APPROVED
TOWN OF LAUDERDALE-BY-THE SEA
BOARD OF ADJUSTMENT MINUTES
Jarvis Hall
Wednesday, May 3, 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 5:03 PM.

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

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

APPROVAL OF MINUTES

i. Previous BOA Meeting Minutes – April 5, 2017

Carmen Miller made a motion to approve the minutes of April 5, 2017 as written. The motion was seconded by Helene Wetherington. The motion carried unanimously (3-0).

PUBLIC COMMENTS
The Chair opened the meeting up to the public for any comments. He instructed that if a member of the public is here to speak on a specific agenda item, you may choose to wait until the public comment on that item. 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-02**: Jack Thibaut (Applicant) – Request a variance to Section 39-569 "Swimming Pools", of the Broward County Zoning Regulations governing the annexed portion of Lauderdale-By-The-Sea, to construct a swimming pool within the front yard setback and a variance to Section 30-313 (d), "Fences, walls and hedges", of the town's code of Ordinances to construct a fence within the required front yard setback. (Planner, Susan Leven AICP)

Development Services Director Linda Connors explained that Planner Susan Leven will be the designated staff member for the Board of Adjustment. Ms. Leven explained that the applicant, Jack Thibaut, is seeking approval to allow the construction of a pool sixteen and a half feet from the front property line where a twenty-five foot setback is required, and to construct a fence twelve feet from the front property line where a twenty-five foot setback is required. This will require a variance for the pool and a variance for the fence. The property is located in an RS-4

zone. It is a single-family home built in 1957 located in the annexed portion of L-B-T-S. She explained that an in-ground pool will be built and the existing fence will be extended. He wishes to retain the fence and build a new portion that will extend across the front of the property. Both the pool and the fence require a variance application. The Town Code provides that a variance application shall be evaluated by considering certain criteria and she went over them separately.

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

The applicant's response was that this house was built further back than other homes in the neighborhood and that only left room for a pool in the front yard within the setback. The fence was there when the applicant purchased the property. The staff response was that they believe the applicant did not meet this criterion. Staff noted that there were other homes in the neighborhood built just as far back as this home. This demonstrates that this is not the only place where the pool can go or that this is the only size the pool can be. They could do a smaller pool located in a different location. Staff also questions the need to have a solid fence across the entire front property and whether having the fence twelve feet from the front property line is the minimum necessary to afford relief.

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.

The applicant's response was that the home is built further back on the site than other houses on the street or in the area, leaving a small backyard. The front yard in the only area available for a pool and to have a yard area. Having to locate the fence to a conforming location will leave hardly any room for an outside area. Staff does not believe this criterion is met by the application. Other properties are set back in a similar manner and have pools in areas that do not encroach on the front yard setback. They also do not have fences across the entire front of the property. There could be smaller/best shaped pool for the property other than the proposed location.

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 applicant's response was that the location and shape of the dwelling on the subject property does not leave room for any other area on the property for the pool. They also state that the fence existed on the property when they purchased it in 2003. They want to keep the fence in that location and just extend across the front of the property. Staff does not believe this criterion is met by the application. A different shape/size pool could fit in the side yard towards the front of the subject property without the need for a front yard variance. The applicant states that they want to keep the existing fence in the front, but the survey shows the existing fence at an angle on the property with setbacks from just less than ten feet to thirteen and a half feet from the property line. The plans show the existing fence in a straight line twelve feet from the property line indicating the applicant's intent to move the existing fence.

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

The applicant's response was that the hardship is not self-created, and that the home was built in 1957 in an irregular L-shape and pushed back on the site, causing a lack of side and rear

yard space. Staff does not believe this criterion is met by the application. Staff agrees that the applicant is not responsible for the shape or the location of the house on the property. Another pool configuration and a smaller deck could make it possible to site the pool in a conforming location. The property owner's unwillingness to amend the plan creates the need for the variance.

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.

The applicant's response was that the proposed changes will not change the look of the property from the street and that the proposed changes will reduce the visible area of the driveway/parking area while still leaving space for cars to park in the front of the house. He further believed that other properties with fences in their front yards do not have a visual impact on the neighborhood. Staff does not believe this application meets the criterion or that this is the minimum variance necessary to afford relief. The pool and fence can be placed in a conforming or near-conforming configuration.

Ms. Leven stated that the sixth and seventh criteria are not applicable to a pool application and fence application. Staff recommends denial of the variance request for both the pool and fence in its present form because it is not the minimum variance that will make possible the reasonable use of the property, and because the installation of a solid fence across the front of the property will have a visual impact on the surrounding properties and area and does not leave sufficient area for parking.

The Chair asked if the applicant would like to speak. Jack Thibaut said from the back of his house he has eight feet to the fence. He wants to know how he could put a pool there. Also, the fence was there when he bought the house as well as a hot tub that he replaced because it was broken. He said there is a swim spa there now. A small pool would be so much nicer for his children and it could fit in the front yard. He would like to know what kind of pool and where else it could be built on the property. Since the house was built in 1957, he understands why the Town might not have the fence permit paperwork. The Chair asked for questions for the applicant. Helene Wetherington asked about different formations and locations for the pool as stated in the staff report. She asked Susan Leven what possibilities were visualized. Development Services Director Linda Connors asked the board members to turn to the planning document. She pointed out the one-story residence and the tile deck and the location of the new pool. Mr. Thibaut said that the tile deck has been there ever since they bought the house in 2003. Ms. Connors said the property front yard setback is twenty-five feet. Once you hit twenty-five feet, you are not located in the front yard even if you are in the front of your building. Mr. Thibaut asked to see that document himself. This is a different configuration of the pool they were proposing that meets the setback criteria for the 25 foot setback.

Ms. Leven explained that the document is just a cut and paste and not an architectural drawing. As staff was not given other options, this was created to show an attempt to locate it on another part of the property to make it a little shorter or narrower in order to still have a pool, usable deck, and front yard space without requiring a significant variance. Ms. Connors explained about the least possible variance that could be granted to allow the reasonable use of the property. Mr. Thibaut said that he does not have an issue building a smaller pool. If the Town thinks this could be done and move the fence back that has been there since the house was built, he does not have any problem with that. Ms. Connors suggested that if Mr. Thibaut look

over alternates with his architect or engineer and/or pool builder and table this discussion until he has been able to review and to see if he needs a variance. If you don't need a variance, then you won't have to come back. If you do, maybe it will be only two feet instead of an entire variance. It could be something you can and the board can reconsider.

Helene Wetherington made a motion to table this agenda item #2017-V-02. The motion to table was seconded by Carmen Miller.

Mr. Thibaut thought they would need a variance to have a pool in the front yard. Ms. Connors said he should review it with his pool company. It may not need a variance at all. Ms. Connors explained to Mr. Thibaut to set a meeting after he reviewed this with his pool company to see what he can come up with to meet the code. If you can get something close to but just does not quite meet the code, then come back to a variance application. The Town could hold this and table it. The application can be amended so that you do not have to pay the fees again. Mr. Thibaut said that he would definitely look into this.

Ms. Connors said that because we do not have a date certain and there are members of the community in the audience, she said that she would re-notice this item. For benefit of those in the audience and for those listening to the meeting, she outlined what transpired. Annika Thibaut said that in public records you could see a Florida Room in the front of the home and every other home she has seen has it in the back of the home located close to the pool. She said there is no room in the back for a pool but as long as she can have a pool, she will work around it so that it works for everyone. Ms. Connors said that they should meet with their pool company and have them draw up a plan for a pool that meets the twenty-five foot setback. If you can get close, we have tabled your application. If you meet the requirements, we can close out this variance. If you don't meet the requirements, you can see if you can shrink the pool size or come before this board and ask for a lesser variance.

The Chair said that this application has been tabled until further notice. Since the public is here, he wants to give them the opportunity to speak. Kay Hall said that she was here because neighbors were concerned about the integrity of the street. She thinks that an alternative is a real good possibility if Mr. and Mrs. Thibaut can do it. Ms. Connors said that if this should come back again in front of the board, everyone would be noticed again. As there were no other members of the public wishing to speak, the Chair closed this portion of the public comments section of the meeting and the board will proceed on voting on the motion.

The motion to table case number 2017-V-02 carried unanimously (3-0).

OLD BUSINESS

There was no old business to discuss.

UPDATES/BOARD MEMBER COMMENTS

Helene Wetherington said the staff does a great job with the staff report. It is online and anyone can view it and familiarize themselves with the code. The Chair agreed with Ms. Wetherington.

ADJOURNMENT

Carmen Miller made a motion to adjourn at 5:30 PM. The motion to adjourn was seconded by Helene Wetherington. The motion to adjourn carried unanimously (3-0).

Chair John Graziano

ATTEST:

Date Accepted: 6/7/2017

LC