

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, Dec. 9, 2009 at 8:30 AM in the Town Hall meeting chambers.

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

Gail Adams Aaskov Bernd Schulte
Bruce Gimmy Richard Lucibella

Atty Spillias was present representing the Board.

Chairman Hanna arrived at approximately 8:45 AM.

III. **APPROVAL OF MINUTES FROM JUNE 10, 2009**

Mr. Schulte moved to adopt the minutes from June 10, 2009 as presented. Mr. Lucibella seconded the motion.

Motion carried – Yea (5).

VI. **VARIANCE REQUESTS**

1. An application submitted by Michael Weiner & Assoc., PA, 10 SE 1st Ave. Suite C, Delray Beach FL 33444, representing the owner, Bruce C. Etheridge as Trustee of the 6393 Ocean Blvd. Trust V/AID 7/21/09, requesting a variance from the provisions of the Land Development Code, Chapter 67; Article III; Technical Codes and Other Construction Standards, Section 67-32; Floor Elevations; Paragraph (c) maximum elevations, Chapter 64; Zoning, Article III; Supplemental Regulations, Section 66-44; Fences, Walls and Hedges; Paragraph (c) maximum height of 4' in required front yards as measured from the street side of the wall and a maximum height of 6' in the side yard as measured from the lowest grade elevation, and Chapter 64, Zoning, Article I; District Regulations, Section 64-1; RSF and RSE Single-Family Residential District, Paragraph (k); RSE development regulations (2)(b) minimum 15' side yard setback requirements, to permit the construction of a single family residence with a finished floor elevation (FFE) of 19.5' NAVD or 21' NGVD which exceeds DEP's minimum 17.95'+/- NGVD requirement, replacing the existing 124.97' of 6' high front wall with a maximum 6' high front wall and 6' high gates and also request to replace up to 333' of an existing 3'9" +/- high wall with a maximum +/- 8'6" high wall from the lowest elevation (which is on the applicants' side) on the northeast property line, and also to request a 5' side setback on the north side of the property for 32'6" of the 40'6" proposed tandem garage/guest house at 6393 North Ocean Blvd. or legally described as the south 125' of north 175' of unnumbered block lying east of Ocean Blvd. in the Boynton Beach Park Subdivision (exact legal description available in Clerk's Office

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 not had exparte communications with the applicant or representatives. All individuals planned on giving testimony were sworn in.

MEETING OF THE BOARD OF ADJUSTMENT HELD ON DEC. 9, 2009

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.

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.

Vice Chairman Aaskov and Town Clerk Hancsak read the justification of application and responses for the requested variances. The applicant stated that special conditions and circumstances exist for the FFE because the demolished home was at 18.5' NAVD which created current grading elevations ranging between 16' NAVD and 18' NAVD and the proposed home is east of the CCCL and therefore must comply with DEP regulations with a minimum FFE of 17.95' NAVD and the 19.5' NAVD will minimize the excavation of the dune. Regarding the 5' side setback the applicant stated special conditions exist because of the two large banyan trees that the applicant would like to keep on the front portion of the property that create a distinctive natural park like characteristic. They stated that the tree size and location prevent the applicant from building the proposed guest and garage at the appropriate location without damaging the trees' canopies and root systems. Special conditions for the wall height exist because the front and north walls need to be replaced or repaired. The height of the front wall/gate will provide privacy, security and safety to the residents since the property abuts a major roadway. The height of the north wall will provide privacy, security and safety because the property abuts a public park and there are differing elevations and also building the walls according to code would be aesthetically unappealing. The applicant felt that special conditions and circumstances do not result from the actions of the applicant regarding the FFE because of the DEP requirements and neighboring properties received similar approvals, and the setback because of the existing trees, and the wall height due to the public park. The applicant stated that granting the variance would not confer any special privileges because neighboring properties have been permitted to construct homes with higher elevations for the FFE, and the setbacks because the prior residence had a guest house built on the property line and this would actually be less of a variance, and the wall height because neighboring properties have requested and received approval for extending wall heights and entry gates. The applicant stated that literal interpretation of the ordinance would deprive them of rights commonly enjoyed by others because of DEP's elevation requirements and a lower elevation will require excavation that may adversely affect the existing grade of the dune, and the also for the setback because the literal interpretation would cause the removal or loss of the trees and adversely affect the natural characteristics and beauty of the lot, neighbors and the Town as a whole, and the wall height because the applicant would be deprived the privacy, security and safety commonly enjoyed by other properties because of the proximity of the park and major roadway. The applicant felt it was the minimum variance because of the current grade

MEETING OF THE BOARD OF ADJUSTMENT HELD ON DEC. 9, 2009

conditions, neighboring properties' elevations and DEP requirements, the 5' setback is only for a partial section of the 40'6" for the guest house and would not adversely affect the vegetations. It would be in harmony with the general intent of the ordinance because it would preserve the historic banyan trees and also provide security and safety from the park and roadway for the wall. The applicant concluded by stating that the variance would not be injurious to the area and they felt that the setback variance does not involve any neighbor on this side of the property and would not affect the privacy of adjacent neighbors.

The administrative comments corrected a mistake discovered in the applicant's submittal in that the applicant refers to some FFE's as NAVD when they were actually NVGD which converts to 1.5' higher in NGVD. Staff stated that the special circumstances do exist and are not the result of actions of the applicant for the FFE because DEP requirements require a minimum FFE of 17.95' NGVD; however, they make reference to the demolished home being at 18.5' NAVD when it was 18.5' NGVD. Special conditions may also exist for the setback request because the owner would like to preserve the established landscaping, however, the actions are the result of the applicant because the home can be designed to meet the code, and also for the side wall because the property abuts a public park and parking lot that also has a higher elevation and possibly also for the front wall because it would be built to the same approximate height and provides an extra security measure. The granting of the variance would not confer a special privilege for the FFE because of the DEP requirements; however the requested height would be a special privilege. A special privilege also would not be conferred for the side wall but would for the front wall (other than the fact that the existing wall is already 6' +/- high). The setback would confer a special privilege because the project is new construction on a vacant lot. Literal interpretation of the ordinance would deprive the applicant of rights enjoyed by others for the FFE because of the DEP requirements but the question remains whether the home needs to be built at a higher level than the neighbors or prior requests and also for the side wall but not for the front wall because of the park. Literal interpretation of the ordinance would not deprive the applicant of rights enjoyed by others for the setbacks because the property is currently vacant. The administrative comments did state that granting the variance would not be considered the minimum for the FFE because a 19.5' NGVD instead of the requested 21' NGVD would be more consistent with neighboring properties and 19.5' NGVD was the maximum for this property on a prior variance request nor for the setback because new construction could be built according to the code. The side wall would be considered the minimum request but not for the front wall. Granting of the variance for the FFE would not be harmony with the general intent of the ordinance because it can be built at 1.5' lower than requested, and the setback is not the minimum because new construction can be designed to meet the code and the wall would be harmony for the side wall and possibly for the west wall due to security factors because of the proximity of the park. The variance would not be injurious to the area for any of the three requests; however, the FFE height would not be consistent with those applicants that had to adhere to a lower FFE in the same zoning district. Based on the information provided staff did not feel that a hardship for the FFE existed for the 21' NGVD height required and recommended approval of a 1.5' NGVD. Regarding the setback, staff did not feel that the request met all of the

MEETING OF THE BOARD OF ADJUSTMENT HELD ON DEC. 9, 2009

hardship criteria and it was new construction without any grandfathering status and recommended denial of the request. Concerning the wall heights, staff agreed for a need for privacy because of the heavy park traffic for the side (north) wall but not for the front (west) wall and recommended approval of the north side wall but not the front west wall.

Michael Weiner, attorney representing the owners, distributed and summarized three exhibits consisting of: a booklet with maps, photographs, case law, article discussing the rising of sea levels, and a comparison of the square footage of neighboring homes as Exhibit A; a list of various variance requests granted in the past as Exhibit B; and a list of prior variance requests for this same address as Exhibit C. Mr. Weiner also re-summarized the Justification of Application for the three variance requests. He concluded by stating that he felt the applicant has met all seven of the criteria for each variance and that they are not creating a bigger house by granting the variances and that the home is set back 75' from the front setback and the heavy foliage hides the structure from the street. He mentioned that the architects, Huy Nguyen and Ron Rickert, were present to answer any questions on the design of the home.

Mr. Rickert, Infinity Architects, commented that the property owners originally wanted to bulldoze the banyan trees; however, they talked them out of it because of the charm they provide. He also stated that they had to work the septic system/drain field as well as the trees. He felt the driveway and the greenery minimizes the front of the property and provides a Caribbean feel. He added that they felt the guest house did not present an overwhelming feel and was on the side of the park and affecting a neighbor. He added that while the current front wall is structurally sound, the new front wall was designed to blend with the proposed home.

Chairman Hanna questioned whether the property owner was planning on residing at the residence or constructing it to sell to which he was advised that the owner planned on living in the residence.

Manuel Palacios, Zoning Official, commented that the staff comments were thorough but clarified that staff felt that the front (north) wall met some but not all of the seven criteria.

Atty Weiner clarified that their justification of application was not suggesting that the property still had a grandfathered status with the original guest house, however, no one in the complained nor did the structure harm anyone in the past.

There was no public comment.

Chairman Hanna mentioned the case law cited in the handout and questioned how it would apply to this case because the case law cited a triangular lot and this lot is rectangular. Atty Weiner stated that the physical characteristics should be taken into account such as the banyan trees for the setback variance, height of the dune for the elevation variance, and the park/parking lot for the wall variances and therefore painted them into a corner. Chairman Hanna also questioned the statement regarding the need for a privacy wall for security reasons; however, they are requesting to build the guest house

MEETING OF THE BOARD OF ADJUSTMENT HELD ON DEC. 9, 2009

closer to park than required. Mr. Rickert stated that the setback variance was for the access to the garage. Atty Weiner clarified that the first two hardships for the setback were met because of the trees and the remaining five criteria is because of the proximity to the park and the proposed setback would not be near a private property but a park.

Chairman Hanna commented that this board is not bound by other granted variances as shown in Exhibit B by the applicant. Atty Weiner stated that he felt this document provided important evidence and if the board voted a certain way he would tell the board he did not feel it was proper. At this point Town Clerk Hancsak summarized the variances documented in Exhibit B to show that many of the variance were of a lesser request was not applicable to these requests.

Mr. Lucibella commented that the applicant may have more of a security breach deterrent than other homes because the property is located across the street from the police department. He also mentioned that the applicant cited a buffering between the parks and having to see the blue metal roofs, however, they are requesting to building at an even higher elevation thus making it easier to see the metal roofs.

At approximately 10:10 AM a short recess was declared and then reconvened at 10:15 AM. Atty Spillias commented that two of the members may have to leave the meeting early and the board may want to consider continuing the meeting to another date. The consensus was that it was not necessary to continue the meeting to another time.

Mr. Rickert stated that the applicant would consider lowering the overall roof height by one foot if the finished floor elevation variance was granted.

There being no further questions Atty Weiner closed by stating that if one looks at the seven criteria it does not say that it must be life or death but special conditions and circumstances remain in how it does not affect the neighbors and he believed that all seven steps were met with the three variances.

The board was declared in executive session.

Atty Spillias reminded the board that the seven criteria for each request must be met otherwise they have not met the burden of proof. The board needs to determine if there is competent evidence to support their decision and evidence into the record. They also need to determine if the hardship is self imposed and if they are dealing with peculiar physical instances.

The board agreed to make separate motions for each request.

Chairman Hanna stated he was in favor of the wall requests because the property faces A1A and the park.

Mr. Lucibella commented that he agreed with the request for the north side wall and agreed with staff and the applicant's comments that the hardship was met but he did not

MEETING OF THE BOARD OF ADJUSTMENT HELD ON DEC. 9, 2009

agree with the west front wall. He added that Old Ocean Blvd. property owners probably have more foot traffic than in front of this home. The other members concurred.

Mr. Lucibella moved to grant the 8'6" +/- north side wall only. He cited that the applicant can leave the existing front wall. Mr. Schulte seconded the motion.

Motion carried – Yea (Lucibella, Schulte, Gimmy, Aaskov)
Nay (Hanna)

Regarding the setback variance Mr. Lucibella stated that he was swayed by the Town Attorney's last comment and that of Atty Weiner in that the trees did add to the appeal of the property and does create a hardship and he was in favor of the variance.

Chairman Hanna stated he was opposed to this request because the board could not grant a variance for aesthetic reasons. He did not feel the removal of the trees was necessary and this did not constitute a hardship. He also felt that the hardship was not met because they could have designed alternate plans. Mr. Lucibella stated that Chairman Hanna's comments changed his mind.

Mr. Schulte agreed that the trees were nice but protecting them is the architect's job and a design issue is not a hardship.

Mr. Schulte moved to deny the 5' side setback variance, seconded by Mrs. Aaskov.

Motion carried – Yea (5)

Regarding the finished floor elevation (FFE) Chairman Hanna clarified the maximum roof height was based on 36' higher than the first floor elevation.

Mr. Lucibella stated that he felt the FFE could result in a drainage issue and reiterated that the requested height would make the view of the blue metal roofs at the park more visible. Mr. Schulte agreed and questioned where the hardship was to go from 19.5' as previously requested to 21' NGVD.

Mr. Schulte moved to deny the request as submitted but also to approve a maximum 19.5' NGVD FFE. Mr. Lucibella seconded the motion.

Motion carried – Yea (5).

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

MEETING OF THE BOARD OF ADJUSTMENT HELD ON DEC. 9, 2009

V. Adjournment

The meeting was adjourned at approximately 10:45 A.M.

ATTEST:

Town Clerk

Chairman Hanna
Gail Adams Aaskov
Bernd Schulte
Bruce Gimmy
Richard Lucibella