

**BOARD OF ZONING APPEALS
MEETING
JANUARY 26, 2010**

MEMBERS PRESENT: Lynne Matthews, Chairman
David Baird, Henry Bauman, James McClary,
Ray Rose, Robert Sween

MEMBERS ABSENT: Richard Kilmer

OTHERS PRESENT: Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
Warren Ross, Bob Marcus, Mona Veery,
Marie Sellitto, Morgan Randolph,
Caroline Thonon, Jack Schlonager

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - February 23, 2010
- C. 2010 Meeting Dates
 - Ms. Matthews drew members' attention to the list of 2010 meeting dates, as delineated in the agenda material, asking if members had any objection to rescheduling the last meeting of 2010 to December 21, 2010.
 - Consensus of the Board was approval of same.

APPROVAL OF MINUTES

- A. Meeting of November 24, 2009
 - Mr. Bauman MOVED, Mr. Rose SECONDED approval of the November 24, 2009 minutes. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS

- Recording Secretary Kelly swore in all participants.
- A. V-04-09 - (1) Request for a variance to the Land Development Regulations per Section 16-16.10 of the City Code to allow an existing swimming pool and deck to have a rear yard setback of 6.2 feet instead of 20 feet as required per City Code Section 26-3.13(d); and to allow the wooden steps that extend to the seawall cap instead of having a maximum 5 foot encroachment into the required yard as allowed per City Code Section 26-8.14(f); and to allow the existing swimming pool deck to have a side yard setback of 4.73 feet at the closest point on the south side of the property instead of 7.5 feet as required by City Code Section 26-3.4(g)(3); and a variance to allow an existing 24.82 foot street yard setback on the existing single family residence instead of 25 feet as required by City Code Section 26-3.4(g)(2); (2) a request to allow a new

screen enclosure to be constructed over the existing swimming pool deck with an existing non-conforming rear yard setback of 6.2 feet instead of 20 feet as required by City Code Section 26-3.13(d); and to allow the new screen enclosure to have a non-conforming side yard setback of 4.73 feet at the closest point instead of 7.5 feet as required by City Code Section 26-3.4(g)(3).

LEGAL: Block 72, Lot 8, Punta Gorda Isles Section 7 of the Public Records of Charlotte County, Florida (a/k/a 841 Pamela Drive, Punta Gorda, Florida).

- Ms. Teri Tubbs, Zoning Official, displayed an overhead of the site location, as delineated in the agenda material, noting V-04-09 had been continued from November 24, 2009, at the applicant's request. She announced there were two parts to this variance request: (1) to allow the existing, non-conforming setbacks in order to clear title to the property; (2) to allow a screen enclosure to be constructed on the existing, non-conforming pool deck. She stated the pool was constructed in 1977, at which time the required rear yard setback for the pool was 15 feet. She noted per the survey provided, the pool had an existing rear yard setback of 6.2 feet and a south side yard setback of 4.73 feet. She pointed out no evidence of a prior variance could be found, adding it was unknown why or how the pool was constructed at this setback. She advised there were also existing wooden steps extending from the rear of the pool deck to the seawall cap which encroached more than the permitted five feet. She recommended approving the request to allow the existing, non-conforming setbacks in order to clear title; however, staff recommended denial of the request to allow a screen enclosure as this would increase the non-conformity, adding that portion of the application did not meet the literal criteria for hardship.
- Ms. Matthews asked if staff was seeking two separate motions.
- Ms. Tubbs replied affirmatively.
- Ms. Matthews asked if the non-conforming structure existing on the property was permitted.
- Ms. Tubbs replied a building permit card was located; however, staff could find no record of a final inspection. She then stated she had received correspondence from the Punta Gorda Isles (PGI) Civic Association (CA) Board of Directors expressing the Board's recommendation for denial of construction of a pool cage.
- Ms. Matthews commented she understood the Board could not recommend approval of an action which would extend an existing, non-conforming structure.
- Mr. Warren Ross, applicant's attorney, announced the applicants were not informed prior to closing on this home in 2001 of the problems associated with constructing a pool cage. He opined the records indicated a number of inspections took place in the

1970s; however, there was no indication of the City's observance of any of the subject problems. He continued a screen enclosure would provide more safety against trespassers, noting his clients traveled extensively. He mentioned the existing fence was greater than four feet in some places and less than same in others. He pointed out State law required a minimum, four-foot barrier around pools, stating a locked screen enclosure provided a greater element of safety. He further stated he did not feel consideration should be given to the issue of "extending a non-conformity." He explained the non-conformity was the encroachment into the setback as opposed to the pool deck itself. He clarified that part of the non-conforming structure which would violate the ordinance could not be expanded, adding since the ordinance in question addressed the vertical as opposed to horizontal distance, he submitted there was no expansion of the non-conformity. He commented on aesthetics, stating all pools within at least one-half mile had pool cages. He noted several neighbors had written letters of no objection to the pool cage, which would not obstruct the view of any of the applicant's neighbors. He submitted into the record documentation from similar variance applications in Naples and Fort Myers, noting same were subsequently approved. He then commented on the issue of hardship, often the most difficult criteria to support, suggesting the appropriate definition was found in the District Court of Appeals case law. He testified hardship in that case law was something which inflicted practical difficulty or unnecessary hardship. He addressed the public policy set forth in Chapter 515 of the Florida Building Code which required either pool cages or a higher fence for pools constructed since 2001 as well as the granting of such variances by other jurisdictions, suggesting the hardship criteria should be viewed in a manner where the benefit of doubt was given to the applicants.

- Mr. McClary asked if the applicant planned on removing the existing fence.
- Mr. Ross replied affirmatively.
- Mr. Bob Marcus, 845 Pamela Drive, stated he resided adjacent to the subject property, confirming he had no objection to this request.
- Ms. Mona Veery spoke in support of the applicants' request, stating she believed same would add to the beauty of the neighborhood.
- Ms. Marie Sellitto, 801 Pamela Drive, announced she resided two houses away from the subject property and expressed support of the application based on the extra safety provided by a pool cage.
- Ms. Matthews called three times for anyone to speak on V-04-09.
- Mr. Bauman MOVED, Mr. McClary SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.

- Mr. McClary noted the Board had recently been presented with a similar case and had recommended denial of the portion of the request relative to a pool cage; however, City Council had then voted to approve all portions of the request. He concluded he personally had no problem with this request.
 - Mr. Bauman stated he was more in favor of granting the request than denying same, explaining he believed there was an issue of safety and health. He pointed out the footprint would be the same, adding the applicants' neighbors supported the request as well.
 - Mr. Sween opined the increased safety of a pool cage over a four foot fence would be a significant plus.
 - Mr. Rose recalled the case described by Mr. McClary was somewhat different in that it had been located near a bridge and embankment. He stated the required setbacks were appropriate in that they allowed a visual line the entire length of the canal. He opined the fence should be replaced if it was less than four feet in order to comply with State regulations.
 - Mr. McClary confirmed the pool deck was elevated approximately 30 inches, noting the 4 foot fence was on top of same.
 - Ms. Matthews acknowledged the similarities between this and the case referred to by Mr. McClary; however, each case must be considered on its own merits. She disclosed she had driven by the home as well as on the street across the canal from the rear of the home. She stated she had no problem recommending approval of the first part of the request; however, she was opposed to extending an existing non-conformity by allowing the pool cage.
 - Mr. Bauman MOVED, Mr. Sween SECONDED to recommend approval of that portion of V-04-09 pertaining to existing, non-conforming setbacks based on the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.
 - Mr. Bauman MOVED, Mr. McClary SECONDED to recommend approval of that portion of V-04-09 pertaining to construction of a screen enclosure based upon the evidence and testimony presented.
 - VOTING AYE: Bauman, McClary, Sween.
 - VOTING NAY: Baird, Rose, Matthews.
 - MOTION FAILED.
- B. V-01-10 - Request for a variance to the Land Development Regulations per Chapter 26, Article 16, Section 16.10, of the City Code to allow a newly constructed, attached garage to have a side yard setback of 3.8 feet at the closest point instead of 5 feet as required by City Code Chapter 26, Article 3, Section 3.7(g)(3); and to allow a newly

constructed driveway to have a side yard setback of .9 feet at the closest point instead of 5 feet as required by City Code Chapter 26, Article 10, Section 10.3(h)(12).

LEGAL: Block 76, Lots 8 & 9, City of Punta Gorda of the Public Records of Charlotte County, Florida (a/k/a 503 McGregor Street, Punta Gorda, Florida).

- Ms. Tubbs displayed an overhead of the site location, as delineated in the agenda material, stating the single family residence was constructed in 2009. She noted the building permit was issued in 2008 with the requirement per Section 6.9(b) which required a foundation location survey. She explained City Code required no building or structure to be constructed beyond the stem wall or foundation surveys until the foundation location had been inspected and approved by the Zoning Official or designee. She clarified Section 6.9(b) of the City Code stated any construction done prior to this approval, particularly with respect to location and setback, was done at the contractor's risk. She explained the applicant was requesting allowance of a newly constructed garage with a side yard setback of 3.8 instead of 5 feet and to allow a newly constructed driveway to have a side yard setback of .9 feet instead of 5 feet. She pointed out strict application of these regulations would create significant financial hardship to the contractor and/or property owner; however, literal interpretation of a variance hardship related to physical characteristics of the property which would prevent use of the property, adding no such hardship could be found. She stated the setback deviations were due to an error and were not the original plan; however, the contractor proceeded with construction "at risk" as stated above. She noted the error could have been mitigated without incurring significant costs for the contractor and/or property owner. She stated granting of the requested variance would not be injurious but could be perceived to be incompatible with the contiguous uses and surrounding neighborhood. She asserted granting the variance would be contrary to the public interest and stated purpose of the ordinance. She confirmed the requested variance represented the minimum modification of the regulation without requiring demolition and removal of sections of the garage and driveway in order to conform to the required setbacks. She summarized the application did not meet the literal criteria. She concluded the Urban Design Division submitted these findings and conclusions for the Board's consideration, adding staff recommended denial of V-01-10.
- Mr. McClary referenced a right-of-way (ROW) on the overhead, asking if same was owned by a utility.
- Ms. Tubbs replied it was an undeveloped City ROW.
- Mr. McClary asked if the City anticipated the ROW would be abandoned at some time.

- Ms. Tubbs replied it would most likely remain undeveloped. She explained the City's practice was to not vacate undeveloped ROWs as same would affect the City's storm water permit with the State as to keeping certain green areas open and available.
- Mr. Sween asked if there could be a conflict with the City's construction of a "ring around the City."
- Ms. Tubbs replied she did not believe so.
- Mr. Rose questioned the source of the survey error.
- Mr. Morgan Randolph, applicant and contractor, explained this was a historical site, adding he had attempted to work off of the existing foundation in their effort to restore the home; however, when he attempted to raise same, it fell apart, adding he had already started the foundation under the original part. He continued after the home was finished, he obtained a garage permit but missed the mark on the measurements. He clarified the encroachment was 5.3 feet plus or minus.
- Ms. Tubbs confirmed the encroachment did not extend beyond the property line.
- Ms. Matthews called three times for anyone to speak on V-01-10.
- Mr. Bauman MOVED, Mr. Rose SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Rose commented he felt the encroachment was minor and would not be noticeable.
- Ms. Matthews disclosed she drove by the home, stating she did not believe granting this request would encroach upon anyone's privacy or right to full use of their property. She then asserted blatantly ignoring the rules was unacceptable, stating there should be some liability on the part of the contractor for fixing the problem at some point. She suggested the Board's motion include a recommendation to vacate at least the driveway portion of the encroachment at the expense of the contractor.
- Mr. Sween asked who maintained the City's property.
- Ms. Tubbs replied the City did so.
- Ms. Matthews observed there seemed to be a small canal adjacent to the property.
- Ms. Tubbs explained it was close to the tidal creek.
- Ms. Matthews clarified there would be no construction within the space between the house and the tidal creek.
- Mr. Bauman MOVED, Mr. Sween SECONDED to re-open the public hearing to allow Mr. Randolph to comment. MOTION CARRIED UNANIMOUSLY.
- Discussion ensued with regard to possible mitigation efforts.
- Mr. Bauman MOVED, Mr. Baird SECONDED to re-close the public hearing. MOTION CARRIED UNANIMOUSLY

- Mr. Rose MOVED, Mr. Sween SECONDED to recommend approval of V-01-10 based upon the evidence and testimony presented.
 - VOTING AYE: Baird, Bauman, McClary, Rose, Sween.
 - VOTING NAY: Matthews.
 - MOTION CARRIED.
- C. V-02-10 - Request for a variance to the Land Development Regulations per Chapter 26, Article 16, Section 16.10, City Code, to allow an existing ground sign to remain in place for the multi-tenant commercial building located at 212 West Virginia Avenue instead of removing said ground sign, which would otherwise be required by Chapter 26, Article 11, Section 11.4(e)(7)(c), City Code, upon installation of 3 new façade signs as proposed by the applicant (a prior variance was granted to allow the existing ground sign to be 30 square feet in area instead of 16 square feet in area as permitted and to allow the ground sign to be 9 feet/8 inches in height instead of a maximum of 5 feet in height as permitted by City Code).
- Ms. Tubbs displayed an overhead of the subject area, as delineated in the agenda material, which was constructed in 1979 and was set back from the fronting rights-of-way (ROWS) of West Virginia Avenue and Sullivan Street. She noted the property was previously granted a variance to allow the existing ground sign, which had sufficient space to include all tenants on the signs, to be constructed at 30 square feet in area instead of 16 as permitted and at 9 feet 8 inches in height instead of the maximum of 5 feet; thus, no hardship existed for the property owner. She advised approval of the variance would not be of substantial detriment to adjacent properties; however, the historic district's character could be compromised by allowance of a proliferation of additional signage in that the existing ground sign could be utilized, reiterating no hardship could be found to justify additional modification. She clarified the request was to allow the existing ground sign to remain in place in conjunction with proposed façade signage. She stated the variance request did not involve any use which was prohibited in the City Center (CC) zoning district and was consistent with the Comprehensive Plan. She concluded with a recommendation for denial of the request as it did not meet the required criteria, offering to answer any questions relative to V-02-10.
 - Mr. Bauman confirmed either the ground or façade signage was allowed, further asking if both would be allowed with an approved, uniform sign plan.
 - Ms. Tubbs replied affirmatively but only for multi-building properties, not multi-tenant.
 - Mr. Rose asked if any façade signage would be allowed in addition to the ground sign such as that identifying each individual business.

- Ms. Tubbs replied a directory sign would be permitted to identify each unit; however, this would not necessarily be legible from the fronting ROW.
- Ms. Caroline Thonon, applicant, stated she purchased this property in 2009, adding it was almost impossible to rent the units as the existing ground sign only allowed for two names. She noted the building was constructed over two lots with 17 parking spaces; thus, she felt it was sufficiently large to warrant façade signage.
- Ms. Matthews questioned the basis for only placing two business signs on the ground sign.
- Ms. Thonon replied she had purchased the property in that condition.
- Ms. Matthews countered the sign allowed for five names.
- Ms. Thonon agreed; however, she felt it was more logical and aesthetically pleasing to have something on the large, front façade in that the building was quite large
- Ms. Matthews called three times for anyone to speak on V-02-10.
- Mr. Rose MOVED, Mr. Bauman SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Sween clarified the sign with only two business names displayed by the applicant could support five business names.
- Ms. Tubbs concurred, stating there had only been two tenants in the building when the existing two signs were put in place.
- Mr. Baird MOVED, Mr. McClary SECONDED to re-open the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Baird asked Ms. Thonon if she would rather have façade signage or the ground sign with five individual business signs in the event she had to choose one or the other.
- Ms. Thonon replied she would prefer the façade signs, explaining the windows of the business spaces within were quite small. She explained the problem was visibility from the street.
- Ms. Matthews clarified the three façade signs were proposed for the three businesses on the lower floors, asking how the applicant would identify the second floor businesses.
- Ms. Thonon expressed uncertainty regarding same.
- Ms. Tubbs recalled that issue had been discussed during the original variance discussions; however, the design of the building did not lend itself very well to façade signage.
- Mr. Bauman pointed out a directory could be placed on the front, center pillar.

- Ms. Matthews called three times for any one to speak on V-02-10. MOTION CARRIED UNANIMOUSLY.
 - Mr. Bauman MOVED, Mr. Rose SECONDED to re-close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. McClary acknowledged signage at this location was difficult due to traffic and the flow of same.
 - Mr. Rose commented he had observed two hanging banners, one on the street sign and one on the building. He asked if the ongoing Land Development Regulations (LDRs) Review would have any impact on this issue.
 - Ms. Tubbs replied affirmatively, specifically on temporary banners.
 - Ms. Matthews asked if a lower, smaller ground sign would be allowed if a method of including façade signage for all five businesses could be found.
 - Ms. Tubbs replied a variance would be required.
 - Ms. Matthews clarified a completely new application, including the accompanying fee, would be required.
 - Ms. Tubbs agreed, explaining the public hearing process required same.
 - Ms. Matthews asked if the City could assist with the new cost.
 - Ms. Tubbs replied she understood City Council did not wish to be presented with requests for fee waivers.
 - Mr. Rose MOVED, Mr. Bauman SECONDED to recommend denial of V-02-10 based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.
- C. AV-02-09 - Request for an Administrative Variance, per City Code Chapter 26, Section 16.10(l), on an existing single family structure located at Block 235, Lot 111, Punta Gorda Isles Section 15-Replat, a/k/a 3310 Tripoli Boulevard, Punta Gorda, Florida, to allow an existing side yard setback of 5.7 feet instead of 7.5 feet as required by City Code Chapter 26, Article 3, Section 3.4(g)(3); and to allow an existing driveway with a side yard setback of 3.3 feet from the south side property line instead of 6 feet as required by City Code Chapter 26, Article 10, Section 10.3(h)(12).
- Ms. Tubbs displayed an overhead of the subject area, as delineated in the agenda material, stating a written objection had been received regarding a request for an administrative variance relative to this property. She explained the request was submitted to allow the title to be cleared which was necessary for sale of this foreclosed property constructed in 1980. She noted the single family residence was issued a Certificate of Occupancy (C.O.) on November 20, 1980, according to the records of the Building Division. She concluded the application met the criteria for an

administrative variance; thus, the Urban Design Division recommended approval of AV-02-09.

- Ms. Matthews confirmed there was no one present who wished to speak in opposition to this request.
- Mr. Jack Schlonager, realtor, stated the property had existed in this condition for 30 years, adding they were simply trying to clear title.
- Ms. Tubbs advised she would speak with the City Attorney with regard to the next step in that the individual who submitted an objection was not present. She mentioned this was the first instance of this kind she had encountered in 15 years.

MEMBER COMMENTS

- Mr. Rose stated he understood the Board could not consider written comments if the writer was not present during a public hearing.
- Ms. Tubbs replied written comments were considered hearsay during quasi-judicial proceedings and should not be considered.

ADJOURNMENT

- Meeting Adjourned: 5:22 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary