

NON-APPROVED

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

Jarvis Hall

Wednesday, June 7, 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 5:02 PM.

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

ROLL CALL

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

The Chair welcomed Tom Macek, the new board member, and mentioned that Ron Piersante is also new to the board but not in attendance tonight. Assistant Town Attorney Kathy Mehaffey was called upon to swear in the new member and Tom Macek took his oath of office. Ms. Mehaffey explained that three board members are needed for a quorum but with the four members and one alternate present, all five can vote this evening.

APPROVAL OF MINUTES

i. Previous BOA Meeting Minutes – May 3, 2017

Helene Wetherington asked for clarification of a sentence in the minutes on page 4 – line 2. The sentence reads: If you don't, then you won't have to come back. Ms. Mehaffey added the words "need a variance" for clarity and the sentence now reads: If you don't need a variance, then you won't have to come back.

Carmen Miller made a motion to approve the minutes of May 3, 2017 as amended. 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 any 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-03:** Byron Revocable Trust, Kelly Byron Trustee (Applicant) – Requests variances to Section 30-313 (q) "Swimming pools, pool decks, patios, hot tubs and spas; setbacks and enclosure required", of the Lauderdale-By-The-Sea Code of Ordinances, to construct an in-ground swimming pool three and a half (3½) feet from the side property lines where five (5) feet is required, and to construct a deck at various setbacks including flush with the

side property lines where two and a half (2½) feet is required.
(Susan M. Leven AICP, Planner)

Planner Susan Leven said that the owner, Kelly Byron, was in the audience and she would be happy to answer board questions. Ms. Leven testified that the property is in an RM-25 zoning district. It was built in 1981 as part of a townhouse development with sixteen units. The applicant was asking to build an in-ground pool 3½ feet from the side lot line where 5 feet is required and a deck that varies in setback and in some cases is flush with the property line at its closest point. She then went through the variance criteria separately because a variance application is evaluated by considering the following criteria.

1. *Special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of such land, structure or building.*

Ms. Leven said this is a townhouse development. Of the sixteen townhouse units in the development, nine of the other lots have pools and decks similar to the style and size proposed by the applicant for her pool and deck. The circumstances particular to this property is that it is one of the only developments of its kind in the district. The majority of the lots in the development already have similar pools as being proposed.

2. *The circumstances which cause the hardship are peculiar to the property or to such a small number of properties that they clearly constitute a marked exception to other properties in the district.*

When the development was constructed in 1980-81, the developer built nine of the units with in-ground pools. All of the pools built on interior (as opposed to end) lots were constructed with minimum side setbacks of three and a half (3½) feet to the south and four (4) feet to the north. Many have decks that are flush with the side lot lines. All of the interior units (as opposed to end units), including the applicant's lot, have the same rear yard area with the same dimensions.

3. *The literal interpretation of the provisions of the applicable regulation would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.*

The literal interpretation of the code would result in a hardship. A regulation change which changed the setback to five (5) feet created a hardship and the applicant would not be able to construct the same type of pool and deck arrangement that most of the neighbors had. Building a conforming pool and deck would result in a significantly narrower pool and perhaps not as usable as some of the others in the development.

4. *The hardship is not self-created or the result of mere disregard for, or ignorance of the provisions of the regulations.*

The hardship was not self-created. It appears that the applicant purchased the property after the change in the code to increase the required side yard setback for the property.

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.*

Ms. Leven said that the minimum necessary to afford relief, what the code intends, does allow for 2½ foot wide in its narrowest point deck around the pool. This also provides a pool that is more useable and more in line with the other pools in the complex. This can all be done while still be in line with the purpose and intent of the code and not having a detrimental effect on the neighborhood. Ms. Leven pointed out that this particular unit and all the units in the townhouse development are surrounded in the rear by fence. There would be no view between neighbors. There are no issues associated with this and no financial hardship.

The sixth and seventh criteria are not applicable to this application. Ms. Leven said that staff recommends approval of the requested variances for the side yard setbacks for the construction of an in-ground swimming pool and deck based on the application and supporting materials. She said there were no communications, e-mails or comments from the public regarding this request. Ms. Leven asked for board questions.

Ms. Wetherington asked if the pool could be closer to the house so it would not impact the rear setback. Ms. Leven said that it does not infringe upon the rear setback, only on the side. Mr. Macek asked about the neighbors and the Chair said that they would be asking for public comments tonight. Mr. Macek asked about written testimony from the neighbors and was told there wasn't any. Ms. Leven explained how all the abutting property owners receive written notice of this meeting with time to have the opportunity to come to the office to look at what is being proposed. The Chair asked the applicant to speak or if any members of the public would like to comment. The Chair asked if any board members had questions for the applicant or any further board discussion. There were no further questions, discussions or comments and the Chair asked the board to make a motion.

Paul LaCoursiere made a motion to approve 2017-V-03 as proposed and as staff recommended. The motion to approve was seconded by Helene Wetherington. The motion to approve 2017-V-03 as proposed and as staff recommended carried unanimously (5-0).

OLD BUSINESS

There was no old business to discuss.

UPDATES/BOARD MEMBER COMMENTS

The Chair said that when Ron Piersante is in attendance, he will have to take his oath of office. Discussion ensued about the July meeting which is unsure at this time.

ADJOURNMENT

Paul LaCoursiere made a motion to adjourn at 5:28 PM. The motion to adjourn was seconded by Helene Wetherington. The motion to adjourn carried unanimously (5-0).

Chair John Graziano

ATTEST:

Date Accepted: _____

LC