

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, December 8, 2010 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 Mark Hanna
Bruce Gimmy Richard Lucibella
 Chairman Schulte

Atty Spillias was present representing the Board.

III. APPROVAL OF MINUTES FROM JULY 14, 2010

Mr. Schulte moved to adopt the minutes from July 14, 2010 as presented. Mrs. Aaskov 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 and/or Chapter 64, Zoning, Article III; Supplemental Regulations, Section 64-44; Fences, Walls and Hedges; Paragraph (c) height not exceed 6' in side yard and (g) permitting decorative elements not more than 5% of cumulative area of the fence - to permit the construction of 64.8 sq foot "after the fact" 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 one piece of additional correspondence had been received on Dec. 7, 2010. She stated that Phillip Crawford, 30 Spanish River Drive, Ocean Ridge FL 33435 had written on his copy of the notice that he did not like the way it looks and he was not sure what roof structure was there before. The board members disclosed that they had not had exparte communications with the applicant or representatives however several had visited the site for a prior variance request. All individuals planned on giving testimony were sworn in.

Due to the fact that there were members from the public present, the Justification of Application by the applicant and town responses were read into the record. The applicant cited that special conditions that apply to the property included that they were granted a variance in 1989 and built an extension into the east side setback with cement patio at the

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north end with a subsequent gated wall around the slab. They added that after construction of the slab an awning was installed above it (they included a document from the awning company reflecting an awning purchased in July 1994) and the contractor stated they did not believe permits were needed for awnings at that time. In 2009 building permits were approved for a rear patio slab, balustrade, awning, and the building department also authorized the removal of a wrought iron gate from the wall in question and shoring up the wall. During this time the contractor installed the balustrade and Plexiglas and replaced the canvas awning above the east walled enclosure and the applicants believed that the contractor had obtained the proper permitting or permission from the Building Official while they were up in Michigan. They commented that they were cited and found in violation of Section 67-51 working without a permit with respect to the balustrades, Plexiglas and the canopy and staff advised that the only remedy is to obtain an additional variance for the existing improvements. The applicant advised that peculiar circumstance exists because, despite having previously obtained a side yard variance for the addition (which included the slab and covered walled area in dispute), despite having obtained the necessary permits (to the extent required by former Town officials), despite having relied upon past representation by their contractors, and despite an approved awning and walled patio which have existed for nearly 20 years, they have now been found to be in violation of the Town Code and told that their only remedy is to seek yet another variance. Accordingly they are seeking a variance either from Section 64-44(c) and (g) pertaining to height and decorative elements for walls or Section 64-1(j)(2)(b) side setback requirements. The applicant advised that special conditions and circumstances do not result from the actions of the applicant because they relied on representations from their contractors and the Town over the past 20 years. They advised they were proactive in obtaining the side yard variance in 1989 and their contractors have been diligent in obtaining subsequent permits (to the extent they were required by Town officials) adding that the current circumstances apparently result from differences in interpretation of the Code and/or differences in interpretation of the extend of the prior variance. They added that the awning replacement, balustrade, and Plexiglas improvements were made by the contractor last year while the owners were in Michigan. More generally, because the walled-in area, including the canvas, has been in place for 16 to 20 years, the owners had a reasonable expectation that they could continue to utilize the space, including replacing the canvas when it grew old. The applicants advised that granting the variance would not confer a special privilege that is denied by the Zoning Ordinance because they felt the requested variance was sought to clarify prior approvals and resolve issues which may be open to multiple interpretations. They advised that the expansion was approved in 1989, the wall in 1990, and the awning was in place for at least 16 years without incident and this was routine maintenance and the additional improvements are filigrees on an already approved space thereby making it more useful and enhancing the property. The applicant advised that literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties because the home is one of the smallest grandfathered homes on Eleuthera Dr. they merely were seeking to clarify their prior side setback variance, validate their original awning approval so they can maintain it and also make the walled area more attractive and useable. They added that making the Sohn's remove the awning after enjoying it for 16 years would work an unnecessary and undue hardship and also

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having a fully enclosed walled area without a protective awning makes no sense. They also said that logic suggests that the intent of the prior approvals was to allow this area to be exempt from the 15' side yard setback limitations. The variance granted was the minimum to make use of the land, building or structure because without the awning, balustrades and Plexiglas the walled area is open to wind and rain making it a limited use to the home. The applicant concluded by stating that the owners believed that the contractor had obtained the necessary permits to make the cited alternations and they have already paid for this error – including costs of the August 3rd administrative hearing and the costs for this variance application. The variance will not be injurious to the area involved because the improvements are attractive and they are replacing the awning and seeking to clarify their prior side setback variance as is the setback for most of the older homes.

The administrative comments were read into the record and they stated the fact that the applicant had previously been granted a variance to encroach into the eastside setback does not make for a special condition or circumstance and concerning the request for exceeding the 5% decorative element for a wall, it is the Town's position that the Plexiglas, balustrades, and the cover now creates a structure and therefore negates the variance request for Section 64-44(c) or (g). The special condition was also created by the applicant because the request of the previous granted variance leaves the applicant with the existing condition and the new work completed by the contractor without a permit still remains the responsibility of the homeowner. The granting of the variance would confer a special privilege just by granting a second variance for what is now "an after the fact" construction. The applicant was denied 2 prior variance requests for a side setback encroachment in the same area in 5/2001 and 6/2009 (just prior to a permit issued in July for a rear patio slab with 4' high balustrade fencing. In addition they relocated the side wall iron gate to the rear of the residence and enclosed the wall in question). The literal interpretation of the ordinance would not deprive the applicant of rights commonly enjoyed by other properties because other property owners have been required to meet the setbacks or obtain a variance prior to the construction per Town codes. Staff is assuming that the applicant's construction of the "after the fact" addition would be considered their minimum variance to make use of the structure or land and is may possibly be in harmony with the general intent and purpose of the ordinance if it were not for the fact that the applicant had already received a variance for this same request and was later denied on 2 prior occasions. The variance will not be injurious to the area involved as a portion of the structure already encroaches into the eastside setback; however the applicant seeking a variance after the fact places the Town in a difficult position to interpret any of the hardship criteria. Based on the application information it is the staff's opinion that a hardship meeting all of the criteria has not been met as has already been stated in the two previous similar requests and the "after the fact" construction should not change the merits of the request. Unfortunately for the applicant there are no Town records of an approved permit for an awning to substantiate their claim that it was indeed permissible. The Plexiglas and balustrades do not meet the definition of a decorate element because they are now utilized to enclose the room by supporting the awning. Staff therefore recommends not approve the request as submitted.

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Cris Rapp, attorney representing Mr. and Mrs. Sohn (also present), mentioned that staff cited the prior variance requests, however, the code provides that the application can be resubmitted after a one year period. He added that the prior requests were for a larger area. Atty Rapp summarized the events by stating that the owner had purchased the home in 1967, 20 years later received a variance was granted for a 245 sq foot side yard encroachment, 12 years later a 500 sq foot variance was requested for encroachments on both sides but was denied and in 2009 they again sought to expand into the east side setback that was also denied. He stated that this variance still provides a FAR of 28%. He commented that the awning was in place since 1994 and read Section 63-117(b) concerning grandfathered structures and added that this was replacing an old tarp. He added that last year when the rear patio slab was approved the Building Official also approved taking the iron gate from the east side 6' high wall and relocate it to the rear of the residence and shore up the wall, therefore what is existing is a permitted wall and awning and then the contractor installed balustrades and the Plexiglas. He concluded by stating that he felt the variance was warranted in this case.

Manuel Palacios, Zoning Official, commented that the Building Official only noticed the Iron Gate being relocated and the wall shored up on 8/19/09 and stated that they would not have needed a permit unless they were removing wall and replacing it with gate to inspect the integrity of the wall. He also stated that the neighbor had commented that this slabbed area was used to house lawn equipment prior to it being enclosed. He stated that the area in question could have been a patio. Mr. Lucibella asked if a permit is normally required for an awning to which Mr. Palacios advised that a permit is required.

Mr. Hanna asked for clarification regarding the 1989 variance file. Town Clerk Hancsak advised that the file could not be located; however, she did provide the minutes, the microfilm and permits cards to the applicants' attorney. Mr. Hanna cited the applicants' reply to criteria B citing that they relied on the contractor and they are now in litigation with him does not constitute a hardship because the property owner is still responsible.

Mr. Sohn, 29 Eleuthera Drive, stated that he was under the impression that the construction was done as per code and he was advised by the builder that all permits complied with the codes and he has since been paid. He stated he was not here at the time but he would have stopped the work had he known it was a violation. He stated he has enjoyed living in Ocean Ridge. Mr. Lucibella asked if he was original owner to which he advised he was.

Town Atty Spillias clarified the grandfathered section of the code cited earlier by Atty Rapp by stating that the mere fact that it existed before a certain date may not mean that was lawfully constructed and therefore remain.

There was no public comment.

At this point the Board was declared in execute session.

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Mr. Lucibella commented that he felt the same way he did one year ago but he finds himself in the same situation and he does not even know if this request meets a variance because the applicant is trying to making the structure whole and correct after the fact. He agreed that the owner may be a victim of the contractor but the enclosure is now a pregnant room and he was not in support of the request based on the code requirements.

Mr. Gimmy and Mrs. Aaskov concurred with the comments made by Mr. Lucibella.

Mr. Hanna also concurred and while he was sympathetic to what the contractor told them and the clever way of closing in the area he did not see a hardship, if anything it was created by the contractor.

Mrs. Aaskov moved to deny the variance request as submitted citing the lack of a hardship. Mr. Gimmy seconded the motion.

Motion carried – Yea (5).

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

Atty Rapp questioned how they were to proceed at this point to which Mr. Lucibella suggested that he meet with the Zoning Official, Town Attorney or Town Clerk.

VI. Adjournment

The meeting was adjourned at approximately 9:30 A.M.

ATTEST:

Town Clerk

Chairman Bernd Schulte
Gail Adams Aaskov
Mark Hanna
Bruce Gimmy
Richard Lucibella