

**BOARD OF ZONING APPEALS
MEETING
JULY 28, 2009**

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

OTHERS PRESENT: Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
David Baird, Alternate Board Member
Ken Struzik

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - August 25, 2009
- C. Last Scheduled Meeting - June 23, 2009

APPROVAL OF MINUTES

- A. Meeting of June 23, 2009
 - Mr. Kilmer MOVED, Mr. Hofmeister SECONDED approval of the June 23, 2009 minutes.
MOTION CARRIED UNANIMOUSLY.

OLD BUSINESS

- A. Results of City Council Action on July 8, 2009
 - 1. 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 District.
LEGAL: Block 2, Lot 21, Punta Gorda Isles Section 1, of the Public Records of Charlotte County, Florida.
A/K/A: 197 Maria Court, Punta Gorda Florida.
 - Ms. Teri Tubbs, Zoning Official, reported V-01-09 had been approved by City Council with the following condition: the pool cage must be removed and replaced at the property owner's expense in the event it interfered with seawall maintenance. She stated Councilmembers indicated they did not feel the pool cage would interfere with line of sight and had expressed both staff and this Board had acted correctly in recommending denial of the application.

- Ms. Matthews questioned the basis on which the variance was granted in that this Board had been advised by staff an existing non-conformity could not be exacerbated.
- Ms. Tubbs responded the Board had not been misinformed, stating the same evidence was presented to City Council; however, Councilmembers opted to approve the request while acknowledging same was in opposition to all recommendations.
- Mr. Hofmeister asked if the Board had the authority to disregard staff's advice relative to compounding a non-conformity.
- Ms. Tubbs replied the Board was advisory in nature and must determine whether a hardship existed, noting same may sometimes be different from staff's findings. She clarified members were asked to determine whether each variance request met the criteria. She cited an example of a case where denial of a variance request may cost the applicant \$100,000, noting same would represent a personal hardship to some but perhaps not others. She clarified staff based their recommendations on a literal interpretation of City Code.
- Mr. Bauman asked where in the Code hardship was defined.
- Ms. Tubbs offered to provide members with same by electronic mail, stating a hardship was typically viewed as something which would take away the use of the land where it could not be used for any purpose.
- Mr. Hofmeister asked if allowing a non-conforming pool cage to be constructed around a non-conforming pool automatically made the latter conforming.
- Ms. Tubbs replied it did not. She explained the subject variance was specifically applicable to the existing pool and configuration; thus, if the pool was damaged to the point where it could not be repaired, a new pool could not be constructed at this location.
- Ms. Matthews confirmed another pool cage would be allowed at this location in the event same was destroyed by a hurricane, for example.
- Ms. Tubbs agreed, provided the existing pool and pool deck remained.

NEW BUSINESS

- Recording Secretary Kelly swore in all participants.
1. V-02-09 - Request for a variance to the Land Development Regulations per Section 26-16.10 of the City Code of Ordinances to allow an existing water well to be used for irrigation for the Punta Gorda Isles (PGI) Section 14 Property Owners Association (POA) greenbelt area. This is a variance to City Code Section 26-3.13(o), which prohibits water wells in the Special Residential Overlay (SRO) zoning district.
LEGAL: A parcel of land bounded on the south by Aqui Esta Drive, on the east by Magdalena Drive, on the north by Conecta Drive and on the west by Guadalupe Drive,

consisting of Blocks 164, 165, 166, 167, 168 and a portion of Block 75, PGI Section 14 of the Public Records of Charlotte County, Florida.

- Ms. Tubbs displayed an overhead of the site location, as delineated in the agenda material, stating a water well existed which could serve the irrigation needs of the subject greenbelt area. She pointed out this greenbelt area was unique since most properties in PGI either abutted a canal or golf course. She explained use of the existing well would reduce the amount of potable water being used for irrigation purposes. She acknowledged the use of potable water for irrigation could be considered wasteful, adding same created an additional cost to these property owners; however, this did not meet the literal definition of hardship. She displayed photographs of the well equipment and surrounding area, stating the equipment was proposed to be screened with sufficient landscaping to buffer any noise associated with use of the well and would enhance the area. She submitted staff's findings and conclusions into the record, announcing the Utilities Department recommended approval of the request based on the recommendations of the Southwest Florida Water Management District (SWFWMD). She concluded staff was charged to recommend denial due to the literal criteria of variance requests; however, based on the fact that the well was existing, its use would help eliminate the use of potable water for irrigation and there being no threat to life, safety and health, staff had no issues outside that literal interpretation of City Code.
- Mr. Kilmer clarified the well was separately metered, with each Section 14 property owner paying an equal portion of the cost for use of same.
- Mr. Ken Struzik, Section 14 POA President, announced the monthly cost specific to the subject meter was running approximately \$485. He stated the POA hoped to refurbish the greenbelt area to its original condition.
- Ms. Matthews clarified the sprinkler system was currently in place, specifically for the greenbelt area.
- Mr. Struzik agreed, stating same was set up so as not to spray on any concrete or homeowners' lawns.
- Mr. Kilmer asked if the well had been tested to determine sufficient flow was available.
- Mr. Struzik replied affirmatively, stating same read at 50 gallons per minute.
- Mr. Kilmer commented on staff's finding relative to the greenbelt area being unique in that it did not abut a canal system, pointing out waterfront property owners also did not have non-potable water available for irrigation purposes. He noted waterfront property owners also paid an annual canal maintenance assessment fee.
- Mr. Bauman asked when the well had been tested.

- Mr. Struzik replied approximately two months earlier, stating the testing company indicated the well was quite deep in that there was no salt intrusion.
- Ms. Matthews asked if the system would be required to be operated in compliance with SWFWMD's watering restrictions and schedules.
- Ms. Tubbs replied affirmatively, stating the Utilities Department would determine the appropriate watering day in that there were multiple addresses.
- Mr. Brower questioned the number of homeowners in Section 14.
- Mr. Struzik replied 69.
- Mr. Brower pointed out each property owner's cost was less than \$10 per month based on a \$485 bill. He questioned the fee for POA dues.
- Mr. Struzik replied \$200 annually.
- Mr. Hofmeister commented he did not feel it was sensible to utilize potable water on vegetation, stating residents were strongly encouraged to practice water conservation methods.
- Mr. Brower asked why the City did not allow wells.
- Ms. Tubbs expressed uncertainty regarding same; however, the original PGI deed restrictions, from which the zoning ordinance for the SRO district was closely modeled, prohibited oil wells, adding the latter was changed to water wells when the zoning regulations were adopted.
- Mr. Kilmer asked how the conditions relative to the subject property created an undue hardship as opposed to a mere inconvenience.
- Ms. Tubbs reiterated she had not found a hardship; thus, the application did not meet the literal criteria; however, a determination must be made as to whether the other mitigating circumstances dictated the request should be granted.
- Ms. Matthews expressed agreement with Mr. Hofmeister's comments relative to the current water shortage and associated regulations; however, she acknowledged the cost per homeowner was not significant.
- Mr. Kilmer countered a decision based on the water shortage indicated all homeowners should be allowed to construct wells.
- Mr. Brower added his homeowners' association was comprised of only ten properties, each of which paid significantly more than the costs being incurred by Section 14 residents. He noted those ten property owners also paid the annual canal maintenance assessment fee. He commented he did not feel a hardship existed; however, he acknowledged this was an existing well.
- Ms. Matthews called three times for any one to speak on V-02-09.

- Mr. Hofmeister MOVED, Mr. Kilmer SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Bauman expressed agreement with Mr. Hofmeister's comments regarding water conservation. He questioned whether Section 14 homeowners would seek approval to connect their own irrigation systems to this source.
- Mr. Hofmeister opined the well would not accommodate same.
- Mr. Kilmer confirmed a test was run on water quality as well.
- Mr. Hofmeister MOVED, Mr. McClary SECONDED to recommend approval of V-02-09 based upon the evidence and testimony presented.
- Mr. Kilmer asserted he was in favor of water conservation; however, he expressed concern with regard to approving a request which was not in strict accordance with the required criteria, specifically there was no hardship.
- VOTING AYE: Hofmeister, Kilmer, McClary, Rose, Matthews.
- VOTING NAY: Bauman, Brower.
- MOTION CARRIED.

MEMBER COMMENTS

- Mr. McClary commented he was pleased to learn the City was researching the potential for reverse osmosis.
- Mr. Bauman expressed hope the Board's discussions this date would provide guidance to City Council as to the difficulty in basing a decision on a strict interpretation of variance criteria as opposed to also giving consideration to the validity of such requests.
- Mr. Kilmer acknowledged the Board was strictly advisory; however, he recalled discussions of the possibility of the Board becoming a decision making body.
- Ms. Matthews responded City Council elected to maintain the Board in an advisory capacity.
- Mr. Kilmer suggested institution of a policy under which in instances where City Council overran a unanimous decision of the Board, such applications would be sent back to the Board for reconsideration with details of Councilmembers' concerns and recommendations.
- Ms. Tubbs responded variances were conducted under the public hearing process and were quasi-judicial in nature. She explained Mr. Kilmer's suggestion would result in further delay for applicants, stating the turn-around time was currently 60 to 90 days.
- Mr. Kilmer asserted he would like City Council to know Board members worked hard to properly perform their duties; thus, when fault was found with the Board's

recommendations, perhaps such applications should be remanded back to the Board for reconsideration.

- Mr. Bauman commented he believed the Board had conveyed their sense of a potential injustice based upon a literal interpretation of the zoning regulations and a lack of authority to override same. He expressed hope City Council would utilize the Board's discussions, as reflected in their minutes, as guidance.
- Ms. Matthews stated she would ensure Councilmembers were aware of this issue.
- Mr. Rose mentioned he had attended the City Council meeting at which the pool cage variance had been discussed and approved. He reported Councilmembers' primary considerations were relative to the property being located against the street, the seawall already having been replaced and no visual obstruction of neighbors' views.

ADJOURNMENT

- Meeting Adjourned: 4:39 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary