetic to the security issue because he has children also but he too did not believe that the criteria had been met and added that if the requested was for a smaller area then he would have possibly considered it more closely.

Mr. Jones stated he felt there was a viable argument on both sides and that he could understand the safety issue but he did not feel that there was a real hardship. He also stated that he did not believe the 75% rule has been written correctly because the intent was for appearance and wind blockage. He added that if they reconstruct it then he would possibly reconsider it because it would change the appearance and not cause as much wind blockage. He commented that he felt adding a second floor was the best option for the site than adding additional first floor area plus a second floor. He added that he did not feel that extending over the garage changes the appearance as much from the front as from the view from Old Ocean Blvd. He also stated that he disagreed with counsel regarding an enclosed cabana not being included in the first floor area.

Mr. Hanna stated that he too sympathized with the safety issue; however, he felt it was more an emotional issue. He stated that he did believe the 75% rule was being followed by the Town but it might not be achieving the intent of code. He also stated that the code was in place when the existing home was purchased and he did not feel the applicant met the burden of proving a hardship.

Chairman Barlage agreed that the code was in place prior to the purchase of the home and he did not feel the answer to "D" was factual regarding information that a 2nd floor was safer than a 1st floor. Regarding the cabana, he stated that a stand alone structure that is underground should not be counted but he was in favor of including it to allow it to meet the minimum criteria if attached, however, he was concerned if this would set precedence for alones in the future.

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Mr. Pugh moved to deny the variance request as submitted, seconded by Mr. Hanna.

Motion carried – Yea (4) (Brown, Pugh, Hanna, and Barlage)

Nay (1) (Jones)

Atty Koehler thanked the board for their consideration and then asked if there was some sort of precedence on what constitutes a hardship. Chairman Barlage stated that each variance was based on proving their own hardship and then questioned whether the 1,000 sq ft was the absolute minimum variance necessary. Atty Koehler and Mr. Trotter advised that they would review their options and questioned whether the board would be favorable to another less violative variance. The consensus of the board was that they would be more open to a less violative request.

- A. An application submitted by Donald S. O'Fee, 1 Ixora Way, 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 District; Paragraph (e) RSF – Single Family Resident Property Development regulations; Sub-Paragraph (2)(a) minimum 25' front building setback, and Sub-Paragraph (2)(b) minimum 15' side interior building setback to permit construction of a new attached garage and a second story built on top of the existing garage (to be converted to a bedroom) which would encroach a maximum of 8' into the required 15' side yard setback and a maximum of 10' into the required 25' front yard setback. The structure is located at the above described address or legally described as Lot 15, Ocean Ridge Beach Subdivision.

Atty Spillias advised that the applicant had telephone the Town Clerk a couple of days ago advising that he was going to withdraw his application; however, nothing was actually received in writing. He read the section of the code regarding the method to withdraw an application. Atty Schoech advised the board that they could actually deny the variance.

Mr. Brown advised that he had spoken to the applicant and he told him that he was investigating other designs.

Mr. Jones moved to defer this variance request until next month, however, if the applicant files a written withdrawal and it is received two weeks prior it would be deemed as a withdrawal accepted by the board and no meeting would be necessary. The motion was seconded by Mr. Brown.

Motion carried – Yea (5).

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V. Adjournment

The meeting was adjourned at approximately 10:30 A.M.

ATTEST:

Town Clerk

Chairman Barlage
Terry Brown
Earl Jones
Mark Hanna
Geoff Pugh