

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, December 13, 2006 at 8:30 AM in the Town Hall meeting chambers.

The meeting was called to order by Chairman Hanna and roll call was answered by the following:

Terry Brown Bernd Schulte
Richard Lucibella Gail Adams Aaskov
 Chairman Hanna

Atty Spillias was present representing the Town and Atty Schoech was present to represent the board.

III. APPROVAL OF MINUTES

A. October 11, 2006

Mrs. Aaskov moved to adopt the October 11, 2006 minutes, seconded by Mr. Brown.

Motion carried – Yea (5)

IV. VARIANCE REQUESTS

- A. An application submitted by Jeffrey S. Lee, 15 Sabal Island Drive, Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development Code, Chapter 64, Zoning, Article I; District Regulations, Section 64-1(h)(1-3); Floor Area Calculations (75% second story); and Chapter 67; Article III; Technical codes and other Construction Standards, Section 67-35; Stilt Construction to permit the construction of a partially enclosed carport with a second story chart room/bathroom and roofed porch area that is 120% +/- of the carport located at 15 Sabal Island Drive or legally described as Lot 15, of McCormick Mile Subdivision (exact legal description located at Town Hall)

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

At this point all the board members disclosed that they had reviewed the site. Mr. Lucibella, Mr. Schulte and Mrs. Aaskov disclosed that they also spoke with the applicant.

Any individuals planning on giving testimony were sworn in.

Chairman Hanna 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 property is the only ½ acre point lot on Sabal Island, has an irregular shape and is located at the end of a natural coral head creating a downward slope from the road to the end of the property. The applicant stated that special conditions and circumstances do not result from the actions of the applicant because he has made no exterior physical changes to the property. The applicant stated that granting the variance would not confer any special privileges because the existing and proposed additional square footage is well below the FAR requirements and would be less than 15%. They

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added that the height of the proposed 2 level structure is less than the maximum height permitted for a single story structure. The applicant stated that literal interpretation of the ordinance would work unnecessary and undue hardship because it would prevent the applicant from using the property commonly enjoyed by others and they would be building a minimalist structure (272 sq ft with 2 – 85 sq ft covered porches) within the setback requirements. They added that the new codes do not adequately address the needs of the existing homeowners with older structures who wish to utilize their existing structures to today's standards. The applicant also stated that a covered contiguous space within inches of the existing structure does not concur with the Town's literal interpretation of the zoning and that the Town has hinted that the structure might be stilt construction even though it is enclosed on 3 sides with an opening for a carport (which the Town does allow). They felt it was the minimum variance sought to grant the applicant because the proposed addition is only 26' tall and ties in with the existing harmony of the existing house and neighborhood. The applicant concluded by stating that the variance would not be injurious to the area.

Town Clerk Hancsak read the administrative comments prepared by the Zoning Official. The comments included that special circumstances do not exist merely because of the statement that it is the only ½ acre point lot and that the elevation sloping down to the end of the lot is also not unique to this property alone and therefore does not constitute a special circumstance from actions of the applicant. He advised that granting the variance will confer a special privilege to the applicant because a detached structure must meet the 75% rule for a second story independently and a determination was made by the Building Official that the structure was considered stilt construction. He advised that the literal interpretation of the provisions of this chapter would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district because there are no private stilt buildings (as defined by the Building Official) in Town and other alternatives could be accomplished. The comments also stated that the request can be construed as minimum variances to make reasonable use of the land; however, it could set a precedent for stilt construction and allowing for over 75% second story for accessory buildings. The comments relayed that granting this request would not be in harmony with the general purpose of this ordinance because there is no other residential stilt construction in Town and the 75% second story for the stilt building will not be met. In conclusion, the variances will not have any detrimental effects on any of the surrounding properties and would not be injurious to the area involved, however, it would be in total contrast to the Town's stilt construction and 75% rule and the recommendation was to deny the request because the applicant has not met the hardship criteria.

Mr. Lee, 15 Sabal Island Drive, submitted several exhibits that included: 2 coral rocks (he cited that his property was at the end of a coral head that slopes down and his home is lower than all the other homes on the island), 2 photographs depicting water running down towards his property from the street (he cited the natural gravel carport at the proposed grade will improve the water flow to the back of the lot and that meeting the code requirements would necessitate a raised slab which would aggravate the existing garage), and an older aerial of the island before most of the development occurred (which shows his lot as being the only ½ acre lot originally platted).

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Mr. Lee commented that the determination of stilt construction was based on the proposed columns with louvers that open and close on 3 sides with an open front. He added that the stormwater will continue to drain with the proposed structure into the waterway and he had no problem with that. He added that the Town would have required him to raise a slab and therefore the drainage may not flow into the water at the end of the lot.

Mr. Lucibella questioned if the applicant had any other hardships to which Mr. Lee stated that if he built the carport with a slab he would need a variance to build at a lower level and he may also be required to have his grandfathered septic system redone and relocated. He added that he felt that the current codes made improving existing homes difficult for property owners.

Mr. Schulte expressed a concern if the Town was running water from the street through his property. He also questioned why the applicant would want any kind of structure that would have water running through it.

Manuel Palacios, Zoning Official, stated that while the Town appreciates the applicants' dilemma stilt construction was totally contrary to the code and the applicant may interpret that louvers could also be construed as a wall but the interpretation by the Building Official was that it was stilt construction. Mr. Palacios added that he met with the architect who was advised that if a foundation was poured and the two structures were attached with one common wall no variance would be required. He did state that the applicant could request a variance if he wanted the carport foundation at a lower elevation to match the existing garage.

Joe Crisafulle, Building Official, commented that if there is water flowing through the lot from the street then SFRN should investigate but he added that water from his lot or anywhere should not flow directly into the ICWW anyway and there are code requirements for water retention. Town Clerk Hancsak advised that the Town has not received any complaints past or present in regards to drainage problems on Sabal Island. Mr. Lucibella questioned the difference between stilt vs. patio. Mr. Crisafulle stated that stilt construction usually means that there is living quarters above columns and not structural members.

Atty Spillias reminded the board of a proposed home at the end of Hersey Dr. several years ago that had a bottom floor that had columns attached to a foundation with frangible walls and therefore was not considered stilt construction.

Regarding the drainage issue, Atty Spillias commented that if drainage was being argued as part of the hardship the Town would need to investigate further to determine if water is flowing from the street and how much, what the impact would be if it was built without stilts, and a determination that the on site drainage requirements for retention was being met. He added that these questions would need to be answered to justify a hardship for stilt.

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Town Clerk Hancsak mentioned that a grate was just replaced at 14 Sabal Island Drive so there must be some sort of drainage in the area that may just need some sort of repair. She reiterated that there have been no complaints regarding drainage problems in that area. Mr. Schulte commented that if it is a Town problem then once it is repaired it would remove the hardship.

Mr. Lee stated that he felt the purpose of the code was to provide relief and not to prevent improvements. He also added that he felt the code is not right and actually is wrong to require more of a structure to meet the code requirements in this case.

Mrs. Aaskov stated that she felt she could not vote on the stilt variance request until the drainage issue was reviewed by the Town.

Mr. Schulte reminded the board that there were actually two issues to deal with; however, the 75% rule can be resolved by joining the two structures. He stated the other is the need for stilt construction and either the Town has a drainage problem or the property owner would need to comply with the drainage code.

Chairman Hanna clarified why the addition was considered attached to the structure to which Mr. Palacios reiterated that the structures would need to share one wall and ingress/egress from one room to the other (the definition provides the interpretation). He added that he explained this to Mr. Lee and how he could come into compliance.

Atty Spillias explained that although the Town should investigate if they are exacerbating the drainage problems in the area it still does not mean that the Town necessarily needs to correct it because the individual property owners need to retain their own water retention requirements. Town Manager Schenck advised that he would look into the matter.

Atty Schoech advised that the issue of drainage should not be the determining factor in granting or denying the variance request or the basis for delaying the decision. He agreed if the Town was creating the problem then it should be addressed and likewise if it is the homeowner.

Speaking from the public, Sandy Wolforth, 14 Sabal Island Drive, commented that there has been a grate in front of her home for probably close to 30 years and it seems that water has collected between their two homes since the last repaving. She stated that her home is at a higher elevation than Mr. Lee so the problem is not as severe as his. Regarding the proposed structure, she advised that she felt since the first floor was partially enclosed and was not stilt construction. She felt the proposed structure would be more attractive than a two story CBS structure.

Mr. Lee advised that he has preliminary drainage plans approved by DEP and he then showed the drawing that depicts columns with separate foundations underneath. He commented that a total foundation would require additional engineering which would create more of a hardship and he was not seeking the Town to do anything with the

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existing drainage. Chairman Hanna stated that it appears that the drainage issue is diverting the board from the actual variance request.

Mr. Lucibella questioned if footers were considered foundations to which Mr. Crisafulle advised that they can be, however, they are not tied into the existing foundation of the house and they would need grade beams connecting and it could get very complicated.

At this time the board was declared in executive session.

Mr. Lucibella stated that while we do not have an architectural review board he felt the code does have to do with aesthetics and what is proposed is gorgeous and he did feel that the water flow is an issue. He stated that if it can be demonstrated that the water flow is a problem then it could be considered a hardship. He stated that he is not concerned with the 75% because it can now be resolved but the board has been advised that it was stilt construction and although he tended to support this structure he would vote against it without proof of the drainage problem.

Mr. Brown agreed that if they attached the two structures it would negate the variance request for the 75% but he wasn't sure about the stilt construction definition. He added that if it was attached he could support the variance.

Mrs. Aaskov stated that she agreed with Mr. Lucibella's comments regarding the drainage and felt it was an important issue and stated she could not support the variance at this time.

Mr. Hanna stated that he did not feel any of the seven criteria had been met.

Mrs. Aaskov moved to deny the variance request. Mr. Brown seconded the motion.

Mr. Schulte clarified that the applicant can withdraw, however, if the variance is denied they must wait a year to refile for the same variance. He stated that he liked the concept but encouraged the applicant to withdraw and work with the Town on the drainage issues. He added that he could possibly support a variance to permit a lower foundation if necessary.

Mr. Hanna commented that regarding the 75% rule he had no problem with the roof structure. He felt the board could not vote based on the aesthetics although it appeared that it would be beautiful but the drainage issue needed to be investigated.

A five minute recess was called between 9:45 AM – 9:50 AM.

Mr. Lee stated that after speaking with the Town Attorney and Town Clerk he discovered that he could ask for a continuance or withdraw and reapply and left the decision up to the board.

The first motion was withdrawn.

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Citing that a continuance would provide more flexibility, Mr. Schulte moved to continue the hearing on March 14, 2007 at 8:30 AM, seconded by Mr. Lucibella.

Motion carried – Yea (5).

Chairman Hanna clarified that a Vice Chair can be appointed on this meeting and felt one should be appointed in the event he was unavailable.

Mr. Schulte moved to appoint Terry Brown as the Vice Chair, seconded by Mrs. Aaskov.

Motion carried – Yea (5).

VI. Adjournment

The meeting was adjourned at approximately 10:00 A.M.

ATTEST:

Town Clerk

Chairman Hanna
Terry Brown
Richard Lucibella
Bernd Schulte
Gail Adams Aaskov