

**BOARD OF ZONING APPEALS
MEETING
NOVEMBER 22, 2011**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, James McClary,
Gene Murtha, Ray Rose, Paul Sacilotto

MEMBERS ABSENT: Richard Kilmer, Robert Sween

OTHERS PRESENT: Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
Garrett Kizer, Jonathan Rubin, Don Teets

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
 - 1. December 20, 2011
 - Ms. Matthews announced the Board's next meeting had been re-scheduled to the third Tuesday of the month due to the holidays.

APPROVAL OF MINUTES

- A. October 25, 2011
 - Mr. Bauman MOVED, Mr. McClary SECONDED approval of the October 25, 2011 minutes. MOTION CARRIED UNANIMOUSLY.

QUASI-JUDICIAL PUBLIC HEARINGS

- Deputy City Clerk Stewart swore in all participants.
- A. V-03-11 - Request for a variance to the Land Development Regulations (LDRs) pursuant to Chapter 26, Section 26-16.10, Punta Gorda Code, to allow a new, 2-car garage addition to be constructed and attached to the historic structure addressed as 413 West Retta Esplanade with a street yard setback on the Durrance Street side of the property of 4.1 feet instead of 10 feet as is required per Chapter 26, Section 26-3.7(g)(2), Punta Gorda Code. Said property is zoned Neighborhood Residential-10 Units per Acre (NR-10) and is located within the National Register Historic District (NRHD).

Legal: A part of Lot H and all of Lot B, measuring 73 feet by 140 feet, in the Northwesterly corner of the East one-half of Block 8, a Subdivision of Block 8, City of Punta Gorda, Florida, recorded in Plat Book 1, Page 34, of the Public Records of Charlotte County, Florida; and that portion of an alley described in that deed dated March 5, 1986, recorded in Official Records Book 859, Page 1,673, of the Public

Records of Charlotte County, Florida (a/k/a 413 West Retta Esplanade, Punta Gorda, Florida).

- Ms. Teri Tubbs, Zoning Official, displayed an overhead of the subject property and entered her staff report, as delineated in the agenda material, into the record. She advised staff found the application met the criteria required for a variance and therefore recommended approval of the request. She acknowledged the site was large enough to construct the garage elsewhere on the property; however, due to the configuration of the wrap-around porch, location of the garage on that side of the property could detrimentally impact the architectural and historic character of the home.
 - Ms. Matthews questioned if a garage had ever existed on this property in the past.
 - Ms. Tubbs replied she did not believe so but rather only a carport. She mentioned the carport had been enclosed on three sides.
 - Mr. Garrett Kizer, applicant's representative, offered to answer any questions.
 - Mr. McClary requested clarification on the proposed location of the garage.
 - Ms. Matthews replied the garage would be built on the Durrance Street side, specifically the rear of the property. She then called three times for anyone to speak on V-03-11.
 - Mr. Sacilotto MOVED, Mr. Bauman SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Sacilotto MOVED, Mr. Bauman SECONDED to find V-03-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.
- B. V-04-11 – Request for a variance to the LDRs pursuant to Chapter 26, Section 26-16.10, Punta Gorda Code, on an existing single-family structure to allow a sidewalk in the required drainage area of the side yard of the property instead of sod as is required per Chapter 26, Sections 26-8.13(a) and 26-8.13(f)(2), Punta Gorda Code; and to allow the sidewalk to have a setback of 0 feet instead of 3 feet as required by Chapter 26, Section 26-8.14(h), Punta Gorda Code, and to allow two walkways for access to the seawall instead of a single walkway as is permitted by Chapter 26, Section 26-3.13(t), Punta Gorda Code.
- Legal: Block 10, Lot 34, Punta Gorda Isles Section 4 of the Public Records of Charlotte County, Florida (a/k/a 2284 Palm Tree Drive, Punta Gorda, Florida).
- Ms. Tubbs displayed several overheads depicting the subject property, as delineated in the agenda material, stating the property owners had installed a 33.5 inch sidewalk along the south side of the property line. She advised City Code required all sidewalks

to be a minimum of three feet from any property line, adding the side yard area, where the walkway was located, was designated as a drainage area and was required to be sodded. She pointed out two walkways to a large dock in the rear of the property were existing; however, City Code allowed only one. She then stated the applicant had become disabled since purchasing the property and thus needed the walkway to access the side and rear yards. She noted drainage in the side yard was provided by use of French drains and other vegetation; thus, other than the literal reading of City Code, the Urban Design Division had no objections to V-04-11 in order to facilitate the accessibility needs of the property owner. She entered her staff report, as delineated in the agenda material, into the record, offering to answer any questions. She drew members' attention to correspondence from Ms. Mary Seal and Mr. Roger Seal, 2284 Palm Tree Drive, as delineated in the agenda material, noting they resided across the right-of-way from the applicant. She announced the Seals expressed approval of the applicant's proposal. She pointed out there was no easement in the side yard as was the case on a number of older properties.

- Ms. Matthews observed Finding #1, as delineated on page 33 of 60, indicated the site was a "standard 80'x12' developed lot in Punta Gorda Isles ...", confirming the correct size was 80'x120'. She then announced members had just been provided with several letters of objection from the owner of the property directly adjacent to the subject location, submitting copies of same into the record.
- Mr. McClary questioned the depth and composition of the French drain.
- Mr. Jonathan Rubin, applicant, replied the French drains were set at a depth of five feet. He reported a study was conducted which determined the level of drainage far exceeded sod's ability to absorb water, specifically ten times the level of drainage attained through the use of sod. He concluded with an explanation of the physical/medical difficulties he had experienced dating back to August 10, 2010, confirming members had been provided with a copy of a statement from his physician in their agenda packets.
- Ms. Matthews clarified the walkways were non-conforming and had been installed without a permit.
- Mr. Rubin interjected his doctor insisted he have a level surface upon which to walk, adding he observed several, similar walkway configurations throughout the neighborhood. He mentioned he had applied for and received numerous permits over the past two years during renovation of his home; however, the contractor who installed the walkways advised a permit was not required as sidewalks were not considered a structure.

- Ms. Matthews asked who had installed the walkways.
- Ms. Tubbs replied she did not have that information in hand.
- Mr. Don Teets, general contractor, stated he had been contacted by the adjacent property owner, Ms. Pauline Kaiser, relative to a water leak. He mentioned only at that time did Ms. Kaiser become aware their neighbors' sidewalk had encroached onto their property. He explained Ms. Kaiser's concern was related to drainage or the lack thereof. He displayed a photograph, taken on August 5, 2011, depicting a coping which ran down the side of the pavers; however, the coping had been removed as evidenced by its disappearance in a subsequent photograph, expressing concern the coping may have been necessary.
- Mr. McClary asked if the coping had been located on the applicant's property or Ms. Kaiser's.
- Mr. Teets expressed uncertainty regarding same.
- Mr. Rubin interjected he had removed the coping for aesthetic reasons.
- Mr. Teets urged the Board to continue V-04-11 until Ms. Kaiser returned to the area and was able to attend the public hearing.
- Mr. Rose inquired as to the basis for Mr. Teet's involvement in this case.
- Mr. Teets replied he had worked on Ms. Kaiser's home following Hurricane Charley in August 2004.
- Mr. Murtha noted the agenda material stated the seawall at the subject location had to be repaired twice, asking if it had been proven conclusively same was the result of poor drainage.
- Mr. Rose asked if the second incident involving the seawall resulted in a complete replacement as opposed to a repair.
- Mr. Rubin explained no sod had been laid on the side of the home where the seawall failed, adding water had seeped in behind the seawall.
- Mr. McClary confirmed the Kaisers had been properly notified of this hearing, pointing out they had gone as far as requesting Mr. Teets' attendance; however, it appeared they were now requesting a continuance.
- Mr. Rose questioned the availability of specifications for the French Drain system
- Mr. Rubin explained a stone/seashell layer was in place underneath the pavers, stating that layer assisted with absorption of the water.
- Mr. Bauman stated it appeared Mr. Teets' involvement was originally due to a problem with Ms. Kaiser's sprinkler system.
- Mr. Teets agreed; however, he reiterated an issue of poor drainage subsequently became evident.

- Discussion ensued with regard to the mechanics of a French Drain system.
- Ms. Matthews called three times for anyone to speak on V-04-11.
- Mr. Rose MOVED, Mr. Bauman SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Sacilotto opined it was impossible to determine the sufficiency of the French Drain system without having an opportunity to review its specifications.
- Mr. Rose MOVED, Mr. Bauman SECONDED to find V-04-11 consistent with the Comprehensive Plan and to recommend approval of same based upon the evidence and testimony presented.
- VOTING AYE: Bauman, McClary, Murtha, Rose.
- VOTING NAY: Sacilotto, Matthews.
- MOTION CARRIED

UNFINISHED BUSINESS

- A. Results of November 2, 2011 City Council Meeting
 - Ms. Tubbs announced V-02-11 had been approved by City Council contingent upon the owner being responsible for any damage to the property as a result of seawall maintenance by the City.
 - Ms. Matthews stated she understood City Council found no reason to remove a pool in better than good condition, adding she felt same was illogical as the request did not meet the variance criteria specified in City Code. She asserted she strongly opposed City Council's decision, pointing out three advisory boards/committees recommended denial. She stated it was unfortunate City Council did not listen to their advisory boards/committees.

ADJOURNMENT

- Meeting Adjourned: 4:35 p.m.

Lynne Matthews, Chairman

Sheri Stewart, Deputy City Clerk