

**BOARD OF ZONING APPEALS
MEETING
FEBRUARY 26, 2008**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, David Brower, Larry Hofmeister,
Richard Kilmer, James McClary, Ray Rose

MEMBERS EXCUSED: Randy Fassett

OTHERS PRESENT: Teri Tubbs, Zoning Official
Perri Turner, Engineering Technician
Lisa Hannon, Zoning Coordinator
Richard Benson, Canal Maintenance Supervisor
Mayor Larry Friedman
Bob Crispin, Ken Milton, David McKee, Aaron White

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- Ms. Matthews welcomed Mr. Rose, announcing he was recently appointed as an Alternate Board member.
- B. Next Scheduled Meeting - March 25, 2008
- C. Last Scheduled Meeting - October 23, 2007
- D. Election of Officers
- Recording Secretary Kelly opened the floor for nominations for Chairman.
 - Mr. Bauman 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.

APPROVAL OF MINUTES

- A. Meeting of October 23, 2007
- Mr. Hofmeister MOVED, Mr. Kilmer SECONDED approval of the October 23, 2007 minutes. MOTION CARRIED UNANIMOUSLY.

OLD BUSINESS

- A. Results of City Council Action on November 21, 2007
1. V-05-07 - 25188 Marion Avenue - Villa #35
Grant a variance to the Land Development Regulations (LDRs) per Section 26-3.5(g), page 26-14, of the City Code on an existing non-conforming structure to allow a rear yard setback of 5 feet 8 inches to construct an addition on a wooden deck in a velocity zone instead of 25 feet as required by City Code
- Ms. Teri Tubbs, Zoning Official, announced V-05-07 had been withdrawn by the applicant.
2. FV-03-07 - 503 McGregor Street
Grant a Federal Emergency Management Agency (FEMA) variance to the LDRs per Section 26-14.8, page 26-149, of the City Code on a structure located at Block 76, Lots 8 and 9, City of Punta Gorda, a/k/a 503 McGregor Street, to allow a finished floor elevation of 7 feet instead of 9 feet, which is the base flood elevation for the property as required by City Code, to reconstruct a home that collapsed while being elevated.
- Ms. Tubbs announced City Council had approved FV-03-07.

NEW BUSINESS

- Recording Secretary Kelly swore in all participants.
- A. Public Hearing
1. V-01-08 - 235 Di Vinci Drive
Request to grant a variance to the City Code of Ordinances, Section 26-3.13(e), page 26-26, of the City Code to allow gravel and rock within 6 feet of the seawall in the Special Residential Overlay (SRO) District instead of sod, as required; and Section 26-8.13(a), page 26-86, to allow gravel within drainage facilities of the required yards instead of sod as required; and Section 12.3(c), page 26-128, to allow gravel within utility easements, instead of groundcover, as required; and Section 12.3(i), page 26-129, to allow gravel instead of required sod in swales or other areas subject to erosion; and Section 26-12.4(k), page 26-132, to allow gravel instead of the required ground cover, shrubbery or mulch in the required yard area; and Section 26-8.14(h), page 26-88, to allow a paver walkway closer than 3 feet to the side yard property line, for an existing single-family residence located at Block 42, Lot 7, Punta Gorda Isles, Section 6, known as 235 Di Vinci Drive.
- Ms. Tubbs displayed an overhead of excerpts of several sections of City Code, as delineated in the agenda material, stating the subject lot was not unusual in size, configuration or characteristics nor were there any special circumstances which would necessitate installation of rock rather than sod in the required drainage areas and

against the seawall as was the case on lots adjacent to this property. She noted strict and literal enforcement of the regulations did not create an undue hardship. She explained the rock, including curbing to within six feet of the seawall, was installed by the homeowner; however, the request to allow the paver sidewalk closer than three feet to the side yard property line was an accommodation for a disabled family member and was thus considered a reasonable request. She stated granting the variance would be detrimental to the surrounding neighborhood and the public's welfare as the extensive use of gravel, river rock or shell would result in the following: increase the need for herbicide use; provide no habitat value of wildlife; reflect rather than absorb heat; did not produce oxygen as plant life did; no storm water treatment and too pervious in drainage areas, especially against the seawall. She advised the condition of the property had been created solely by the owner's actions and could be reasonably corrected. She confirmed the applicant purchased the property in December 1999, adding January 2002 Geographic Information System (GIS) aerials, as delineated in the agenda material, depicted no gravel extending into the required yards; however, February 2004 aerials and survey depicted nearly the entire yard covered in rock. She concluded the variance application did not meet the criteria required by City Code, reiterating the current conditions were the result of actions by the homeowner. She recommended denial except to allow the existing paver sidewalk closer than three feet to the property line to remain as an Americans with Disabilities (ADA) accommodation. She then displayed a survey of the property, stating green areas depicted grass, yellow areas depicted bushes, plants and trees and the remainder of the property was covered in rock, driveway or house.

- Mr. Bob Crispin stated he was a nearby property owner, adding he was a personal champion of defending a person's personal property rights. He advised he had practiced in the field of architecture, landscape architecture and construction for over 30 years. He explained he had been made aware of this application by certified mail as his property was located within 200 feet of the subject lot, adding he had contacted Mayor Larry Friedman by electronic mail, a copy of which he then submitted into the record. He reminded the Commission of the diligent efforts by staff and the community to put the current LDRs in place. He urged the Commission to deny this application as he believed same would negatively affect his property values. He pointed out his correspondence with Mayor Friedman depicted the basis for his recommendation for denial. He concluded he did not see any hardship other than that caused by the applicant's actions, thanking the Board for the opportunity to speak.

- Mr. Ken Milton stated he resided directly adjacent to the subject location, expressing opposition to the request. He opined the City's Codes were beneficial to Punta Gorda and its property owners. He noted variance applications should be submitted before work was done, which was not the case here. He counted six Code violations, including the six foot sod requirement adjacent to the sea wall. He expressed his belief these conditions would have a detrimental effect on the marketability of his own home due to the extent of non-compliance next door to same, adding both he and his spouse had experienced a great deal of anguish over this issue. He urged the Commission to deny the variance request.
- Ms. Matthews disclosed she had driven by the property and was able to view the front of this property, confirming the gravel directly abutted Mr. Milton's property. She asked if there was any type of buffer in place.
- Mr. Milton replied cement curbing ran down the property line, adding based on the survey flags in place, a portion of the cement sidewalk extended over same as did part of the curbing in the rear of the applicant's yard.
- Mr. David McKee stated he resided at 225 Di Vinci Drive, adding he was one of the neighbors who had reported these violations to the City. He asserted the applicant knew in advance he would be violating City Code. He opined good neighborhoods required an honor system; however, intentional violations of City Code severely impacted that system. He stated the anguish and conflict which had been provoked in the neighborhood was painful, reiterating six sections of the City Code were deliberately violated; thus, action must be swift and equally deliberate. He contended these conditions endangered the seawalls. He concluded with a request for denial of the application as the applicant had failed to meet the criteria required by City Code.
- Ms. Tubbs asked if the Board wished to receive an update of the Code Enforcement Board case.
- Ms. Matthews replied affirmatively.
- Ms. Perri Turner, Code Compliance Officer, displayed several photographs of the property and provided a detailed review of the Code Enforcement case beginning in September 2007. She stated the first Code Enforcement Board (CEB) hearing was held in November 2007, at which time a Cease & Desist Order was issued continuing the case to the January 23, 2008 CEB meeting and requiring the respondent, Mr. Aaron White, to apply for a variance. She clarified the respondent was granted 120 days from November 28, 2007, to obtain a variance; however, if the variance was denied, the respondent was required to eliminate the violations within 30 days of that denial. She advised no variance application had been submitted as of January 23, 2008, no

attempt had been made to remove the rocks, and Mr. White failed to attend that hearing. She summarized the respondent was then granted 20 days from that date to remove the stones or be subject to a \$250 per day fine.

- Ms. Tubbs reported the applicant had submitted the variance application on January 31, 2008, noting same did not necessarily stop the abovementioned CEB daily fine.
- Mr. White asserted he was not notified of the January 23, 2008 CEB Meeting, adding his initial variance application was refused by the City as it was submitted on an old form and the fee had increased.
- Ms. Matthews asked when Mr. White had filled out the initial application.
- Mr. White replied November 29, 2008, stating he was unable to retain a surveyor for 1 month following same. He noted he was advised the application must be re-submitted on the new application form, thus the reason for the delay. He reiterated he had not been noticed for the January 23, 2008 CEB hearing.
- Mr. Brower commented the CEB case was not relevant to the matter before this Board.
- Ms. Turner interjected the CEB's Order was sent by certified mail on December 10, 2007, and signed for by Mr. White on December 11, 2007, adding that Order included notice of the continuance to January 23, 2008.
- Ms. Matthews clarified Mr. White was properly noticed.
- Mr. White countered he was under the impression he was required to obtain the variance in 120 days. He then expressed his understanding State Statute superseded local ordinance, reading into the record sections of Florida Statute (F.S.) 720.3075 and 373.185 as same related to xeriscaping and water conservation incentive programs. He explained his intent when applying the gravel to his property was to reduce his water consumption and to create a "French Drain" adjacent to the seawall, adding he was willing to allow the City to utilize his property as a test site for a French Drain system. He stated he felt he was conserving water as well as reducing the use of pesticides and the subsequent run-off into local estuaries. He mentioned he had been unaware before this date of the feelings of his neighbors as expressed above. He then contended precedent was set at other properties in Punta Gorda Isles (PGI), submitting photographs depicting same into the record.
- Ms. Matthews responded she believed Mr. White had been asked to provide the addresses of those properties.
- Mr. White stated he did not wish to "snitch" on his neighbors.
- Mr. Hofmeister countered the information had already been submitted and was thus considered part of the public record.

- Mr. White stated these property owners had advised him their properties had been grandfathered, asking how he could be accorded the same rights.
- Ms. Tubbs replied grandfathering did not exist with regard to required yards, adding earlier Codes required 100% sod; however, the City included the xeriscape allowance in 2005. She clarified there was a difference between “xeri”scaping and “zero”scaping, stating the City did not support the latter.
- Mr. White stated he resided in California for many years during a severe drought, adding zeroscaping was allowed.
- Ms. Matthews requested clarification of Mr. White’s statement with respect to State Statute overriding City Code.
- Ms. Tubbs explained State Statute required the City to allow xeriscaping, not zeroscaping.
- Ms. Matthews then confirmed staff was not recommending denial of the portion of the request related to an ADA accommodation.
- Mr. White clarified he had not violated any City Code when the concrete slab was installed, presenting a copy of a permit attesting to same.
- Ms. Matthews asked when Mr. White purchased this property.
- Mr. White replied 1999; however, he had not resided in the home until 2002.
- Ms. Matthews asked if Mr. White was a member of the PGI Civic Association.
- Mr. White replied he was not.
- Mr. Hofmeister commented on the concrete paver blocks directly against the property line, confirming Mr. White had installed same as an accommodation for his disabled son. He requested clarification of those disabilities.
- Mr. White replied his son had cerebral palsy and suffered from mental deficiency as well.
- Mr. Hofmeister asked how the paver blocks accommodated the disability.
- Mr. White replied his son enjoyed riding a gas powered lawn mower without the blade. He explained doing so provided him with the feeling of driving and the freedom associated with same.
- Mr. Hofmeister disclosed he inspected this property from both the right-of-way (ROW) and the water, stating the paver blocks on the side were very close to the property line and had started to shift.
- Mr. White responded he wished to finalize this application as well as the CEB case before he made any permanent changes.
- Mr. Hofmeister clarified the paver blocks were not for access.

- Mr. White countered his son had difficulty walking and had a tendency to fall over in tall grass due to the manner in which he walked which was the result of his disability.
- Mr. Kilmer requested clarification of the Code sections as displayed by Ms. Tubbs at the start of her presentation.
- Ms. Tubbs provided a detailed explanation of Sections 3.13, Special Residential Overlay District, Section 8.13, Soil Conservation, Section 12.3, General Provisions and Section 8.14, Structures and Uses Limited in Yards. She pointed out sod was not required other than in drainage areas, stating planting beds, curbing and native plants were allowed. She noted the latter required very little if any watering once established.
- Mr. Kilmer clarified the 40% sod requirement was no longer in place.
- Mr. White interjected he had installed no more landscaping since this problem arose. He then read a letter from Dr. and Mrs. Bruce Bielfelt, 235 Di Vinci Drive, in support of the variance request.
- Ms. Matthews responded the Board could not consider same as the letter writer was not present.
- Mr. Brower commended Mr. White on his efforts to save water; however, the Board must base their decision on specific criteria. He explained Mr. White must demonstrate how his lot was different than any other lot in the City.
- Mr. White replied he was not using any fertilizers, pesticides or herbicides, adding he cut his water usage by 75%.
- Mr. Brower clarified his question, again asking how Mr. White's lot was different from his neighbor's properties.
- Mr. White replied it was not different.
- Mr. Brower pointed out this variance request was not based on any hardship applicable solely to the applicant and the applicant's property.
- Mr. White suggested all property owners landscape their yard in the same manner.
- Mr. Brower asserted City Code did not allow same.
- Ms. Matthews added Mr. White had the burden of demonstrating how his property met the criteria as required by City Code for the granting of a variance.
- Mr. Bauman stated it appeared Mr. White had attempted to achieve zeroscaping while the City Code allowed for xeriscaping. He asked how an individual with Mr. White's intentions could ensure compliance with City Code.
- Ms. Tubbs replied all citizens had access to City staff who were happy to assist with same. She stated she spoke at great length with Mr. White after his first CEB hearing, at which time she explained there were other options which did not require the irrigation necessary for a fully sodded lawn. She commented at that time it appeared

- Mr. White was seriously considering making the required changes as opposed to seeking a variance; however, he had not contacted her again until late in January 2008.
- Mr. White expressed his wish the City published this type of information, reiterating he had observed the same zeroscaping on other properties and assumed same was allowed. He mentioned he had experienced bug problems with sod.
 - Mr. Kilmer asked if Mr. White's yard could be modified to meet the City's requirements for xeriscaping.
 - Ms. Tubbs replied affirmatively, specifically by removal of a fair amount of rock. She explained xeriscaping promoted the use of mulch, which retained moisture, while rocks and gravel retained heat.
 - Mr. Kilmer asked Mr. White if he was willing to modify the existing conditions to meet the requirements of xeriscaping.
 - Mr. White replied affirmatively; however, he expressed regret at the amount of expense he had incurred to date.
 - Mr. Bauman expressed respect for Mr. White's son's desire for independence; however, a lawn mower traveled on grass as well on stone. He further asked if Mr. White intended to make the pavers permanent for his son's sake.
 - Mr. White replied the pavers were not permanent. He explained his son had made ruts in the grass from the lawn mower; thus, he had installed the pavers in deference to his neighbors.
 - Mr. Bauman clarified Mr. White was seeking a stable as opposed to permanent surface.
 - Ms. Matthews questioned the standard width for an ADA compliant sidewalk.
 - Ms. Tubbs replied five feet.
 - Mr. Kilmer noted ADA requirements were not mandated on private property.
 - Mr. Rose asked if a landscape project of this size required a permit.
 - Ms. Tubbs replied not for a single family residence.
 - Mr. Hofmeister distributed copies of material related to xeriscaping, as delineated in the agenda material, provided by a Master Gardener at the University of Florida Extension Service in Charlotte County. He offered copies to Mr. White, stating xeriscaping was defined as water efficient landscaping appropriate to the natural environment.
 - Discussed ensued with regard to the differences between xeriscape and zeroscape.
 - Mr. Crispin welcomed Mr. White to consult with him, reiterating he had been in the business of landscape architecture for 30 years.
 - Ms. Matthews called three times for anyone to speak on V-01-08.

- Mr. Bauman MOVED, Mr. Bower SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
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- Mr. Hofmeister MOVED, Mr. McClary SECONDED to recommend denial of V-01-08 based upon the evidence and testimony presented.
- Ms. Matthews recommended the applicant be required to bring the property into compliance.
- Ms. Tubbs responded same would be addressed by the CEB.
- MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

- Meeting Adjourned: 5:11 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary