

**BOARD OF ZONING APPEALS
MEETING
MAY 24, 2011**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, Richard Kilmer, James McClary,
Gene Murtha, Ray Rose, Robert Sween

OTHERS PRESENT: Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
James McCarty

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
 - 1. 2011 Meeting Dates
 - Ms. Matthews confirmed members had received the list of 2011 meeting dates in their agenda packets, asking if the Committee wished to reschedule their December 27, 2011 meeting to December 20, 2011.
 - Consensus of the Board was to do so.
 - 2. Election of Officers
 - Recording Secretary Kelly opened the floor for nominations for Chairman.
 - Mr. McClary NOMINATED Ms. Matthews for Chairman.
 - As there were no other nominations, Ms. Matthews was appointed Chairman by acclamation.
 - Ms. Matthews opened the floor for nominations for Vice Chairman.
 - Mr. McClary NOMINATED Mr. Bauman for Vice Chairman.
 - As there were no other nominations, Mr. Bauman was appointed Vice Chairman by acclamation.
- B. Next Scheduled Meeting
 - 1. June 28, 2011
 - Ms. Matthews announced she would be unavailable for the July 26, 2011 meeting.

APPROVAL OF MINUTES

- A. Meeting of October 26, 2010
 - Mr. Bauman MOVED, Mr. Kilmer SECONDED approval of the October 26, 2010 minutes.
MOTION CARRIED UNANIMOUSLY.

QUASI-JUDICIAL PUBLIC HEARINGS

- Recording Secretary Kelly swore in all participants.
- A. V-01-11 – Request for a variance to the Land Development Regulations per Chapter 26, Section 26-16.10, Punta Gorda Code, to allow a newly constructed pool deck on an

existing structure to have rear yard setbacks of 18.6 feet and 19.6 feet instead of 20 feet as required by Chapter 26, Section 26-3.13(d), Punta Gorda Code; and to allow a newly constructed pool deck on an existing structure to have side yard setbacks of 7.2 feet and 7.4 feet instead of 7.5 feet as is required per Chapter 26, Section 26-3.4(g)(3), Punta Gorda Code, for property located in the General Single Family (GS) zoning district. LEGAL: Block 4, Lot 14, Punta Gorda Isles Section 4 of the Public Records of Charlotte County, Florida (a/k/a 2281 Bayview Road, Punta Gorda, Florida).

- Ms. Teri Tubbs, Zoning Official, displayed an overhead depicting the subject location, as delineated in the agenda material, stating the homeowner had contracted with Tropical Pool and Spas of Southwest Florida (Tropical Pools) to construct a swimming pool and paver deck which would maintain the 20 foot rear yard setback, as depicted on the permit application. She mentioned the application was initially rejected due to lack of a survey which was less one year old. She confirmed the applicant was made aware of the foundation location requirement prior to construction. She noted a January 6, 2009, inspection by the Building Division failed as the pool shell was found to be only 17 feet from the seawall. She stated prior to that time, an application for a screen enclosure was submitted which was accompanied by a copy of the survey provided with the original permit depicting a 20 foot setback. She continued the pool enclosure permit was approved; however, a plans change was submitted after that time with a larger enclosure, adding the plans change indicated the slab had been enlarged. She explained the Zoning Division had never approved the plans change for a larger slab. She displayed the final survey showing the closest point at 18.6 feet, tapering down to 19.6 feet, and the left side of the new slab/deck area was 7.2 feet at the closest location. She attested to her staff report, as delineated in the agenda material, stating there were no special conditions relative to the subject property as there numerous cul-de-sac lots within the Punta Gorda Isles (PGI) subdivision. She further stated staff could find no hardship when new construction was not done according to plans. She summarized the request did not meet the criteria required by City Code for approval of a variance; thus, staff recommended denial of V-01-11.
- Ms. Matthews asked if a foundation location survey was submitted before this project was started.
- Ms. Tubbs replied a survey was submitted prior to construction; however, the deck was constructed in a manner inconsistent with the approved plot plan. She continued the required foundation location survey was not submitted until the enclosure application was provided, adding the foundation location for the pool differed from the enclosure application.

- Ms. Matthews asked when the pool was constructed.
- Ms. Tubbs replied approximately one year earlier.
- Mr. James McCarty, applicant, stated he originally purchased this property approximately six years earlier for \$675,000 during the housing “boom”; however, the property was currently appraised at \$300,000 or less. He mentioned he spent five weeks per year in the home, commenting favorably on the neighborhood and community. He noted he had renovated the property, providing a detailed description of same. He asserted the property had been surveyed three times since he had purchased same. He acknowledged the contractor had built the pool too close to the seawall, adding he had conducted these various transactions long distance. He explained it appeared the contractor took the measurement off the back of the house as opposed to off of the seawall; however, the home was situated somewhat oddly on the lot. He maintained the property was pristine, adding his neighbors were delighted with all of the work which had been done.
- Ms. Matthews opined Tropical Pools should assume liability.
- Mr. McCarty questioned whether the City would require him to tear down what had been constructed, asserting there were numerous properties with similar construction.
- Mr. McClary clarified the contractor simply measured from the wrong point.
- Mr. McCarty interjected he planned to eventually relocate permanently to this property. He maintained there were numerous homes in disrepair in the community, expressing frustration at being penalized for enhancing the property’s appearance.
- Ms. Matthews reminded everyone the Board was bound by the criteria provided within the City Code.
- Mr. Kilmer observed the applicant depicted on the variance application was actually the pool contractor, confirming there was no representative present.
- Mr. McCarty explained Mr. Ralph DiCarlo, pool contractor, was experiencing serious health issues, opining same had accentuated some of the trouble.
- Mr. McClary commented on the importance of the community’s appearance to property values, adding he did not believe the Board should overlook same. He asserted the economy would worsen before it began to improve, resulting in continued deterioration of many homes.
- Mr. Bauman acknowledged this was new construction; however, the Board had taken favorable positions on other variance applications. He noted he personally found the above described measurements to be insignificant as compared to that required by City Code.

- Mr. Kilmer clarified Mr. McCarty had a contract with Tropical Pools, asking if the contractor was simply walking away from this problem.
- Mr. McCarty replied they were not; however, he stated legal fees would be incurred if he was required to tear out the construction.
- Mr. Rose questioned the amount of clearance between the end of the pool and the stem wall.
- Mr. McCarty replied the cage was set on the pool itself.
- Mr. Rose asked if corrective action would affect the pool.
- Mr. McCarty replied the pool would need to be removed as well as the enclosure. He pointed out the locations of the pool, enclosure and stem wall on the displayed survey, reiterating he had been forced to pay for three surveys.
- Mr. Rose asked if all three surveys were identical.
- Mr. McCarty replied affirmatively.
- Ms. Tubbs countered the two surveys provided by the same company were identical; however, the other depicted a different streetyard setback.
- Discussion ensued with regard to the differences between each of the three surveys and possible reasons for same.
- Ms. Matthews called three times for anyone to speak on V-01-11.
- Mr. Kilmer MOVED, Mr. Bauman SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Kilmer commented the unexplainable differences between the surveys were not the fault of the homeowner.
- Mr. Bauman MOVED, Mr. Sween SECONDED to find V-01-11 consistent with the City's Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented.
- Ms. Matthews requested City Council be advised of the details of this hearing as same were crucial to the final decision.
- Mr. Kilmer further requested City Council be made fully aware of the discrepancies in the three surveys.
- MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

- A. Results of November 17, 2010 City Council Meeting
 - Ms. Tubbs reported City Council had denied V-06-10, noting the Board had recommended same at their October 26, 2010 meeting.

COMMITTEE/BOARD COMMENTS

- Mr. Rose announced he would not be available for the Board's June 2011 meeting.

ADJOURNMENT

- Meeting Adjourned: 4:48 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary