

**BOARD OF ZONING APPEALS  
MEETING  
JUNE 23, 2009**

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

**OTHERS PRESENT:** Lisa Hannon, Zoning Coordinator  
David Hilston, Urban Design Manager  
Joan LeBeau, Chief Planner  
David Baird, David Bischoff, Alternate Board Members  
Laurie Lyons, Una O'Leary Escolas, Natalie Hanners,  
Judy Nicholson, Eric Woods, Edith Sourbeck, Xavier Narutowicz

**CALL TO ORDER/ANNOUNCEMENTS**

- A. Roll Call
- Ms. Matthews welcomed Mr. David Baird and Mr. David Bischoff, recently appointed by City Council as alternate members of the Board.
- B. Next Scheduled Meeting - July 28, 2009
- C. Last Scheduled Meeting - November 25, 2008
- 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 then 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 November 25, 2008
- Mr. Rose MOVED, Mr. Hofmeister SECONDED approval of the November 25, 2008 minutes. MOTION CARRIED UNANIMOUSLY.

**OLD BUSINESS**

- A. Results of City Council Action on December 3, 2008
1. V-08-08 - 321 Harvey Street - Request for a variance to the Land Development Regulations per Section 26-16.10, page 26-196, of the City Code on an existing structure to allow an existing side yard setback of 1.6 feet for an existing pool and concrete equipment pad instead of 5 feet as required by City Code Section 26-3.7(g)(3);

and to allow a new lot line to be established that surrounds the southerly 6.8' x 31' of an existing pool and pool enclosure with a newly established 3.2 foot rear yard setback instead of 15 feet as required per City Code Section 26-3.7(g)(4), page 26-15; and to allow the side yard setback from the newly established lot line to be 2.8 feet on the south side and 3 feet on the north side instead of 5 feet as required per City Code Section 26-3.7(g)(3), page 26-15.

- Ms. Lisa Hannon, Zoning Coordinator, reported V-08-08 was approved by City Council.
- B. Results of City Council Action on December 17, 2008
  - 1. V-10-08 - 3811 Tamiami Trail - Request to grant a variance to the Land Development Regulations per Section 26-16.10, page 26-196, of the City Code of Ordinances to allow a ground sign that is 19.5 feet in height instead of 15 feet in height as permitted in the Highway Commercial (HC) zoning district, and to allow the ground sign to have 98.6 square feet of signage area for a multi-tenant building instead of a maximum 64 square feet signage area as permitted by City Code Section 26-11.3(g), page 26-120.  
Ms. Hannon announced V-10-08 was approved by City Council.
- C. Results of City Council Action on January 21, 2009
  - 1. V-09-08 - Public Works Campus - Request to grant a variance to the Land Development Regulations per Section 26-16.10, page 26-196, of the City Code to allow the maximum building height for the mixed used buildings which are located in the center of the proposed "Public Works Campus" mixed use project to be no greater than 5 stories and 54 feet in height as measured from Base Flood Elevation (BFE) to the top of the roof structure, and to allow the office use buildings located along Maud Street to be no greater than 4 stories and 40 feet in height as measured from BFE to the top of the roof structure; and to allow the multi-family buildings which will face Shreve Street to have no more than 3 habitable floors and be no greater than 40 feet in height as measured from BFE to the top of the tie beam instead of 2 stories and 35 feet in height as allowed in the Neighborhood Center (NC) zoning district, per City Code Section 26-3.8(g)(11), page 26-18, located on property commonly known as "The City of Punta Gorda Public Works Campus."
  - Ms. Hannon advised V-09-08 had been withdrawn by the applicant, stating the City had elected to purchase property on the corner of Cooper Street and Airport Road for use by the Public Works and Utilities Departments.
  - 2. V-03-08 - Hilton Garden Inn - Request by Punta Gorda Lodging, LLC, to reconsider and extend the timeline included as a condition on the variance approved for the Hilton Garden Inn to be located on the property known as the northeast corner of the City Marketplace Property generally addressed as 115 Tamiami Trail.

Ms. Hannon announced the applicant's request for an extension was approved with specific conditions, providing a brief explanation of same.

**NEW BUSINESS**

- Recording Secretary Kelly swore in all participants.
- Ms. Matthews noted the agenda indicated the following item as "V-01-08," confirming the public hearing notice had been advertised correctly.
- A. V-01-09 - Request for a variance to the Land Development Regulations per Section 26-16.10 of the City Code of Ordinances to allow a new screen enclosure to be constructed on an existing pool deck with a rear yard setback of no less than 5.1 feet instead of 20 feet as required by City Code Section 26-3.13(d), and to allow a side yard setback of no less than 7.42 feet instead of 7.5 feet as required by City Code Section 26-3.4(g)(3). Said structure is located in the General Single Family-3.5 (GS-3.5) zoning district in the Special Residential Overlay (SRO) District.  
LEGAL: Block 2, Lot 21, Punta Gorda Isles (PGI) Section 1, of the Public Records of Charlotte County, Florida (a/k/a 197 Maria Court, Punta Gorda, FL)
- Mr. David Hilston, Urban Design Manager, entered the staff report, as delineated in the agenda material, into the record, stating the subject pool was constructed in 1979 at which time the required rear yard setback was 15 feet. He noted the submitted survey showed the pool had an existing rear yard setback of 5.10 feet at the closest point. He advised no evidence of a prior variance could be found, adding it was unknown how or why the pool was constructed at this setback. He pointed out there were no special conditions or unusual circumstances which were not applicable to other lands or buildings in this zoning district, adding many PGI lots were located adjacent to a bridge. He clarified the configuration and location of the applicant's pool had existed since 1979, adding no hardship could be found. He explained granting of this variance would be incompatible with the surrounding neighborhood. He pointed out Section 26.8.15 of the City Code required swimming pools to be enclosed by a fence or wall not less than 4 feet in height measured from the pool deck or a screened enclosure, confirming a fence was in place. He concluded the application did not meet the criteria required for a variance; thus, the Urban Design Division recommended denial of V-01-09.
- Mr. Hofmeister confirmed there had never been a pool enclosure on this particular pool.
- Mr. Bauman asked if other pool properties adjacent to bridges had pool cages.
- Mr. Hilston replied he had not conducted a City-wide survey regarding same.

- Mr. Kilmer commented the photographs were not clear with regard to an existing fence.
- Mr. Hilston confirmed a fence was in place, acknowledging the fence was obscured by foliage.
- Ms. Matthews disclosed she had driven by the subject location and personally observed a fence; however, it was difficult to see due to huge shrubs between the bridge and the property line.
- Mr. Hofmeister asked if a fence was required to completely encircle the pool.
- Mr. Hilston replied the canal was considered a barrier.
- Mr. Hofmeister questioned the significance of the photographs on page 28 of the agenda material.
- Mr. Hilston replied those photographs were submitted by the applicant in conjunction with a running narrative within the application itself.
- Ms. Matthews then noted the barge mentioned in the applicant's narrative was no longer in place and had no bearing on this hearing.
- Ms. Laurie Lyons, applicant's realtor, announced her client desired to be on the water and to have pool access and security. She clarified there had been no seller's disclosure; however, she spoke with a contractor and a pool company representative, both of whom assured her a pool cage could be constructed at this location as the encroachment was existing, adding the applicant, Ms. Una O'Leary Escolas, was not seeking an additional setback. She asserted young people had been observed jumping off of the nearby bridge and climbing onto this property. She noted there was also a severe problem relative to wildlife such as birds and raccoons, for example, migrating onto the lanai and using the pool. She requested the Committee's favorable consideration of the request. She expressed confusion as to why upward construction was not allowed in that no additional outward encroachment was being sought.
- Ms. Matthews asked if anyone contacted the City prior to purchasing the home to determine whether or not a pool cage could be constructed.
- Ms. Lyons replied she was unsure.
- Mr. Brower asked if the buyers received any disclosure from the seller regarding this non-conformity.
- Ms. Lyons replied they had not.
- Mr. Brower asked if anyone had contacted the seller subsequent to learning of this problem.
- Ms. Lyons replied she believed the listing realtor may have done so.

- Mr. Brower clarified Ms. Lyons had not. He questioned the number of properties the applicants had visited prior to deciding on the subject location.
- Ms. Lyons replied quite a few.
- Mr. Brower asked if anyone had been concerned with the close proximity of the pool to the canal in comparison to those other properties.
- Ms. Lyons replied neither she nor the pool company/contractor had thought same would be a problem.
- Mr. Brower asked if Ms. Lyons showed many properties in Punta Gorda Isles (PGI).
- Ms. Lyons replied affirmatively.
- Mr. Brower asked at what point the pool contractor had informed Ms. Lyons of the encroachment.
- Ms. Lyons replied prior to the closing, during the due diligence process. She acknowledged her awareness a pool cage could not create an additional encroachment; however, she had assumed a cage would be allowed as the pool itself was allowed in 1979. She noted she was also aware the pool deck could not be extended.
- Mr. Brower asked if any attempt was made to cancel the contract when these issues came to light.
- Ms. Lyons replied the closing had already taken place.
- Mr. Brower questioned the pool contractor with whom Ms. Lyons had been dealing.
- Ms. Lyons replied Casa Pools. She then questioned what harm a pool cage would cause at this stage in that the pool encroachment had existed since 1979.
- Mr. Hilston replied an existing non-conformity could not be expanded.
- Ms. Lyons reiterated she did not see how a pool cage was harmful.
- Mr. Hilston replied that may be true from an emotional standpoint; however, staff was responsible for enforcement of City Code.
- Ms. Matthews added the Board must also base their decision on current City Code and in adherence with its bylaws. She opined this request did not meet variance criteria. She pointed out there would be major issues in the event the seawall collapsed.
- Mr. Bauman commented the problems in 1979 were not what was before the Board this date.
- Mr. Hofmeister questioned the number of times this home had been sold since 1979.
- Ms. Matthews replied four.
- Mr. Hofmeister pointed out the other three owners found not having a pool cage was acceptable.
- Mr. McClary stated it appeared ownership of this property had transferred several times without a variance in place.

- Ms. Escolas stated she purchased the subject property on April 3, 2009, and had confirmed with her realtor and a contractor that a pool cage could be constructed. She noted work on the cage had commenced when she was informed a building inspector began questioning an issue related to the roof overhang, adding the issue related to setbacks then came to light. She commented on the close proximity of the nearby bridge, reiterating children were observed jumping off of same and climbing on to their dock. She asserted their fence had not prohibited trespassers, stating people tended to congregate on a nearby vacant lot to fish. She clarified the pool and its easy access were visible from that vacant lot. She then stated a large bird population had utilized the pool for the past two years while the home was vacant; thus, a significant amount of excrement was present as a result of same, which presented a safety hazard relative to the spreading of numerous diseases. She mentioned the large amount of excrement also presented a “slip and fall” danger on the narrow walkway around the pool. She asserted the requirement for a five foot fence was insufficient to prevent a drowning tragedy as same was easily scalable.
- Ms. Matthews advised Ms. Escolas to contact the Police Department with regard to people fishing from vacant lots. She then questioned the width requirement around a pool in the event a pool cage was allowed.
- Mr. Hilston replied he was unsure, stating same was relative to the Building Code.
- Mr. Rose asked if the pool would be allowed to be replaced in the event it was damaged and was not repairable.
- Mr. Hilston replied it would not.
- Ms. Natalie Hanners, 182 Gulfview Road, commented the above mentioned barge was present more often than not. She asserted enforcement of the no fishing from vacant lots rule was ineffective, adding she had personally observed children and wildlife in the Escolas’ pool.
- Ms. Judy Nicholson, 191 Maria Court, expressed agreement with all points made by Ms. Lyons and Ms. Escolas, stating she did not feel allowing a pool cage would be harmful.
- Ms. Escolas submitted a copy of a petition in support of her request into the record.
- Mr. Eric Woods, 122 Maria Court, spoke in favor of the request, stating he believed a pool cage would enhance the property.
- Ms. Matthews questioned the age and condition of the seawall at this location.
- Mr. George Nicholson, 191 Maria Court, replied he understood it had been replaced within the last 15 years.
- Mr. McClary asked if a variance could be granted on a non-conforming, unapproved structure.

- Mr. Hilston replied all criteria must be met, which was unlikely in such an instance. He reiterated a non-conformity could not be expanded.
- Mr. McClary recommended the applicants seek redress with the title company and attorneys involved in the sale of the property.
- Mr. Kilmer commented the surveys did not show any encroachments for the setbacks.
- Ms. Matthews asked if the issue of a variance for the pool itself should be revisited.
- Mr. Brower countered same was not before the Board this date.
- Ms. Matthews confirmed a building permit had been issued for the pool.
- Ms. Edith Sourbeck, 111 Maria Court, urged favorable consideration of the request for a pool cage.
- Mr. Xavier Narutowicz, 183 Maria Court, spoke in support of the applicant's request.
- Ms. Matthews called three times for any one to speak on V-01-09.
- Mr. Hofmeister MOVED, Mr. Brower SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Kilmer expressed concern with regard to extending a non-conformity, adding any pool work in the future would not be allowed. He commented on the fact that there had been no contact with the City even after the obvious encroachment came to light, stating he felt same should have been in order. He expressed appreciation of all of the comments made this date, including those related to health and security; however, the Board must adhere to City Code.
- Mr. Hofmeister expressed empathy with the applicant, adding the issues expressed this date were valid, albeit emotional as opposed to factual.
- Mr. Bauman stated there were a number of elements the Board must consider in their deliberations relative to a variance, adding this request did not satisfy all of those elements; therefore, he could not support this application.
- Mr. Rose MOVED, Mr. Bauman SECONDED to recommend disapproval of V-01-09 based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.
- Mr. Hilston announced V-01-09 would be reviewed by City Council on July 8, 2009.

#### **OTHER BUSINESS**

- A. Fiscal Year (FY) 2010 Strategic Plan Discussion
  - Mr. Hilston announced Mayor Larry Friedman had requested input from various stakeholders, including the City's advisory boards/committees, noting a copy of the Strategic Plan was provided in the Committee's agenda material. He explained members could submit suggestions either individually, as a committee or both.
  - Mr. Bauman commented the City's Strategic Plan did not list the department responsible for each particular project.

- Mr. Hilston responded he would pass Mr. Bauman's suggestion along to the City Manager's Office.
- B. City of Punta Gorda Parks & Recreation Master Plan
- Ms. Joan LeBeau, Chief Planner, announced this document could be viewed on the City's web site. She advised three chapters of the Master Plan had been completed, urging members to view the document and provide comments on same. She stated staff hoped to present the Master Plan to City Council in August or September 2009, anticipating completion by the end of 2009. She concluded with a brief demonstration of access to the Master Plan through the City's web site.
- Mr. Hofmeister mentioned he recently read of a problem relative to artificial turf being excessively hot.
- Ms. LeBeau responded staff had conducted extensive research on same prior to installing artificial turf in the playground area near the interactive fountain in Lashley Park. She noted a shade structure was planned for that area.

**ADJOURNMENT**

- Meeting Adjourned: 5:13 p.m.

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Lynne Matthews, Chairman

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Mary Kelly, Recording Secretary