APPROVED
TOWN OF LAUDERDALE-BY-THE SEA
BOARD OF ADJUSTMENT MINUTES
Jarvis Hall
Wednesday, November 1, 2017 at 5:00 P.M.

CALL TO ORDER
Chair John Graziano called the Board of Adjustment (BOA) meeting for the Town of Lauderdale-By-The-Sea (L-B-T-S) to order at 5:00 PM.

PLEDGE OF ALLEGIANCE TO THE FLAG
The Pledge of Allegiance was recited.

ROLL CALL
Members present were Helene Wetherington, John Graziano, John Lanata, 1st Alternate Paul LaCoursiere, and 2nd Alternate Ron Piersante. The absent members were Carmen Miller and Tom Macek. Also present were Assistant Town Attorney Kathryn Mehaffey, Development Services Director Linda Connors, Planner Susan Leven, and Permit Administrator for CAP Government David Lee. Planning Technician Jhanelle Campbell was present to record the minutes of the meeting.

APPROVAL OF MINUTES

i. Previous BOA Meeting Minutes – June 7, 2017

Paul LaCoursiere made a motion to approve the minutes of June 7, 2017. The motion was seconded by Helene Wetherington. The motion carried unanimously (5-0).

PUBLIC COMMENTS
The Chair opened the meeting up to the public for comments. As no one from the public spoke now, the chair closed this public comment portion of the meeting.

NEW BUSINESS

i. **Case Number 2017-V-04**: Robert and Gail Gordon (Applicant) – Request a variance at 4437 West Trade Winds Avenue to:
   a. Section 30-211 (c)(4) "Waterfront setback" of the Lauderdale-By-The-Sea Code of Ordinances, to construct a single family dwelling fifteen (15) feet from the rear property line where twenty-five (25) feet is required, and if approved, then
   b. A variance to Section 30-211 (c)(5) "Roof Overhangs" to allow a roof overhang to be measured from the varied setback which would allow the roof overhang to extend twelve (12) feet from the rear property line where the Code provides that rear roof overhangs may extend no more than twenty-two (22) feet from the rear property line.

Assistant Town Attorney Kathy Mehaffey said that there is a new board member present, Ron Piersante, and asked Linda Connors to swear him in. Mr. Piersante took his oath of office. Then Planner Susan Leven made a PowerPoint presentation. The area where the variance is

requested and the area for the requested variance for the roof overhang were pointed out on a slide. She explained that Mr. and Mrs. Gordon submitted an application for a new, single-family dwelling in 2016. It was reviewed and approved. A building permit was issued. After construction started, it was discovered that the dwelling in the RS-5 district (Residence) was designed and approved under a section of the Town Land Development Code that was amended in 2015, increasing the rear setback on a property abutting a waterway from fifteen feet to twenty-five feet. She explained that when the Town Commission approves an amendment to the Code, it is effective the day of approval. However, it takes Municode a while to bring that amended text into the Code. When the application came in, the ordinance was not codified yet. Anyone doing a search of the Code on Municode would not find it unless they look specifically in the ordinances not yet codified. When the application came in, both the architect and staff were looking at the old code. This was brought to the Town's attention by a neighbor and the Building Official issued a stop work notice. The owners were contacted and they applied for a variance to remedy the situation. The Town received five letters with three residents in favor and two opposed to the variance request. The neighbor to the north has not put anything in writing but seems to be neutral. Ms. Leven spoke about the criteria that Town Code provides for the evaluation of a variance application. Staff's responses apply to both the residence setback and the roof overhang requirements.

The applicants' attorney, Nectaria Chakas, made a PowerPoint presentation and explained that Mr. Gordon is present this evening. She said she would outline the steps that Mr. Gordon took before he bought the property trying to ensure something like this did not happen. The structure was being constructed, but construction stopped when informed about the problem. She went into detail about the twofold variance request with one tied in with the other. It was explained that a few blocks away, in a different zoning district, RD-10, a fifteen foot setback is allowed there. She spoke about differences in other zoning districts and that the Gordon residence is a two-story home. Attorney Chakas explained that people rely on Municode service, e.g., lawyers, professional people, architects, citizens, and members of the public. That is what they use when they want to see what the code requires. She displayed the printout from Municode that Mr. Gordon used with his notes still on it. There were many communications with the Town and there were missed opportunities for the home to be re-designed. The problem is now that the building is already there. She then showed the Code Amendment adopted October 2015. It was not posted on Municode at that time and spoke about the lag between approval and publication on Municode. Ms. Chakas stated again that Mr. Gordon did everything he could have done before he purchased the property to make sure this did not happen. Also, this building furthers the Town's objective with the Mid-Century Modern architecture. She asked for board questions.

Mr. Lanata asked that if the variance is granted, can they come back and build a one-story accessory building within 5 feet of the waterway. Ms. Chakas said they could but her clients would be happy to agree to a condition that would prohibit this.

The Chair opened the public hearing and invited the public to comment. Stephen Nagy said that he wrote his opposition to the variance. He has photos on his iPad and wanted the board members to view them. Assistant Town Attorney Kathy Mehaffey said that the media has to be visible to everyone. She suggested submitting a hard copy to Staff so they have the document for backup for the next meeting. She explained that this board is a recommending body. Their recommendation goes to the Town Commission who makes the final decision. Mr. Nagy said that he submitted his opposition in writing. He is two houses away to the south. He felt that the better choice is to deny the variance and have them fix the structure to the way it should be. In fact, a re-design would improve the sun exposure to the pool. This project would block Mr.

Nagy's view to the north, if the variance is granted. He felt that the setbacks are imperative. The responsibility is on the builder to build within the setbacks of the zoning district. He gave other examples and wanted to emphasis that there is no natural gas in L-B-T-S. There was no proper spot survey done. It was a slab survey. He explained how the error could have been caught sooner. Fix it now and avoid a domino effect down the road. The Chair commented that they usually try to limit the talking time period to a specific amount of time but he forgot to mention it. Everyone can continue talking in this same time pattern.

John Staszel said that he lives next door. He agrees with what Mr. Nagy has to say. He opposes the variance because it obstructs his view dramatically and lowers the value of his property. It is not under code and should be brought up to code. If Mr. Staszel rebuilds, he would demand the same variance and be part of the domino scenario. The people in favor of the variance are not on the water and the two people who oppose are on the water. His brother, a few houses down, also opposes the variance. His letter would be forthcoming, if not already in receipt. Everyone on the water does not support it. The Chair asked to see the slide that shows the houses along the waterfront. Discussion ensued about one and two-story houses on the waterway. The Chair asked if anyone else from the public wished to comment. No one responded. Attorney Chakas said that Mr. Nagy brought up a spot survey versus a slab survey and she clarified that the slab survey does show the setback. The setback was shown on the survey that was submitted. The survey is included in the board packet. She said that the public speaker spoke about a case in L-B-T-S which involved a pool and a fence built in a City right-of-way. It is a very different situation. The only thing in common is that someone made a mistake. The variance being discussed today is on private property not encroaching on a neighbor's property. She also said that views could be obstructed by landscaping or houses nearby with different zoning regulations. She said that her client told her that the spot and slab survey are essentially the same thing. She clarified that the five-foot setback is specific to the dock and not the building. The Chair reiterated that they want to listen to everyone on this important agenda item and he would not restrict talking time. The Chair asked to go through the criteria so that they all understand the evaluation of the variance.

Ms. Wetherington said that the criteria that did not pass were #1 and #4. She read #4 into the record. *The hardship is not self-created or the result of mere disregard for, or ignorance of the provision of the regulation.* She asked Staff for clarification. Ms. Leven said that Staff found that the property owners were ignorant of the regulation. Ms. Connors answered Ms. Wetherington that the Town does not disagree with the times the property owner said he communicated with the Zoning Department. She also stated that Zoning Staff missed opportunity as well during the zoning review. Ms. Connors testified that the zoning review was not properly conducted. They missed the change and did not review it properly. She answered Ms. Wetherington that when an ordinance is passed, it is updated and put on Municode. It is not codified into the code immediately so when you search, you find the old ordinance. Unless you read every ordinance that has not yet been codified, you would not know if there is a new ordinance. Ms. Wetherington said that if staff does not know the new code, which is their responsibility, then a builder, a homeowner, or anyone in the community would not know. How could Mr. Gordon know that there was a new code setback? Ms. Wetherington did state that she was sympathetic and empathetic to all neighbors. Mr. LaCoursiere thinks that what happened is not Mr. Gordon's fault. This was not self-created or a mere disregard for or ignorance of the provision of the regulation. They built it as approved but there is concern for the domino effect. Mr. Lanata also concurs. It is an unfortunate situation. Mr. Piersante said that he read the other cases and if the municipality made a mistake on your part, it is too bad. He is also thinking of the two gentlemen next door and the effect this would have on their properties. He asked if the Gordons proved that there is a hardship and she answered that the board has to decide that.

Chair Graziano spoke about a visual hardship for the neighbors next door and potential hardship on value. Ms. Connors answered Mr. Piersante that the Staff Report lists both the Staff's and the Property Owners' responses to the criteria for evaluation. Staff was saying that except for criteria #1 and criteria #4, the property owners met the criteria. She explained that #4 was a "soft" not met. Ms. Wetherington said that the impact this could have on the neighbors is in criteria #5. *The variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.* As there was no more discussion, the Chair asked for a recommendation.

John Lanata made a motion to move forward with a recommendation of approval of 2017-V-04 to the Town Commission, each of the two variance requests, with Staff's recommendations and with the Board's condition that they cannot build an accessory building on this property. The motion to approve was seconded by Paul LaCoursiere.
Upon discussion, Ms. Wetherington did not know how this board could stop the construction of an accessory building if it is built to code and is allowed by code. She was answered that they were willing to do that if the board granted the recommendation of the variances (give and take).
The motion to recommend approval of 2017-V-04 to the Town Commission as proposed by Staff and with the board's condition of not building an accessory building on this property carried (3-2). (Ms. Wetherington and Mr. Piersante opposed).

OLD BUSINESS
There was no old business to discuss.

UPDATES/BOARD MEMBER COMMENTS
There were no updates or board member comments.

ADJOURNMENT
Paul LaCoursiere made a motion to adjourn at 6:11 PM. The motion to adjourn was seconded by Helene Wetherington. The motion to adjourn carried unanimously (5-0).

Chair John Graziano John LANATA

ATTEST:

Date Accepted: 6/20/18

LC Kallah Lewis
Board Secretary