

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, April 13, 2011 at 8:30 AM in the Town Hall meeting chambers.

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

Gail Adams Aaskov John Wootton
Bruce Gimmy Richard Lucibella
 Chairman Schulte

Atty Spillias was present representing the Board.

III. APPROVAL OF MINUTES FROM DECEMBER 8, 2010

Mr. Lucibella moved to adopt the minutes from December 8, 2010 as presented. Mrs. Aaskov seconded the motion.

Motion carried – Yea (5).

IV. VARIANCE REQUESTS

1. An application submitted by Albert Naar and Judith Kelly, 6103 N Ocean Blvd., Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development Code, Chapter 64; Article I; District Regulations; Section 64-1; Paragraph (k) RSE Single-Family Residential Estate Property Development Regulations; Sub-Paragraph (6) Maximum Floor Area of 36%, to permit the installation of a concrete slab and pool bath to the existing ground level storage area which will increase the Total Floor Area by 1,916 sq ft which represents a 49.5% floor area ratio at 6103 North Ocean Blvd. or legally described as Lot 5 and the north ½ of Lot 6, Blk 9, Amended Plat of Boynton's 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 however several had viewed the site. 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 commented that the area in question is currently exposed earth covered with loose stone which has caused an elevated mold condition throughout the space. They stated that remediation is not possible until a permanent moisture barrier is installed (concrete slab) which will increase the FAR from 35.8% to 45.9%. They also commented that the area is not considered a basement by code definition and must therefore be included in the FAR. They cited that special conditions exist because the property is located between Old Ocean Blvd. and North Ocean Blvd. and the FFE must be measured from the Old Ocean Blvd. side. They added that this change in elevation required the existing storage area to be constructed per the original design and was not the result of the applicant. The applicants advised that granting the variance would not confer a special privilege that is

MEETING OF THE BOARD OF ADJUSTMENT HELD ON APRIL 13, 2011

denied by the Zoning Ordinance because of the unique topography of this and a few other properties in the zoning district. They added that if the difference in elevation had been less, this part of the structure could have been classified as a basement and a slab floor would have been allowed, since basements are not included in the FAR. They added that the addition of a minimally sized bathroom on the same level as the pool would allow the owner the convenience and safety that is granted to others in the district. 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 existing storage area has an elevated and worsening mold condition and without remediation the owner is exposed to continuing health risks and expenses that other property owners are not subject to. They also stated that by not having a bathroom on the same level as the pool subjects the owner and guests to the hardship of having to go up and down a flight of stairs just to use the restroom and thereby creates a potentially dangerous slip and fall situation due to wet feet and stairs. The variance granted was the minimum to make use of the land, building or structure since a permanent moisture barrier is required before remediation can even begin and the proposed pool bathroom is a minimum standard size of 81 sq ft. The applicant concluded by stating that the variance would be in harmony with the general intent of the ordinance because it will simply allow the owner to begin to remediate an unhealthy and potentially dangerous mold condition that will only continue to get worse if not treated. The variance will not be injurious to the area involved because the request is for an area that is within the current footprint of the residence.

The administrative comments were read into the record and they stated that a special condition does exist due to the change in elevation between Old Ocean Blvd. and North Ocean Blvd. and Old Ocean Blvd. determines the FFE. The original owner constructed the pool at the lowest elevation where there is no living area (i.e. bathroom) and this was not the result of the applicant. The granting of the variance would confer a special privilege because the nature of the variance request involves a very serious health issue that needs to be addressed immediately. He added that the need for a bathroom may not confer a special privilege, but would also allow a bathroom on the same level as the pool. The hardship criteria of "literal interpretation" does not apply here since the applicant has submitted documents justifying the need on purely a health reason and if uncorrected the mold problem can make the home unlivable. The request for the bathroom, for this criterion of the variance request, is not justified since it exceeds the FAR percentage allowed in the same zoning district. The granting of the variance for the slab is the minimum that will make possible the reasonable use of the building because it will allow addressing a very serious mold issue. However, there is no justification for the bathroom other than convenience to be located on the same level as the pool. Granting the variance will be in harmony with the general intent of the ordinance since there exists a very unhealthy and potentially dangerous mold condition and if the area is slabbed anyway, the addition of a small 81 sq ft bathroom could be in harmony. The variance will not be injurious to the area involved nor is it detrimental to the public welfare.

It is the staff's opinion that in addressing the mold issue there are other means of eliminating the mold source without the need for a variance but if this method proves to be the best option then there is a justification for this part of the variance. The bathroom

MEETING OF THE BOARD OF ADJUSTMENT HELD ON APRIL 13, 2011

portion of the variance has not met all aspects of the hardship criteria. Staff also requested that Peter Ringle, Deputy Building Official with Hy-Byrd Inspections, attend the meeting to answer questions relating to other options available for the mold mediation.

Tony Mauro of Mauro Brothers, representing the applicant, mentioned that the application explained the variance requests. He stated that the requests did not include any additional construction or square footage. He mentioned that the contractor struggled with the topography during construction because of the elevation and that if the lowest level was surrounded on 3 sides by the soil the basement would have been permitted. He commented that since completion there have been constant struggles with the mold and they have tried chemicals, ventilation, and fans to no avail. He added that after speaking with many experts the best option was to slab the lowest level. As far as the bathroom was concerned, Mr. Mauro stated that the owners were concerned with the grandchildren and friends safety while traversing the stairs to use the bathroom facility as this created a safety and health liability. He then showed a few pictures of how those using the pool would have to travel to the upstairs bathroom. He added that once the moisture problem was taken away they would be able to get it under control. Mr. Lucibella clarified that the guests could use the elevator to get to the bathroom.

Manuel Palacios, Zoning Official, commented that the applicants produced documents showing the need for remediation for the mold but he felt there was no justification for the bathroom. He added that Peter Ringle was present to answer any questions regarding other means of remediation.

Mr. Gimmy stated that he had a similar problem with property he owned in NJ and even with a concrete slab it would still get mold that he would spray with bleach.

Mr. Ringle commented that he had 25 years of construction experience and 4 years of inspecting experience. He stated that normally a basement has some sort of covering under the slab and it needs ventilation because mold needs moisture and a lack of light to grow. He stated that ventilation to the area is key to prevent mold and he felt that a concrete slab would serve as the best barrier if a vapor covering was installed first. He added that bleach is the worst for mold because it actually assists in spreading the mold.

Mr. Gimmy questioned if a vapor barrier was ever installed to which he was advised that originally there was a covering but it has since disintegrated, citing that they only last approximately 5 years if not properly protected with a slab.

Mr. Lucibella questioned what has been tried to ventilate the area. Mr. Mauro stated that there is one large door with vents and heavy duty fans that create a loud unpleasant environment. At this time Mr. Mauro submitted molded paper copies that were housed inside a timer box to show the mold effects. Chairman Schulte mentioned that he had to install UV lights to avoid mold and that lighting and movement of air is most important to alleviate mold.

MEETING OF THE BOARD OF ADJUSTMENT HELD ON APRIL 13, 2011

Atty Spillias summarized the past history by stating that in this lower level area any plumbing or slabbed area, etc. could provide proof that additional living area was being created and is therefore included in the FAR. Mr. Mauro commented that the area located between Old Ocean Blvd. and N Ocean Blvd. was unique and suggested the possibility of creating a distinct designation.

Chairman Schulte reminded the board that the mold and bathroom addition was two different issues to which Mr. Mauro commented that the hardship was still health and safety for both issues.

Mr. Wootton questioned if the mold has been an issue since the home was completed in 2007. Mr. Mauro stated that the builders or original owner were not aware of the problem until the home was sold because they had routine maintenance and therefore did not see there was a mold issue.

At this point the meeting was opened up for public comment to which there was none.

Mr. Gimmy asked Tom Bolender, Bolender Inspection Corp., if he had taken care of the property before to which he advised he had not. When asked what the solutions could include he stated that a concrete slab was the best option and would be 95% effective with a one-time cost. He advised that without a slab the mold would have a food source from the earth and ventilation and the moisture from the humidity. He stated that the property needs to get rid of both issues. Mr. Wootton asked what would happen if only plastic was put down. Mr. Bolender advised that the plastic would disintegrate probably within a five year period.

Mr. Lucibella asked Mr. Ringle his recommendation. Mr. Ringle stated that a concrete slab would be the most effective if not for the zoning issue for the FAR.

Mr. Naar, 6103 N Ocean Blvd., stated that they were merely attempting to cease the mold and add a toilet and sink in a closer proximity to the pool for their guests. Mr. Naar mentioned that after they moved into the residence and were planning on going up north for a few months they stored the patio furniture in the lower level and upon their return they noticed the mold. He stated that he did not have a home inspection completed because the home was totally new and the owner offered a 1 year warranty on all of the appliances and they assumed that that was adequate. Mr. Mauro reiterated that the maintenance was kept up each day and therefore they did not notice the mold problem and the best method to alleviate it was to install a vapor barrier and install a concrete slab.

At this point the board was declared in executive session.

Mr. Gimmy stated he felt approving the mold variance would set a precedent and he was concerned that if this owner sells the property the area would then be turned into living space. He stated that he could not support either request. Atty Spillias reminded the board that each variance request was based on its own hardship.

MEETING OF THE BOARD OF ADJUSTMENT HELD ON APRIL 13, 2011

Mrs. Aaskov commented that she did not agree with the bathroom request and she had no issue with the slab.

Mr. Wootton stated that unfortunately there was a design flaw and that the architect utilized every inch of space possible but he understood that the slab was the best and most permanent solution for the mold but he could not agree with the bathroom.

Mr. Lucibella stated that he was concerned that 5 years from now the owner may knock out windows to create additional living space but realistically he knew he must support the slab variance. He stated he could not support the bathroom because anyone could slip and fall anywhere and the property still has an elevator that can be used.

Town Clerk Hancsak mentioned that a similar variance may soon be sought for the neighboring property in the future.

Mr. Lucibella moved to grant the variance request for the concrete slab thereby increasing the FAR to 45.9%. Mrs. Aaskov seconded the motion.

Motion carried – Yea (5).

Mr. Wootton moved to deny the variance request for the bathroom, seconded by Mrs. Aaskov.

Motion carried – Yea (5).

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

V. Adjournment

The meeting was adjourned at approximately 9:40 A.M.

ATTEST:

Town Clerk

Chairman Bernd Schulte
Gail Adams Aaskov
John Wootton
Bruce Gimmy
Richard Lucibella