

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, March 12, 2003 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 Richard Lucibella
 Chairman Barlage

III. APPROVAL OF MINUTES

A. September 11, 2002

Mr. Jones questioned if letters that are received are included in the permanent folder or whether the minutes should reflect any of the written views. Atty Schoech stated that the minutes should actually reflect the conversation and the letters can be part of a permanent file.

Chairman Barlage and Mr. Hanna requested that page four be corrected to add in the last paragraph –if attached- after criteria and in the second to the last paragraph to include the word - not – after might.

Mr. Hanna moved to approve the amended Sept. 11, 2002 minutes, seconded by Mr. Brown.

Motion carried – Yea (5)

IV. VARIANCE REQUESTS

- A. An application submitted by submitted Orlando and Liliane Sivitilli, 5011 North Ocean Blvd., Ocean Ridge, FL 33435, requesting a variance from the provisions of the Land Development Code, Article II; District Regulations, Section 26-12; RMM Medium Density Multiple-Family Residential District; Paragraph (d) property Development Regulations; Sub-Paragraph (2) Minimum Building Setbacks (a) 25' Front Building Setback, and Section 26-10; Single-Family Dwelling Districts; Sub-Paragraph (d) roof, elevation and covering requiring a maximum of 20% flat roof area (also shown in Section 14-32) and Article XIV; Nonconforming and Grandfathered Uses; Section 26-221; grandfathered uses, lots and structures; Paragraph (e) enlargement or expansion to permit 3-6' awnings and 3-3' awnings that would further encroach a maximum of 14.85' and 11.85' into the required 25' front setback, also to permit a flat roof area that would exceed the 20% permitted by 34.8% thereby altering a grandfathered structure by converting a commercial/residential structure into a three unit residential structure. The structure is located at the above described address or generally described as Blocks, A,B, & Z Palm Beach Shore Acres PT of Lots 18 & 19 in

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OR1432 P282 (being Lot 13 of unrec pl of blue Ocean) Block A (exact legal description located at Town Hall)

Town Clerk Hancsak read the variance application by title and advised for the record that all fees had been paid and no additional correspondence had been received.

Chairman Barlage and Town Clerk Hancsak read the justification of application and responses for the requested variance. The applicant advised that special conditions exist which are peculiar to the land, structure or building involved because the subject property has been the subject of an ongoing litigation since Oct. 2002 concerning the current nonconforming commercial uses located in the lower floor of the property. The uses are now prohibited by Section 26-222 and in an effort to resolve the pending litigation, both parties have entered into a Settlement Agreement. The agreement includes approving a site plan to convert the property to an exclusive residential use, already approved by P & Z and Town Commission, and which is now before this board. The applicant added that these special conditions do not result from the actions of the applicant because the code requires converting the nonconforming status of the property to become consistent with Town Ordinances. The applicant stated that granting the variance would not confer any special privilege that is denied by the Zoning Ordinance to others because the granting would result in the settlement of litigation and will allow the conversion to an exclusive residential use consistent with surrounding residential uses and would in fact facilitate the elimination of the existing nonconforming status. The applicant stated that literal interpretation of the Land Development Code to preclude the requested conversion plan to exclusive residential use would deprive the owners the opportunity to convert the existing nonconforming use to residential. They added that the variances sought are minor and attempt to enhance the desirability and attractiveness of the proposed units while utilizing the existing footprint/building. The applicant felt the variances are the minimum to provide for a covered entrance and maintain usage of the existing structure/footprint, the front setback variance is the minimum needed for the awning and the rooftop variance is to allow for outdoor usage and is necessary due to the limited green space available. They advised that the granting of the variances would be in harmony with the general intent and purpose of the ordinance because it would allow the conversion of an existing nonconforming use to a more desirable residential use and would therefore not be injurious to the area. It would benefit the public according to the Town's own policies and objectives to eliminate all commercial uses and it achieves closure to an ongoing litigation.

At this point all individuals that intended to provide testimony were sworn in.

Chairman Barlage requested that Atty Spillias provide a background on the property and why the variances are before this board. Atty Spillias advised that a Settlement Agreement has been entered into and was executed after site plan approval by the P & Z and Town Commission and for total closure the variances before this board must be heard and decided. He added that this board should not make their decision based on the litigation; however, he believed an understanding of the litigation was necessary. He stated that if the variances are approved the Settlement Agreement would be finalized and

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if the variances were not approved then the Sivitilli's have other options to review. He stated that both the P & Z and Town Commission were aware of the variances needed; however the Commission does not have the authority to grant them but they supported the requests. He added that this board should be aware that they are not being directed to approve the requests.

Atty Schoech stated that the board takes each case as it comes and must keep in mind the peculiar particular issues related to each request and must apply the spirit of the law rather than the strict letter of the law. He added that in this case there happen to be some additional issues including the litigation and converting nonconforming commercial use to residential which doesn't dictate approval but assists with reason.

Atty Spillias continued by stating that the Settlement Agreement allows 10 years to convert the building, although the Town could have sought immediate action in a Summary Judgment, but this provides time to create a more attractive look for the entrance from the south end of Town. He added that the applicant could actually have closed and boarded up the building and the Town's only control would be preventing a blighting situation. He also stated that the Commission was in favor of the three townhouse type units vs. a 5-6 apartment building.

Town Clerk Hancsak read the administrative comments prepared by the Town Manager, which included a brief summary of the request and a history of the property. The comments regarding the justification of application reflected that special circumstances exist which are peculiar to the land or building involved because this property is the only mixed-use commercial building in the Town with the requirement to convert to an exclusive residential use. She added that the circumstances that triggered this request is due to the ongoing litigation with the Town resulting in the need to convert the commercial property to residential which is surrounded by three streets and is currently nonconforming making it difficult to convert to an attractive and practical residential building. The applicant did not create the special condition because they did not construct the original structure nor have they altered the structure footprint from its original design and it is the Town's codes that are being imposed upon the site requiring conversion. She added that it is the Town's desire to settle the litigation and that the property become architecturally attractive as it serves as the southern entrance into the community. Granting the variance requested would not confer any special privilege that is denied to others because this is the only mixed-use commercial site in the Town, there are no other buildings or structures that would be subject to the same requirements and these variances would actually facilitate the elimination of an existing nonconforming status. Literal interpretation of the provisions of this chapter would deprive them rights commonly enjoyed by other properties in the same zoning district because the requested plan is in response to the Town requiring a conversion of the property and an enhanced design of the property and the applicant is utilizing the existing footprint. She added that an exclusive residential use that includes covered parking areas and uniform balconies for each unit is consistent with the surrounding residential neighborhood and are desirable characteristics for a structure which sits at the Town's southern entrance. It is the staff's opinion that the request is the minimum variance that will allow the most reasonable use

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of the land while meeting the Town's request that the property be designed attractively. The awnings give the illusion of covered parking areas and the rooftop variance allows for outdoor usage of property that has very little green space and provides a uniform building envelope and thereby will be in harmony with the general intent of the chapter. Staff added that the variance would not be injurious to the area because it will alleviate the current nonconformity of the structure and improve the aesthetic desirability of the area at the request of the Town. Therefore, based on the information provided in the application, the recommendation of the Town Commission and the Planning and Zoning Commission of the overall plan, and the desire of the Town to finalize a settlement agreement terminating litigation, it is the opinion of staff that a hardship meeting all the criteria has been met for the variances requested and recommend approval of variances.

At this point Town Clerk Hancsak ascertained for the record that all the members have visited the site, Chairman Barlage spoke with the architect, Mr. Hanna spoke with the applicant and Mr. Lucibella advised that he has spoken with the applicant, however, not regarding this request.

Tim Bessette, architect for the applicant, commented that the 3' awnings added beauty to the entry to the front door and the 6' awnings provided cover for the parking spaces. He added that the parking area projects 8' into the building and 6' for the remainder to attempt to alleviate the parking lot appearance. He also stated that landscape medians were being added. Mr. Brown questioned if there were any negative effects with the FDOT to which Mr. Bessette advised that the parking was actually moving further east.

Mr. Bessette commented that roof decks were being proposed because of the lack of outdoor space. He stated that a front view of the building will provide a pitched roof and only a small portion was flat and should be aesthetically pleasing.

Mr. Jones clarified that the units would be approximately 1,800 square feet each. He stated that he was concerned with the vinyl awnings being properly maintained and replaced when necessary. He was advised that this type of maintenance would be similar to painting or any other necessary maintenance. He added that the Town may wish to address an entrance sign at the older sign location with the applicant. Town Manager Dailey advised that the staff is reviewing relocating the sign but there is no landscape area or irrigation in the area he is referring to, however, options are still being considered.

Mr. Lucibella questioned the visual effect for the outdoor stairs to which he was advised that the effect would be minimal and the only the habitant will see the majority of the stairs.

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

Mr. Jones stated that he felt that making a nonconforming use residential within the existing envelope and adding approximately 900 square feet to the existing 600 square feet units was minimal. He stated that he had no problem with the roof deck and felt

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there were no major issues and felt it would be a nice addition. He did comment that his only concern is the maintenance of the awnings.

Mr. Lucibella commended the staff, architect and Mr. and Mrs. Sivitilli for their hard work to resolve this ongoing issue and the changes were minimal considering this is virtually the only building of its kind in Town. He stated that felt all seven requirements were met and agreed with Mr. Jones' comments and that his only regret was that they had ten years to complete but he understood the reasoning.

Mr. Hanna stated that he disagrees with the ordinance pertaining to commercial use but he felt the applicant did an excellent job of converting the building to conform. He urged the other members to vote in favor the variances.

Mr. Brown agreed with Mr. Hanna and added that his only concern was the ten-year period. He asked if the applicants could back out of the agreement. Atty Spillias advised that one aspect of the Settlement Agreement was that the Sivitillis' agree not to ask a future Commission for a reversion to allow commercial use otherwise they would incur any legal fees. He added however that if the Town creates a commercial area they could request commercial use. He also stated that it was this specific site plan that is vested for ten years.

After some discussion it was agreed that the motion should not include the ten year period because the Settlement Agreement, approved by the Commission, addresses it.

Mr. Hanna moved to approve the variances as requested, seconded by Mr. Lucibella.

Motion carried – Yea (5).

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

- B. An application submitted by Hilena Fernandez, representing Aida E. Fernandez, 16 Adams Road, Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development code, Article II, District Regulations, Section 26-12; RMM Medium Density Multiple-Family Residential district; Paragraph (d) Property Development Regulations; Sub-Paragraph (2) Minimum Building Setbacks (a) 25' front setback, (b) 15' side setback, (c) 25' side corner setback, and (d) 15' rear setback, and Article III; Supplemental Regulations, Section 26-33; Fences, Walls and Hedges (a) requiring maximum 4' height in front or corner side yards based on the crown of the street at a point directly opposite such point of measurement, and Section 14-27 Floor elevations (b) finished grade of slab shall not be less than 8' to permit construction of a new single family residence (after demolition of duplex) with a 20' front setback, 10' side interior setback, 15' side corner setback and a 10' rear setback, also a request for a 6' high wall in the front setback, and lastly to permit a garage at an elevation of 7.5' instead of the required 8'. The structure will be located at 16 Adams Road or legally described as Lot 13 of Ocean Shore

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Estates Subdivision (exact legal description available in the Clerk's Office).

Town Clerk Hancsak read the application by title and advised that all fees had been paid and that no additional correspondence had been received.

Atty Spillias explained that the Town Commission normally heard the variance request from Section 14-27, however, because of the pending revised code adoption scheduled for tomorrow this responsibility would change to the Board of Adjustment this item was being requested before this board. He added that it could be heard provided the applicant acknowledges this and accepts the decision of the Board of Adjustment. Town Clerk Hancsak advised that a letter had been received from the architect, Francisco Perez, agreeing to the decision of the Board of Adjustment. Atty Schoech agreed with the comments made by Atty Spillias and suggested that if the motion was to grant the variance it should include this board ratifying their decision at their next meeting.

Hilena Fernandez, representing her mother, who is the owner, agreed with the board going forward with the variance request for Section 14-27 for the record.

All individuals intending on providing testimony were sworn in. All the board members disclosed that they viewed the property and only Earl Jones had spoken with the applicant.

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

Town Clerk Hancsak read the administrative comments prepared by the Town Manager, which included a brief summary of the request. The comments regarding the justification of application reflected that special circumstances exist which are peculiar to the land or building involved because this property is a grandfathered substandard sized lot (5,220 sq. ft), the minimum allowed is 7,500 sq. ft., and the existing setbacks and floor elevations are both nonconforming. She added that due to the size of the lot, the previous flooding, and elevations of the abutting road and adjacent property owners, there are unique circumstances that would require variances in order to rebuild on this property with as little nonconformity as possible. The applicant did not create the special condition because they did not construct the original structure nor have they altered the structure footprint from its original design. Granting the variance requested would not confer any special privilege that is denied to others because the process is available for any structure in the same zoning district which requires such process due to the unique elevations and lot sizes in the area and the proposed structure would actually make the setbacks and elevations more conforming. Given the existing nonconforming use, literal interpretation of the code presents a hardship in meeting the requirements of the Town. A strict interpretation of the elevation requirements would have a negative impact on adjacent properties by producing an extreme difference in grade. The required elevation also renders a four foot privacy wall ineffectual, which, when coupled with small

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setbacks, is a desirable structure for privacy on this corner lot. The setback provisions would not allow the property owner to build an average-sized home, even though the proposal would lower the use from a duplex to a single family residence which is a favorable use to the Town. It is the staff's opinion that the request is the minimum variance that will allow the most reasonable use of the land and is a practical petition as it would be more conforming than the current residence while reducing the density from multi-family to single family and would be in harmony with the general intent of the chapter. Staff added that the variance for setbacks and elevation would not be injurious to the area involved because they lessen the current nonconformity of the structure and the requested landscaped wall will provide privacy not only to the landowner but also the neighbors. Therefore, based on the information provided in the application, it is the opinion of staff that a hardship meeting all the criteria has been met for the variances requested and recommend approval of variances provided a hold harmless agreement is executed by the property owner to release the Town from any flooding liability connected with the 7.5' garage elevation variance.

Francisco Perez, architect for the property owner, summarized the site plan and explained the existing structure already encroaches into the setbacks. He added that the new proposed structure also does not full take advantage of the setbacks requested because of the way it was designed. Regarding the privacy wall, Mr. Perez stated that the applicant would like to open up the living room area to a garden/pool area and provide some privacy due to the raised elevation of the lot.

Mr. Jones ascertained that the wall would appear to be 6' on the outside of the property and 4' on the inside and commented that a variance may not be necessary for the wall based on the proposed revision to this section of the code. Mr. Jones stated that he was concerned with the applicant requesting an elevation less than the 8' requirement considering the flooding in this area and possible future rebuilding in the area thereby possibly making it a low area again. Mr. Lucibella agreed and questioned why they would propose to create a possible problem and suggested raising the home to 8.5' and the garage at 8'. Mr. Perez responded by stating that the slope from the road up to the garage and the leveling off area would be harder with a higher elevation. He added that most codes do not require that garages be located at flood plain. Mr. Jones stated that he felt the architect is creating a hardship to the property owner because of the liability for the garage.

Mr. Lucibella commented that he felt the setback and wall issue were not a problem but he felt the elevation request was different. Mr. Perez stated that the higher the home would sit on the property the more exposed it would be and the privacy would be diminished. Chairman Barlage advised a change in proposed elevation could also change the proposed walls.

Mr. Brown commented that the structure is nonconforming now and in his view this is clearly a better structure and it could appear monstrous at 9' elevation. He added that he felt the requests were reasonable in terms of the ultimate value to the Town.

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Ms. Fernandez, on behalf of her mother, thanked the board for the comments regarding the elevation and advised that she would discuss the matter further with the architect.

There being no comment from the public, the board declared itself in executive session.

Mr. Brown stated that he felt the requests were reasonable and he did not view the garage as a problem and approved of the requests based on the staff recommendations.

Mr. Hanna concurred with Mr. Brown.

Mr. Lucibella commented that he was in favor of all three requests.

Mr. Jones advised that he felt the site would provide a vast improvement to the area. He added though that he felt the wall was out of the Town's jurisdiction based on barrier requirements for the pool.

Chairman Barlage stated that he felt the wall was not an issue and the improvement was fine, however, he was concerned with the garage elevation and felt it could be raised 6" to decrease the possibility of flooding.

Mr. Jones moved to approve the setback and wall height variance requests as submitted. Mr. Lucibella seconded the motion.

Motion carried – Yea (5).

Mr. Jones moved to approve the garage elevation at 7.5' subject to the execution of a hold harmless agreement and the ratification of this decision at the boards' next meeting after the code revisions are adopted. Mr. Brown seconded the motion.

Motion carried – Yea (Brown, Jones, Lucibella)
Nay (Hanna, Barlage)

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

Chairman Barlage asked that a copy of the section of the code pertaining to the Board of Adjustment be distributed to the members so that they could be aware of the changes in the proposed code.

Mr. Jones stated that he had attended the P & Z meetings for the proposed code revisions and wanted the board to be aware of an item of responsibility that was being moved from the Town Commission to the Board of Adjustment. This included a building code appeal prior to the issuance of a Certificate of Occupancy (CO).

Atty Spillias stated that the major change involved a situation when a contractor would submit the completion of the improvements prior to the issuance of a CO and the Town would dispute its completion. An appeal process is now available through the Board of

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Adjustment. He added that pure building code issues would go through the County until the Town takes that responsibility back at which time a Building Board of Appeals would be created. He also stated that this would be a burden placed upon the contractor or developer. Mr. Jones questioned if the Building Board of Appeals would be comprised of experts or residents to which Atty Spillias advised that he was unsure.

Regarding the code changes, Chairman Barlage commented that he believed this was a quasi-judicial board and felt as such members should not give opinions regarding proposed code changes because it may be brought up later as possibly being biased and may be a conflict.

Mr. Lucibella stated that being a member of this board does not give up ones citizenship and they should be permitted to voice their opinions. Mr. Jones agreed stating that he has offered his opinions during the total process.

Atty Schoech agreed that the board does walk a fine line but everyone still has rights and input can be provided as long as personal opinion does not affect a variance decision. He did caution the board that they must keep the sunshine law in mind.

Mr. Lucibella took this opportunity to say that he would truly miss Mr. Jones' presence and his detail in participation at these meetings and felt the Town owed a vote of thanks to him. Atty Spillias stated that he appreciated Mr. Jones input and citizens like him that take the time to learn the codes and they are positive for the Town.

V. Discuss Procedure to Require Forwarding Administrative Comments to Applicant

Mr. Jones suggested a policy in the future to distribute a copy of the administrative comments to the applicant. The board concurred.

VI. Adjournment

The meeting was adjourned at approximately 10:55 A.M.

ATTEST:

Town Clerk

Chairman Barlage
Terry Brown
Earl Jones
Mark Hanna
Richard Lucibella