

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, May 11, 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 Jeff Lee
Bruce Gimmy Richard Lucibella
 Chairman Schulte

Atty Spillias was present representing the Board.

III. APPROVAL OF MINUTES FROM APRIL 3, 2011

Mr. Lucibella moved to adopt the minutes from April 3, 2011 as presented. Mrs. Aaskov seconded the motion.

Motion carried – Yea (5).

1. An application submitted by Jeffrey & Amanda Eder, representing Spanish Creek LLC, 6480 N Ocean Blvd., Ocean Ridge FL 33435, requesting a variance from the provisions of the Land Development Code, Chapter 64; Article III; Supplemental Regulations; Section 64-77; Paragraphs (b)(d)(e) which include regulations that no dock may project more than 5' into any waterway line, floating platforms or docks must conform to setback requirements and not require installation of pilings, and boat lifts must conform to setback requirements and not extend beyond the area permitted for dolphin pilings to permit the construction of a 4' access dock that would project 36'(+/-) westward of the existing wider, newer seawall (but approximately 24'(+/-) west of the actual property line) connecting to a 33'(+/-) proposed 5' wide ramp running north and then connecting to a proposed enterprise floating dock and boat lift (30' wide and 40' long) that would extend a maximum of 45(+/-) further west of the property line also running north at 6480 North Ocean Blvd. (located north of Town Hall) or legally described as Lot 2, Spanish Creek Subdivision (exact legal description available in Clerk's Office)

Deputy Clerk Hallahan read the variance request, and added that all fees had been paid and that no additional correspondence had been received. Richard Lucibella disclosed that he had visited the property that morning and met with Jeffrey Eder to see the area in question. All other board members said that they had not had exparte communications with the applicant or representatives. 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 stated that they were requesting a variance from Section 64-b (5 foot dock width), 64 d (floating docks) & 64e (boatlifts) to allow them to apply for a permit for the construction of boat dockage in Spanish Creek behind their single-family home now under

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construction. He stated that special conditions and circumstances existed and do not result from the actions of the applicant because a mangrove fringe lined their west property line and the trees extend over the waterway and western old seawall on lot 2 and the existing seawall was stable enough to remain, but too fragile to support a dock and a regulation 5ft dock would encroach on the mangroves. The Mangrove fringe and seawall structures pre-existed the purchase of the vacant land. Removal of the old wall would negatively affect the mangroves. Granting the variance would not confer a special privilege and literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district because they would want a private dock as any other waterfront homeowner may have. Not allowing water access would be create hardship by required off-site additional expenses or not allowing water access otherwise enjoyed by waterfront homeowners. The variance is the minimum because the water depth of Spanish Creek is quite shallow and navigable waters require dockage further away from the seawall than the code permits. They did not feel that the variance would be injurious to the area as no through boat traffic is present as this the southern dead-end of Spanish Creek, and would not create a navigational barrier. They owned the mangrove forest on the west side of their property which could not be developed due to is protected status, and there were no adjacent property owner infringements. A floating dock is planned to minimize protruding structures and preserve the natural appearance of the area. The boatlift is integrated below the decking of the floating dock for esthetics.

The administrative comments were read into the record and stated that the dense Mangrove growth and the shallow water line in this lagoon did make it a special condition and circumstance that is peculiar to the land involved, which is not applicable to other lands in the same zoning distance and was not the result of any action on the part of the applicant. The granting of this variance request would not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands, since this area had excessive Mangrove growth and very shallow water, making the construction of a dock and boatlift within the town's requirements impossible to build. The literal interpretation of the provisions of the ordinance would deprive the applicant rights commonly enjoyed by other properties in the same zoning district because the construction of the boat lift and dock would not be allowed under these ordinances as is enjoyed by other waterfront properties. The variance requested is not the minimum variance that would make possible the reasonable use of the land because the submitted survey shows that it may be possible to construct a ramp straight from land out to the proposed dock and lift, thereby eliminating the need for the lateral ramp parallel to the land. The granting of this variance would be in harmony with the general intent and purpose of this ordinance because the same privilege is allowed by other waterfront properties. This variance would not be injurious to the area involved or detrimental to the public welfare.

It was the staff's finding that was there was a viable reason that the access dock could not extend straight to the floating dock and that it did meet the required hardship. The staff recommended that the variance was submitted be granted if the applicant provides a valid reason for the proposed location of the access dock.

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Jeff Eder, the applicant, commented that they are a family of boat-owners and would like a boat behind their new home. The mangroves however on his property make it very restricting. He had met with FDEP and had received approval for 2 seawalls parallel with the mangroves in between. The existing seawalls need repair as they are not structurally sound; it would be reinforced and stabilized, and then left alone. The proposed dock is away from the Mangroves and the seawall. There would be minimal impact to the mangrove areas, as the mechanical equipment should be far away from the mangroves. A boat elevator would be built into the dock.

Manuel Palacios, Zoning Official reported that rather than a straight line out to water where the mangroves are very dense, this proposal shows less intrusion to the mangroves.

Mr. Lee asked if the derelict seawall had to stay. Mr. Palacios stated to remove it would be disturbing to the mangroves. FDEP prefers any disturbance to be minimized. Mr. Eder stated that the seawall to the west was not structurally sound and if removed would uproot the trees and cause a washout. He hoped to repair the seawall and would try to be as close to the seawall as possible, but if the wall fell, he also didn't want it to damage the dock. He was limited by the trees and red mangroves, and would allow space for growth of the mangroves.

Mr. Schulte stated that this appeared to be a FDEP issue rather than a home owner issue as to where the dock could be constructed.

Mr. Lee asked if a dock could be built on one of the empty lots. A few years ago this area was approved for 12 townhomes, and he asked if those plans included a dock. Deputy Clerk Hallahan responded that she was unsure if the proposed townhomes included a dock; but that the current code did not allow for a dock to be built on an empty lot without a structure.

Mr. Lucibella asked if it was possible for the existing seawall to be repaired or rebuilt. Manny Palacios stated that FDEP is strict with the construction and trimming of mangroves, and that mangroves have a higher priority than a seawall. Currently the Town of Manalapan has an issue with dead trees in their mangroves along A1A, but FDEP will not allow them to remove them, as it would be too harmful to the stability of the area. Atty. Spillias stated that generally FDEP will require that in order to remove mangroves you have to litigate them to a different lot. FDEP was allowing him to shore up the existing seal. It may be possible to rebuild the seawall, but it would be very difficult. This mitigation is usually only allowed for commercial properties not single family residences.

Mr. Lucibella asked the depth of the water, and if there were existing mangroves on the north lot. Mr. Eder responded that at high tide 3 to 4½ feet, but at low tide 1 foot, and that the north lot had existing white mangroves.

There were no comments from the public.

At this point the board was declared in executive session.

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Mr. Gimmy stated that if he had bought the property, it should been done beforehand and not now. He did not feel that a allowing this would set a precedent.

Mr. Lucibella stated that the 3 lots shared a common ownership and the areas to the south and west of it could never be really built on. The area was a dead end that did not affect others.

Mrs. Aaskov stated that both FDEP and the Army Corp of Engineers had approved it, and it seemed a reasonable request.

Mr. Lee stated that it was a 40ft dock and asked if the lift could be established on the other end. He has a neighbor on Sabal Island who wanted to expand his existing dock. He was concerned of the possibility for future lifts and docks on the other lots if this was approved.

Mr. Palacios stated that if variance as requested was approved and built, it would then become an existing non-conformity, and could not be expanded on further.

Atty. Spillias stated that they would be approving only what was presented.

Mr. Gimmy moved to grant the variance request as submitted for the dock and boatlift installation. Mrs. Aaskov seconded the motion.

Motion carried – Yea (5).

V. ANNUAL APPOINTMENT OF CHAIR AND VICE CHAIR

Richard Lucibella voted to reappoint Bernd Schulte as Chairman of the Board of Adjustment. Seconded by Bruce Gimmy.

Motion carried – Yea (5).

Gail Aaskov voted to reappoint Richard Lucibella as Vice Chairman of the Board of Adjustment. Seconded by Bruce Gimmy.

Motion carried – Yea (5).

VI. Adjournment

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

ATTEST:

Deputy Town Clerk

Chairman Bernd Schulte
Gail Adams Aaskov
Jeff Lee
Bruce Gimmy
Richard Lucibella