

**BOARD OF ZONING APPEALS
MEETING
AUGUST 28, 2007**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, David Brower, Randy Fassett,
Larry Hofmeister, James McClary

MEMBERS EXCUSED: Richard Kilmer

OTHERS PRESENT: Teri Tubbs, Zoning Official
Dennis Murphy, Growth Management Director
Vice Mayor Harvey Goldberg
Lisa Hannon, Zoning Coordinator
Chris Viesel, Doug Houck, Ben De Jong, Chris Cannon,
Nancy Miller-Houck

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - September 25, 2007
- C. Last Scheduled Meeting - July 24, 2007

APPROVAL OF MINUTES

- A. Meeting of July 24, 2007
 - Mr. Hofmeister MOVED, Mr. Bauman SECONDED approval of the July 24, 2007 minutes.
MOTION CARRIED UNANIMOUSLY.

OLD BUSINESS

- A. Results of City Council Action on August 15, 2007
 - 1. FV-02-07 - Request for a variance, per City Code Section 26-14.8, Page 26-150, on an existing structure that is listed in the Florida Master Site File as a contributing structure, on property located at Block 8, Lot A, a/k/a 401 West Retta Esplanade, Punta Gorda, Florida, with the existing lowest finish floor elevation of 8.3 feet and the lowest horizontal structural member at no less than 7.3 feet, instead of 12 feet in a velocity zone, which is the base flood elevation of the property.
 - Ms. Lynne Matthews announced FV-02-07 had been withdrawn by the applicant.

NEW BUSINESS

- A. Public Hearings
 - Recording Secretary Kelly swore in all participants.
 - 1. V-04-07 - 25188 Marion Avenue, T-1031
Grant a variance to the Land Development Regulations (LDRs) per Section 26-3.5(g), Page 26-14, of the City Code to extend an existing, non-conforming wood deck by 5 feet, to allow a rear yard setback of 3 feet instead of 25 feet as required by City Code.

- Ms. Teri Tubbs, Zoning Official, provided a brief review of staff's findings, as delineated in the staff report in the agenda material, stating although there was no record of a building permit for the existing deck, the applicant purchased the property with the deck in place and wished to extend the deck to enable easier wheelchair access. She then announced the applicant had recently amended his application, displaying a letter depicting same, to request an extension of three feet as opposed to five. She displayed an overhead of the site location, as delineated in the agenda material, stating the request seemed to be a reasonable accommodation under the Americans with Disabilities Act (ADA). She concluded with a recommendation for approval of the request, stating the Building Division had no objection to the request.
 - Ms. Chris Viesel, Emerald Pointe Manager, announced on April 19, 2007, the Emerald Point Condominium Association Board of Directors approved the applicant's variance request to extend his deck an additional three feet; however, a request for an additional five feet had been submitted to the City. She clarified the Board of Directors did not object to the request for a three foot extension.
 - Mr. Hofmeister disclosed he had visited the subject property, stating he was not opposed to an extension of three feet.
 - Ms. Matthews called three times for anyone to speak on V-04-07.
 - Mr. Fassett MOVED, Mr. Hofmeister SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Fassett MOVED, Mr. Bauman SECONDED to recommend approval of V-04-07 as amended for a 3 foot extension based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.
2. V-05-07 - 25188 Marion Avenue - Villa #35
- Grant a variance to the 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. Tubbs announced the applicant had requested a continuance to December 2007 due to staff's recommendation for denial; however, the Board's bylaws did not allow for a continuance longer than 60 days. She noted the applicant subsequently requested a continuance to the Board's October 23, 2007 Meeting.
 - Ms. Viesel requested clarification of the applicant's request, stating same appeared to be different from the request submitted to the Emerald Point Condominium Association Board of Directors. She expressed concern with regard to construction of the proposed deck addition so close to the existing seawall.

- Ms. Tubbs displayed an overhead of the proposed site plan and survey, as delineated in the agenda material, depicting the area in which the applicant wished to construct a three foot extension on the existing deck.
 - Discussion ensued with regard to the possible discrepancy between what had been submitted to the City as compared to that requested of the Emerald Pointe Condominium Association.
 - Ms. Matthews suggested Ms. Viesel coordinate with the applicant prior to October 23, 2007.
 - Mr. Fassett MOVED, Mr. Bauman SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
 - Mr. Bauman MOVED, Mr. Brower SECONDED to continue V-05-07 to October 23, 2007. MOTION CARRIED UNANIMOUSLY.
 - Mr. Fassett clarified the applicant would not be charged a continuance fee.
3. V-06-07 - 566 West Marion Avenue
- Grant a variance to the LDRs, Section 26-3.7(b), Page 26-16, of the City Code on an existing accessory garage structure to allow the accessory structure to be elevated above the existing grade but remain in its current location with a setback of 0.6 feet, or 7 inches, from the side yard property line, instead of moving it to a 3 foot setback as required by City Code for accessory structures.
- Ms. Tubbs reviewed staff's findings, as delineated in the staff report in the agenda material, stating in light of the historic nature of the garage architecture, Florida Statutes regarding historic preservation and City Code Section 26-3.14(f) supported the request. She noted visual evidence presented by the garage structure indicated restoration of the structure in its current configuration was appropriate and consistent with the intent of the Historic Overlay District regulations. She displayed an overhead of the site location, concluding with staff's recommendation for approval of V-06-07. She mentioned the Historic Preservation Advisory Board (HPAB) also recommended approval of the request.
 - Mr. Fassett asked if the alleyway between Lots J and S had been vacated.
 - Ms. Tubbs replied she believed so.
 - Mr. Doug Houck, applicant, confirmed the alleyway had been vacated. He then stated he purchased this property several years prior and wished to maintain the historic atmosphere of the community. He explained a two year restoration of the home had just been completed when the house was destroyed by Hurricane Charley in August 2004; however, the wood and shingle garage survived almost intact. He noted he had proceeded with rebuilding a home on the property, keeping in mind a historic façade,

adding he wished to restore the garage in its current location in order to maintain the overall, historic atmosphere. He provided a brief history of the garage, pointing out it had been constructed by a former Mayor of Punta Gorda. He requested the Board's favorable consideration of the request.

- Mr. Ben De Jong, contractor, mentioned the 2004 Building Code covered existing structures and encouraged preservation of the original qualities of a building's character, site or environment.
- Ms. Chris Cannon, 124 McGregor Street, stated she resided adjacent to the subject property, recommending approval of the request due to the historic nature of the garage.
- Ms. Nancy Miller-Houck, applicant, stated she and Mr. Houck had gone to a significant amount of trouble to save this garage in the interest of historic preservation.
- Ms. Matthews called three times for anyone to speak on V-07-07.
- Mr. Hofmeister MOVED, Mr. Fassett SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Hofmeister disclosed he had visited the site, confirming the garage was historic in nature with a metal roof, cedar split siding on the outside and boarding on the interior. He pointed out the garage had already been elevated with no approved permit; however, he had no objection to the request.
- Mr. Bauman commented on the importance of preserving the City's heritage and character, stating he believed granting the variance would be compatible with same.
- Mr. Fassett clarified the garage would be moved toward McGregor Street.
- Mr. Fassett MOVED, Mr. Hofmeister SECONDED to recommend approval of V-06-07 based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.

OTHER BUSINESS

A. Discussion of Bylaws

- Ms. Tubbs distributed copies of the draft bylaws with two additional changes, as delineated in the agenda material, noting the change on page 3 was simply a minor typographical error. She pointed out an additional change to Section 11.A., Continuance by an Applicant. She then drew members' attention to an excerpt of the August 8, 2007 City Council Meeting, as delineated in the agenda material, with regard to the possibility of the Board becoming a decision making body; however, City Council had indicated their desire to maintain the Board as an advisory body in light of the complexity of the ensuing appeal process as well as Council's responsibility to the citizenry. She noted other changes previously discussed by the Board remained in place, offering to answer any questions. She stated she had researched the type of

criteria used by neighboring municipalities for variance requests, adding she had amended the bylaws to more closely reflect same.

- Mr. Bauman asked if similar boards in other municipalities were decision making.
- Ms. Tubbs replied it varied among same.
- Mr. Fassett stated the Charlotte County Board of Zoning Appeals (CCBZA) was decision making, adding he understood the basis for same was to ease the burden of the Board of Charlotte County Commissioners (BCCC). He mentioned the CCBZA had an attorney present during their meetings. He opined there may come a time in the future for this Board to become a decision making entity. He then noted the City Attorney had expressed a strict directive that variance requests must meet all eight criteria in order to be approved; however, he noted the proposed language loosened some of the criteria, asking if the City Attorney had relaxed his opinion.
- Ms. Tubbs replied he had not offered his opinion on the proposed criteria one way or another. She agreed the existing criteria was extremely tight.
- Mr. Fassett stated he felt there was a human factor in each request which must be considered.
- Mr. Bauman clarified Mr. Fassett felt the proposed, revised criteria was somewhat relaxed. He pointed out page 5 stated "a recommendation for variance can be made only if all of the following conditions are found to exist," noting the word "all" did not provide the Board the option to exercise some discretion.
- Mr. Fassett responded Criteria #3 in particular seemed more liberal. He asked if staff had been given different direction than that which had been provided in the past.
- Ms. Tubbs reiterated she had not been given any different direction from the City Attorney. She explained monetary expense did constitute a hardship, providing an example of a homeowner who would be asked to demolish their home due to insufficient setback.
- Ms. Matthews disagreed the Board had ever made a decision based on emotion as was stated by Councilmember Bill Albers at the August 8, 2007 City Council Meeting. She asserted the City must have some compassion, especially in light of the upheaval since Hurricane Charley.
- Mr. Fassett concurred, stating he hoped staff shared that mindset.
- Mr. Bauman agreed the regulations should never be so narrow as to prevent the Board from using their discretion; however, he opined the criteria descriptions outlined in the bylaws were quite broad.

- Mr. Fassett recalled past variance requests where staff had been required to base their recommendation for denial on a literal interpretation of the criteria. He expressed hope the Board's attitude on this subject would be passed on to City Council.
- Ms. Tubbs noted the City was now requiring a spot or early foundation survey in order to "catch" and preclude the need for variances on new construction. She explained a slab or foundation could be corrected relatively easily.
- Ms. Matthews commented favorably on this practice.
- Mr. Fassett asked if the Building Division recommended contractors provide a pre-survey before concrete was poured.
- Ms. Tubbs replied affirmatively.
- Mr. Dennis Murphy, Growth Management Director, stated a good contractor generally conducted a proper boundary survey; however, he acknowledged there were some who did not. He mentioned pool construction tended to present problems; thus, final, as-built surveys were now required on same.
- Mr. Hofmeister confirmed the bylaws would reflect language in the Land Development Regulations (LDRs).
- Ms. Tubbs agreed, stating she would need to amend the LDRs once the bylaws were approved by City Council. She noted the bylaws would not take effect until the LDRs were amended accordingly.
- Mr. Brower commented on the word "all" as stated earlier, opining the standards should be made clear to Board members, applicants and affected parties alike.
- Mr. McClary concurred.
- Mr. Hofmeister commented he felt the criteria allowed some subjectivity.
- Ms. Matthews noted the current bylaws stated "all" of the criteria must be found to exist.
- Mr. Brower agreed; however, the amended bylaws were slightly less draconian. He pointed out proposed Criteria #2 stated "the strict and literal enforcement of the zoning regulations would create an undue hardship," suggesting the word "undue" allowed some flexibility.
- Mr. Bauman summarized it appeared members wished to maintain the word "all" while recognizing the proposed language gave the Board some discretion.
- Mr. McClary suggested changing "if all of the following conditions are found to exist" to "if all of the following conditions are considered."
- Mr. Brower countered he believed same could result in "spot zoning."
- Ms. Matthews requested City Council be made fully aware of the Board's concerns expressed this date.

- Vice Mayor Harvey Goldberg stated he believed there was a great deal of credibility with regard to the Board's concerns. He acknowledged the City Attorney took a very conservative stance on these types of issues in an effort to protect the City; however, he agreed there was a need to consider extremely extenuating circumstances which may warrant consideration beyond strict interpretation of the eight criteria. He opined the issues raised this date represented another reason to maintain the Board as an advisory body.
- Mr. Fassett recognized the ultimate decision fell to City Council.
- Ms. Tubbs asked if the Board wished to review the bylaws again prior to presentation to City Council.
- Consensus of the Board was for staff to determine whether any additional changes could be made to address members' concerns and to ensure City Council was fully apprised of their discussions.

ADJOURNMENT

- Meeting Adjourned: 5:03 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary