

TOWN OF LAUDERDALE-BY-THE SEA
BOARD OF ADJUSTMENT MINUTES

Jarvis Hall

Wednesday, October 1, 2014 at 6:00 P.M.

CALL TO ORDER

Acting Chairperson Sandra Booth called the Board of Adjustment (BOA) meeting for the Town of Lauderdale-By-The-Sea to order at 6:07 PM. The Pledge of Allegiance was recited. Town Planner Connors called upon Gerri Ann Capotosto to stand and take the oath. Roll was called. Members present were Sandra Booth, Carolyn Zaumeyer and First Alternate Gerri Ann Capotosto. Charles Baclet, Carmen Miller, Helene Wetherington, and Second Alternate Verence Rapaport were absent. Also present were Town Attorney Susan Trevarthen, Town Planner Linda Connors and Planning Technician Juliana Cardona. Clerk Idalia Gutierrez was present to record the minutes of the meeting.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was already recited.

APPROVAL OF MINUTES – Previous BOA Meeting Minutes dated August 6, 2014

Carolyn Zaumeyer made a motion to approve the minutes of August 6, 2014 as written. The motion was seconded by Gerri Ann Capotosto. The motion carried 3-0.

PUBLIC COMMENTS

No one from the public spoke.

TOWN PLANNER REPORT

No report given.

NEW BUSINESS

Case Number 2014-V-02: Truong and Lilianne Duong (applicants)/ Variance Request Application to allow an encroachment into the rear setback for the property located at 1941 W. Terra Mar Drive (RS-4 Broward County Zoning District) (Linda Connors Town Planner)

Town Planner Linda Connors explained that this property is in the annexed portion of the Town and currently follows the Broward County Zoning Code from the time of its annexation is 2001. She said that the applicants want to construct a single-family home. The total square footage for the proposed home is 5,645, excluding covered patios. The plans also include a pool and an outside kitchen. They are requesting relief from the requirements of Section 39-287 to encroach into the rear setback. The rear setback in the Broward County Zoning Code is 15 feet. They propose 5 feet and were asking for 10 feet reduction of the required setback. Ms. Connors explained that there was a typo in the zoning requirement document sent by the Town to the applicants' architect which incorrectly stated the rear setback in the Broward County Zoning

Code was 5 feet. The Town did correct the information and re-sent it to them. Town Planner Connors read into the record the portion of the Town Code, Section 30-7 (b), that has to do with an act or omission by Town employees or its contractors in the interpretation or administration of the Code is not binding if the act or omission results in an incorrect interpretation or application of the Code. She said it is supported by case law.

Town Planner Connors said the applicant is required to meet the hardship test for their requested variance. Section 30-127 of the Town Code provides that a variance application shall be evaluated by considering seven different criteria. She explained what the seven criteria were, how the applicant justified and answered the seven criteria, and staff's discussion and findings as to whether the seven different criteria have been met. She stated that staff researched the properties in the area and selected a sample group to review for compliance with the Code's rear setback requirements. The properties that staff reviewed met the requirements of this section of the code. She concluded that staff found that the criteria to grant the variance have not been met. Staff recommended denial of the variance. However, if the Board of Adjustment recommends approval of the variance, Town Planner Connors read the conditions into the record which Staff recommended to be included in granting the variance. This concluded her presentation and there were no Board questions at this time.

Eric Mills, Virtual Design Group, said he was from the applicants' architectural firm. He was present this evening to represent Mr. and Mrs. Duong. Because the applicants did not know if they were going to sell the Lauderdale-By-The-Sea property for a large home in Boca Raton, his firm contacted the Town to find out the zoning criteria for maximum lot coverage on the L-B-T-S property. When they received the information from the Town, they did their own research and aerial photography. He gave the Board Members copies. He said that Mr. and Mrs. Duong decided not to buy the home in Boca Raton and committed to build on this property based on his firm's design criteria. It was not until the permitting process that they realized there was an error in the setback information sent by the Town. He said that other homes in that area have a similar setback and they were asking for the same treatment and to be granted the variance for the 5 feet rear setback. He said that the home they are proposing fits into the high standards of the neighborhood. The front setback will be equal to the other homes and the rear setback will not be seen from the street. Ms. Capotosto clarified that the setback Mr. Mills pointed out on the other house was the side setback and not the rear setback. Mr. Mills said that he was not able to get plans through the County. Ms. Zaumeyer asked about Google Earth shots and Mr. Mills said that was as far as Google Earth would let him zoom in. Mr. Mills answered Ms. Capotosto that the encroachment would be for the full two-stories of the house. Both the lanai and the pool would be in the encroachment but he can push the pool back to 8 feet. Ms. Capotosto asked for a copy of the general floor plan. Ms. Zaumeyer was answered that the pool edge is 5 feet from the seawall. Mr. Mills said they were willing not to ask for the variance for the pool. Town Attorney Susan Trevarthen said for the record that the applicant has submitted two aerial photos that the Clerk would enter into the record and that members of the Board were reviewing plans for the residence. Mr. Mills stated that there were no objections to the conditions Ms. Connors suggested, if the Board recommended the variance. Ms. Capotosto was answered that the plans reflect full lot line to lot line. All the other setbacks were maximized. As there were no more Board questions for Mr. Mills, the Acting Chair opened the meeting up to public comments.

Anthony Giordano, neighbor, is in the process of buying the house at 1921 W. Terra Mar Drive. He has no objection to the variance. He answered Ms. Capotosto that it is the house to the right of the subject property. As there were no other public comments, the Acting Chairperson closed public comments. Town Attorney Susan Trevarthen asked Ms. Booth if there were questions for

Staff. Ms. Capotosto asked Ms. Connors about the pool being close to the seawall. Ms. Connors answered that the pool did not show its dimension and did not show how far it was from the property line. Ms. Capotosto said it looks like it is 2 to 4 feet from the house. Ms. Connors said 2 to 3 feet at most. Acting Chairperson Booth wanted to know if the applicant was given the option to amend the variance application and bring it to the November meeting. Ms. Connors said the variance tonight is only for the house. She said that the applicant wanted to move forward and present tonight just the request for the variance for the home. The pool would not be determined tonight and there were additional zoning reviews to be made. The Town has not received a full set of plans. Therefore, it was not reviewed 100% for compliance with the Town's Code. Ms. Capotosto was answered by Ms. Connors that anytime a variance is approved, it opens the door for other people's variances. From a legal standpoint, Ms. Trevarthen said that they are not precedential and do not provide evidence that someone else would receive the same treatment. However, when a variance is granted, it does suggest to people that more may be granted. This 15 feet rear setback has been in the Code since 1998. There are different setbacks in the neighborhood because houses have been built prior to 1998 and there were different standards when the County built in that area. Today's decision is on a request for a variance from the 15 feet rear setback on new construction. Ms. Trevarthen further clarified that Staff did not find any basis for the variance and did not recommend approval. The decision tonight was up to the Board. Acting Chairperson Booth asked the Town Attorney to clarify what the motion should be tonight. Ms. Trevarthen said that the Board either recommends to Town Commission that the variance be approved or denied. If the Board approves, it would be good to note which of the criteria the Board felt were met.

Carolyn Zaumeyer made a motion to recommend to Town Commission denial of the variance. The motion was seconded by Sandra Booth (who it was considered passed the gavel in order to second the motion). The motion carried 3-0. The record would show that there were three votes in favor of the motion to deny the variance in accordance with Staff's recommendation.

Town Planner Linda Connors said that Staff's Report would reflect the motion tonight was a recommendation by the BOA to the Town Commission for denial to allow an encroachment into the rear setback for the property located at 1941 W. Terra Mar Drive. This application would go before the Town Commission on October 14, 2014 at 7:00PM.

OLD BUSINESS

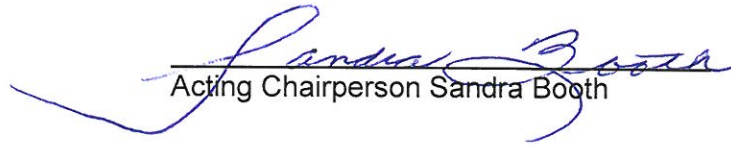
Ms. Connors said there was no old business to report. She further stated there would not be a BOA November meeting as they have not received any applications.

UPDATES/BOARD MEMBER COMMENTS

There were no updates or comments.

ADJOURNMENT

As there was no other business to discuss and without objection, Acting Chairperson Booth adjourned the meeting at 6:44PM.


Acting Chairperson Sandra Booth

ATTEST:

Date Accepted: 4-15-2015



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