

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, June 10, 2009 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:

Gail Adams Aaskov    Bernd Schulte  
Bruce Gimmy         Richard Lucibella  
                                 Chairman Hanna

Atty Baker was present representing the Town.

### **III. APPROVAL OF MINUTES FROM SEPTEMBER 10, 2008**

Mr. Schulte moved to adopt the minutes from Sept. 10, 2008 as presented. Mr. Gimmy seconded the motion.

Motion carried – Yea (5).

### **VI. VARIANCE REQUESTS**

1. An application submitted by Ray and Thelma Sohn, 29 Eleuthera Drive, Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development Code, Chapter 63, General and Administrative Provisions, Article VII; Nonconforming and Grandfathered Uses, Section 63-117; Grandfathered uses, lots and structures, (d) grandfathered structures, (1) alteration, extension, enlargement or expansion and Chapter 64, Zoning, Article I; District Regulations, Section 64-1; RSF and RSE Single-Family Residential District, Paragraph (i); RSF development regulations (2)(b) minimum 15' side yard setback requirements - to permit the construction of 245+/- sq foot addition that would encroach a maximum of 4.1' into the east side yard setback. This would expand on an existing grandfathered structure. The property is located at 29 Eleuthera Drive and described as Lot 29, Inlet Cay Subdivision (exact legal description located at Town Hall)

Town Clerk Hancsak read the variance request, and added that all fees had been paid and that no additional correspondence had been received. The board members disclosed that they had driven past the site and did not have any contact with the applicant. All individuals planned on giving testimony were sworn in.

Chairman Hanna commented, for the benefit of all those present, that this was an administrative hearing regarding a zoning variance of which the applicant has the burden to prove a hardship for their request/s. He added that the applicant and Town has the opportunity to address the board who then may respond with various comments or questions, and then the public has an opportunity to speak or provide their views on the request before the board holds further discussion and renders a decision. He also stated that the applicant's request and hardship given is the main focus of the meeting. Aesthetics or health issues are not governing factors in their decision making. He commented that the Board was independent of the Town.

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Due to the fact that there were members from the public present, the Justification of Application applicant and town responses would be read into the record.

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 there is an existing extension that was the result of a prior variance approval which already marked the front elevation line of the existing home and reduced the lateral setback and this request was to follow the existing line. They believed this to be a particular circumstance that differs from other properties in the area. The applicant felt that special conditions and circumstances do not result from the actions of the applicant because there was no violation or forced action without due process on the applicants' part. The applicant stated that granting the variance would not confer any special privileges because others can apply for similar variances. The applicant stated that literal interpretation of the ordinance would deprive them of their right to request the variance based on the particular circumstances present on their property, a right enjoyed by any one owner located in the same area. They also wrote that it would not permit him to extend the remainder area of the already existing extension on the home along the same setback line. The applicant felt it was the minimum variance because it would follow the existing line of construction and setback. It would be in harmony with the general intent of the ordinance because it would permit the best usage for the property without affecting any neighbor or hindering the right of any one to request the same. The applicant concluded by stating that the variance would not be injurious to the area.

The administrative comments stated that the special circumstances do not exist and the fact that they were granted a previous variance did not make for any special condition, because it was the result of the applicant. The granting of the variance would confer a special privilege by granting a continuing variance of the first. Literal interpretation of the ordinance would not deprive the applicant of rights enjoyed by others because other property owners have been required to meet the setbacks. The administrative comments did state that granting the variance could be considered the minimum to complete the building line extension and granting the variance may possibly be in harmony with the general intent of the ordinance if it were not for the fact that the applicant had already received a variance for the same request. The variance would not be injurious to the area as a portion of the structure already encroaches into the eastside setback. Based on the information provided staff did not feel that a hardship meeting all of the criteria had been met and therefore did not recommend approval of the variance.

Christian Ballesteros, architect representing Mr. Sohn, reiterated that the request was to extend into the already existing setback encroachment. He added that the applicant had received a prior variance but could not afford to fully extend the structure at the time and now that he plans to retire to Florida they would like to extend the master bedroom to the one story structure. He also commented that health and age situations prevent from adding a second story. He concluded by stating that the existing condition allows for a stronger request and it is also at the back of the house.

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Mr. Schulte questioned Mr. Ballesteros comment that the first variance was only partial because the applicant could not afford the total extension request and also if this request has been denied before. Mr. Ballesteros advised that that is what he was advised and this variance was turned down once before. He also advised that the neighbors had no objection to the variance.

Town Clerk Hancsak advised that she could retrieve the prior variance if the board wished to review it, however, she believed that the first variance was not granted fully because at that time screen enclosures were included in the lot coverage and the total depth request not only would have encroached into the setback but also brought the lot coverage above the permitted 35%. She also stated that a resident at 30 Spanish River Drive had inquired about the variance and was unsure if they objected to it. She stated that she provided the fax number if they wished to write a statement to be read at the meeting or asked if they would like to see the proposed improvement but she has not received any correspondence.

Manual Palacios, Zoning Official for the Town, commented that he understood what the applicant wanted to do; however, he did not feel the hardship criteria had been met.

Mr. Sohn, 29 Eleuthera Drive, stated that his home was one of the first built in the subdivision and they all were one story and now there are a lot of two story homes. He stated that they love their home and the area but his wife can't go up stairs and the proposed addition on the first floor would allow for more room.

Speaking from the public, Brandon Caldwell, 66 Spanish River Drive, stated that he had no objection to the variance request. He stated that he felt this board should make a recommendation to the Town Commission for code reform because the code does not allow people to live in their home in the manner that they would like and there were several definitions or interpretations that needed addressed. Chairman Hanna commented that he attended a P&Z meeting that Mr. Caldwell had also attended and agreed that there may need to be some issues addressed, however, but questioned where is an argument that a 15' setback was not acceptable or predictable. Mr. Caldwell responded by stating that he believed there were other inconsistencies but agreed that setbacks should be met and adhered to in most instances.

Atty Baker thanked the public for their comments but reminded the board that the board needed to render their decision based on a fact finding rule and rely on the criteria presented for this variance.

The board was declared in executive session.

Mr. Lucibella commented as an example that some boards may possibly grant relief based on part of a beautification program; however, this board does not have this digression. He stated that he could not recommend approval based on the facts presented and the fact that a previous variance was granted does not create a hardship for another.

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Mr. Gimmy, Mr. Schulte and Mrs. Aaskov all concurred with Mr. Lucibella's comments. Chairman Hanna mentioned that that board may have been more liberal in the past but this board needs to adhere to the current codes and he too does not believe the criteria has been met.

Mr. Schulte moved to deny the variance request, seconded by Mr. Lucibella.

Motion carried – Yea (5)

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

V. Adjournment

The meeting was adjourned at approximately 9:10 A.M.

ATTEST:

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Town Clerk

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Chairman Hanna  
Gail Adams Aaskov  
Bernd Schulte  
Bruce Gimmy  
Richard Lucibella