

TOWN OF LAUDERDALE-BY-THE-SEA

BOARD OF ADJUSTMENT MINUTES

Town Commission Meeting Room

Wednesday, May 2, 2012, at 6:30 P.M.

I. ELECTION OF OFFICERS

Rescheduled to the next meeting.

II. CALL TO ORDER

Assistant Town Clerk McCormick called the meeting to order at 6:30 p.m. Members present were Geri Ann Capotosto, Arthur Franczak, Henry Overton, Vernice Rapaport, Helene Wetherington, and first alternate Helen Swinghammer. Also present were Town Planner Linda Connors, and Assistant Town Attorney Kathryn Mehaffey. Assistant Town Clerk Glen McCormick was present to record the minutes of the meeting.

III. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

Town Planner Connors stated both the election of officers and approval of minutes would be deferred to the next regular Board of Adjustment (BOA) meeting in June.

IV. APPROVAL OF MINUTES

Regular Board of Adjustment Minutes of July 5, 2009, and December 7, 2011

Rescheduled to the next meeting.

V. WORKSHOP

Review of Board of Adjustment Procedures

Town Planner Connors reviewed the BOA procedures as detailed in the backup. She noted the BOA only met when there was a variance application for consideration, and the regular meeting day was the first Wednesday of the month at 6:30 p.m. in Jarvis Hall. The next meeting would be held Wednesday, June 6, 2012, at 6:30 p.m.

Ms. Wetherington sought guidance on reviewing variance applications, as the applicant was seeking approval for something that was, in and of itself, a violation of the Town's code or not being able to meet that standard. She asked if Town staff had any general guidance Board members should use when reviewing and making a decision whether to approve or deny a variance.

Town Planner Connors responded Board members should consider if there were any special circumstances; for example: whether the condition was self imposed, did it pose a hardship, did the literal interpretation of the Town code make it difficult to satisfy the code for the particular piece of property, was it the minimum variance needed to accomplish their goals. For instance, if an applicant wished to install a pool and it could only fit in a certain manner and how much into the setback it would encroach. They should also look at if the variance sought to allow a use that would not be permitted in another circumstance. She noted financial hardship was not a justification for granting a variance. The staff report for each application would highlight each criterion and her interpretation of the application, and there would be times when Board members would disagree with her recommendation(s).

Ms. Wetherington wondered if an applicant's presentation of affidavits of support for their planned improvements from their neighbors should have any bearing on a Board member's decision.

Town Planner Connors replied whether such affidavits weighed in the decision to grant a variance was up to individual Board members. She always recommended to applicants that they bring to the BOA hearings all the information possible, and if they

could demonstrate their neighborhood supported their plans, this was data the Board could use to evaluate the application, but Board members should always remember to stick to the criteria of the code for granting variances.

Ms. Wetherington sought clarification as to a self-imposed hardship.

Town Planner Connors responded a self-imposed hardship was one created by the applicant. For example, installing a paved patio without a permit that encroached on the setback, resulting in the Town code requiring its removal or a reduction of the patio at the property owner's expense.

Ms. Wetherington asked about Board members being approached by a community member involved in an issue that was to come before the Board, whether they were the applicant or was closely associated with the applicant.

Assistant Town Attorney Mehaffey remarked those were considered *ex parte* communications; that is, a conversation or any kind of communication occurring outside of the hearing, regarding an item that was or might be coming before the Board for review. She recommended Board members exercise extreme caution when dealing with *ex parte* communications and, to the extent that they could, they should not participate in them, though they were unavoidable at times. Once an *ex parte* communication took place, Board members should disclose the interaction regardless of the content; forward the information to Town Planner Connors, and she would coordinate the information with the Town Clerk. She stated if the *ex parte* communication was disclosed prior to the Board's meeting packet going out, it would be included in the packet. If the communication was oral, at any time before the next meeting, the information should be sent via email to Town Planner Connors or the Town Clerk, noting the conversation, who it was with and the basic subject matter of discussion. The record of such communications should also be forwarded to the applicant, and if the communication was not recalled, prior to discussing the item in the next meeting, Town staff would call upon Board members to reveal any *ex parte* communications. Assistant Town Attorney Mehaffey explained Board members could also tell the applicant or member of the public that, as the item would be coming up for approval at the next Board meeting, they were unable to discuss the details of the situation. Failure to disclose *ex parte* communications resulted in a prejudice and, if an applicant chose to appeal a Board decision and could prove there were significant *ex parte* communications that were never disclosed, it could result in invalidating the ruling on the variance.

Mr. Franczak wondered how the Board should go about approving one set of the minutes at the next Board meeting, as they were for a 2009 meeting; no current member of the Board could verify their accuracy.

Assistant Town Attorney Mehaffey pointed out the 2009 minutes for approval by the current Board was due to the Board of Adjustment meeting only twice in the last two years, and the 2009 minutes were not approved at those meetings. Every time there was a transition of every board and commission meeting across the country, the next board usually consisted mainly of members that were not present at a meeting whose minutes they had to approve.

Town Planner Connors gave the Board her email address and phone number: lindac@lbts-fl.gov, and noted that it was also located on the Town's website. She gave her phone number 954-640-4213 and stated that board members should not hesitate to contact her for information.

Assistant Town Attorney Mehaffey clarified Board members could discuss items on the agenda with members of the Town Commission, but they were considered *ex parte* communications and should be disclosed. Whenever an application or situation came before the Board that a Board member or someone they worked with might have some kind of financial relationship or interest in the subject matter or the application, Board members should call Town Planner Connors or her immediately. It was much easier to deal with potential or actual conflicts of interest issues in advance.

VI. UPDATES/BOARD MEMBER COMMENTS

None

VII. ADJOURNMENT

Having nothing further to discuss, Town Planner Connors adjourned the meeting at 7:01 p.m.


Chairperson

ATTEST:

Date Accepted: 6/6/12

Colleen Tyrrell, Board Secretary

CT/cc