**APPROVED**

# TOWN OF LAUDERDALE-BY-THE SEA

## BOARD OF ADJUSTMENT MINUTES

***Jarvis Hall***

***Wednesday, June 20, 2018 at 5:00 P.M.***

CALL TO ORDER

Planner Susan Leven 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. She said that Helene Wetherington has submitted her resignation for the Board of Adjustment as well as the Planning and Zoning Board. The first alternate, Alan Bluestein, would now become a regular board member and the second alternate, Bernard Petreccia, would now become 1st alternate. The Town Commission would appoint the 2nd alternate. As this is the first meeting of the BOA since the seating of the new board, an election of officers would be the next order of business and was done so without objection.

*ELECTION OF BOARD OF ADJUSTMENT CHAIR AND VICE CHAIR*

The floor was opened for nominations for Chair. Ms. McCormack made a motion to nominate John Lanata as Chair. The motion was seconded by Mr. Ferrante and it carried without objection. As there were no other nominations, nominations were closed. John Lanata was declared Chair by acclamation.

The floor was opened for nominations for Vice Chair. Chair Lanata made a motion to nominate Cari McCormack as Vice Chair. The motion was seconded by Mr. Ferrante and it carried without objection. As there were no other nominations, nominations were closed. Cari McCormack was declared Vice Chair by acclamation.

Ms. Leven turned the meeting over to Chair Lanata. Roll was called. Members present were John Lanata, Cari McCormack, William Ferrante, Jeffrey Whyte, and 1st Alternate Bernard Petreccia. The absent member was Alan Bluestein. Also present were Assistant Town Attorney Kathy Mehaffey, Planner Susan Leven, Planner Jhanelle Campbell and Clerk Kaliah Lewis.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

APPROVAL OF MINUTES

i. Previous BOA Meeting Minutes – November 1, 2017
   Cari McCormack made a motion to approve the minutes of November 1, 2017. The motion was seconded by William Ferrante. 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 wished to speak now, the chair closed this public comment portion of the meeting.

NEW BUSINESS

**i. Case Number 2018-V-01: Tom Macek and Samaret Otero (Applicants) – Request variances to Section 30-313 (t) "Accessory buildings and structures" of the Lauderdale-By-The-Sea Code of Ordinances, to allow a**

**tiki hut to remain in a non-conforming location on property located at 268 Imperial Lane (Susan Leven, Planner)**

Planner Susan Leven gave a PowerPoint presentation. She explained that the applicants were requesting a variance to allow a tiki hut, which did not go through a zoning review prior to construction, to remain on their property in a non-conforming location. The structure is currently flush with the rear property line where a five foot setback is required and 1.72 feet from the side property line where a five foot setback is required.

She said that this came to the attention of the Town through an anonymous complaint. Code Enforcement cited the property in August 2017 for not having a zoning permit for their tiki hut. She explained why a tiki hut is governed differently than a regular accessory structure. The tiki hut did not require a building permit but it did require a zoning permit. They are seeking a variance because there are setback requirements.

Ms. Leven then spoke about the seven criteria that an applicant had to meet in order to qualify for a variance. She explained to the board each one of the criteria for which tonight's applicants had to respond and stated that a tiki hut is a permitted use in this zoning district. Since there is electricity in this tiki hut, it is considered an accessory structure. She also explained the applicants' responses and staff's findings for the applicable criteria. She said that they do not feel the criteria have been met and what the applicant wrote did not justify the need for a variance.

Chair Lanata invited the public to speak but no one came forward. He then invited the applicant to speak and Tom Macek explained the misinformation or miscommunication of the rules that really should have been followed originally. That they could build without permits was not entirely correct. He still needed a zoning permit which he found out after the fact. He talked about filling out an application for an Administrative Adjustment. Knowing about the problem of being in the setbacks, his neighbors came to the meeting to support him. There is even a neighbor's letter in favor of the tiki hut. Mr. Macek said that the loss of the tiki hut would not be a hardship but it would be really heartfelt. However, he understands staff's explanation of why they could not recommend granting a variance.

Mr. Macek then spoke of his proposal to not have to destroy the whole tiki hut by moving the two south posts three and one-half feet north so that it would come in the adjustment zone. Then the variance would only be needed for the east side of the property. He said that none of the neighbors he knows made a complaint but he knows that there was one complaint. Tonight is not about the complaint but rather about the tiki hut in the setbacks. Mr. Petreccia asked if moving the posts would affect structural soundness and Mr. Macek answered that it will be rebuilt by the same company that originally built it. This company was told about the need for permits and that he understands this fact himself. He realizes the original information he was given about permits by the company constructing his tiki hut was not 100% accurate. The tiki hut is four years old and has withstood all elements of the weather. Mr. Ferrante asked about the neighbors to the east and west and the applicant said they both do not have issues with this. There were no other board questions.

Christina Buerosse, a neighbor, said that there has been a sign in front of the applicant's house for some time. If a neighbor had a problem, they would have known for quite some time to come to tonight's meeting. To show support, everyone in the audience stood up because they did not have a problem with the tiki hut or with granting the variance. John O'Grady said that the neighborhood is fine with the tiki hut. As there were no other public requests to speak, Chair

Lanata closed the public hearing and opened the meeting up to the board for questions/comments.

Mr. Whyte wanted to know if there is conveyance of the variance and does it continue into perpetuity. Assistant Town Attorney Kathy Mehaffey said that it would normally run with the land but the board could set conditions for it to run with the structure. For example, if the structure were destroyed, it could be conditioned to be rebuilt consistent with code. Mr. Whyte asked about the seawall and Mr. Macek explained that the seawall is not too far south. Ms. McCormack wanted to know about the setbacks and if they were talking about where the posts were installed and could the roof still be in the setback. Ms. Leven explained that where the posts would be installed, the roof would have to match and not remain in the setback. The whole structure would be moved the same amount. Ms. Mehaffey clarified that the setback is for the entire structure including the roof and its overhang. Everything must be moved out of the setback. Ms. Mehaffey further stated that this rebuild would require building permits now because there is electricity in the structure.

Mr. Petreccia wanted to know if the overhang goes over the east property line. Mr. Macek said that on the east side, all the palm fronds are squished against the tiki hut and do not overhang. Mr. Petreccia could not support a variance, if the overhang infringes on the neighbor's property. Ms. Leven directed the board members to look at the survey. In the rear, there is a small area where it does go over the property line but it does not appear to do so on the east side.

Chair Lanata does not see any reason to move posts because the applicants would still be outside the zoning code. It is unfortunate what happened but we have to go by what the law says and there is no justification for a variance. They need to bring this into compliance. Ms. McCormack asked Ms. Mehaffey if literally all the criteria that the applicant had to meet are what determine if a variance should be granted. She is concerned that a precedent could be set for others with a tiki hut that is not code compliant. Ms. Mehaffey stated that variances are fact specific. Legally, this would not set a precedent. The board is to evaluate the criteria. Staff has provided a recommendation. The applicant has provided additional information. The board can evaluate the site and make their own determination and recommendation independently. They can consider all the material and any other information the board feels is relevant which the board received at this public hearing. Ms. McCormack feels that the code states that all the criteria have to be met. In this case, over 50% of the criteria have not been met. Chair Lanata stated for the record that he received a letter from former Mayor Scot Sasser recommending that the board grant the variance. Chair Lanata does not feel he can do this because of the criteria not being met.

> Bernard Petreccia made a motion to grant the variance with the new location of the two posts. The motion to approve was seconded by William Ferrante.
> *<u>For discussion</u>: Mr. Whyte would like this motion amended so that it would terminate the variance if the house is sold or if the tiki hut needs to be rebuilt. In this way, the variance would not be in perpetuity. Mr. Petreccia agrees with Mr. Whyte.*
>
> Jeffrey Whyte made a motion to amend the main motion by adding the ability to terminate this variance if the house is sold or if the tiki hut has to be rebuilt. The motion to amend was seconded by William Ferrante.
> *<u>For discussion</u>: Chair Lanata would like to make a motion to grant the variance based on the existing structure but if it should ever be destroyed, it would need to be brought up to code with the setbacks. Mr. Petreccia said that without moving the posts, the tiki hut would infringe on the property line onto the waterway. Ms. Leven stated that without*

*moving those posts, part of the structure would not be on his property. She reminded that the roof of the tiki hut goes over the property line towards the water. Chair Lanata asked Mr. Macek if he could trim the roof so that it would not overhang. Chair Lanata explained that even if the applicant moves the posts in the rear, he still is in the setback on the other side. He suggests leaving the tiki hut as it is and just trim the roof. Mr. Macek said that the overhang is just palm fronds and that would take about half an hour to trim. Both the maker of the main motion, Bernard Petreccia, and the second, William Ferrante, agreed to withdraw the main motion in favor of a new main motion.*

Bernard Petreccia made a motion to grant the variance and leave the existing structure as it is. The motion to approve was seconded by William Ferrante.

Chair Lanata made a motion to amend the main motion to include trimming the roofline back so that it is behind the property line. The motion to amend the main motion was seconded by William Ferrante.
*For discussion: Mr. Petreccia and Mr. Ferrante decided to withdraw their main motion and to start all over again. Mr. Whyte and Mr. Ferrante withdrew their motion to amend the main motion and so did Chair Lanata and Mr. Ferrante in order to start all over again.*

Bernard Petreccia made a motion to grant the variances for the existing structure (tiki hut) but with two conditions: (1) the palm fronds over both the east and south property lines have to be trimmed at the roofline so it would not overhang and (2) if the existing structure is damaged (50% or more) in any way, it needs to be inside the proper setbacks (code compliant). The motion to approve was seconded by William Ferrante.
*For discussion: Ms. McCormack would like to know how many other tiki huts this could affect. Ms. Mehaffey said that this would not affect any other tiki huts. This is a variance for this site and only this site. It is very fact specific and does not translate to any other property. It does not give anyone else the right to do anything similar.*

The motion to recommend approval with two board conditions for 2018-V-01 to the Town Commission carried 4-1 (Ms. McCormack opposed).

Ms. Leven stated for the record that this is the board's recommendation to the Town Commission which is the ultimate vote.

OLD BUSINESS
There was no old business to discuss.

**ADJOURNMENT**

**Cari McCormack made a motion to adjourn at 6:55 PM. The motion to adjourn was seconded by Bernard Petreccia. The motion to adjourn carried unanimously 5-0.**

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

**Chair John Lanata**
**Date Accepted:** 10/3/18

**ATTEST:**

**SL**