

**BOARD OF ZONING APPEALS  
MEETING  
SEPTEMBER 22, 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 Griggs, Bill Clarkson

**CALL TO ORDER/ANNOUNCEMENTS**

- A. Roll Call
- B. Next Scheduled Meeting - October 27, 2009
- C. Last Scheduled Meeting - July 28, 2009

**APPROVAL OF MINUTES**

- A. Meeting of July 28, 2009
  - Mr. Hofmeister MOVED, Mr. Kilmer SECONDED approval of the July 28, 2009 minutes.  
MOTION CARRIED UNANIMOUSLY.

**OLD BUSINESS**

- A. Results of City Council Action on August 19, 2009
  - 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 Section 14 Property Owners Association greenbelt area. This is a variance to City Code Section 26-3.13(o), which prohibits water wells in the Special Residential 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, Punta Gorda Isles Section 14 of the Public Records of Charlotte County, Florida.
    - Ms. Teri Tubbs, Zoning Official, announced City Council had approved V-02-09 at their August 19, 2009 meeting.

**NEW BUSINESS**

- Recording Secretary Kelly swore in all participants.
- A. V-03-09 - Request for a variance to the Land Development Regulations per Section 26-16.10 of the City Code of Ordinances to allow an existing swimming pool to have an existing rear yard setback of 9 feet to the property line at the closest point instead of 20 feet as required by City Code Section 26-3.13(d); and to allow the existing

swimming pool to have an existing side yard setback of 6.4 feet at the closest point instead of 7.5 feet as required by City Code Section 26-3.4(g)(3); and a variance to allow an existing 7.4 foot side yard setback on the east front corner of the existing single family residence instead of 7.5 feet as required by City Code Section 26-3.4(g)(3).

LEGAL: Block 12, Lot 18, Punta Gorda Isles Section 4 of the Public Records of Charlotte County, Florida, a/k/a 32 Sabal Drive, Punta Gorda, Florida.

- Ms. Tubbs displayed an overhead of the site location, as delineated in the agenda material, stating the home was constructed in 1973. She explained a variance application, V-18-80, was submitted in 1980 to allow a swimming pool to be constructed 8 feet from the rear property line, adding a variance was granted to allow the pool to be constructed 12.5 feet from the rear property line instead of 15 feet as was required at that time. She continued a swimming pool permit application was subsequently submitted and approved, adding the pool was subsequently constructed and a final inspection approved in 1981; however, the pool and deck were not constructed in accordance with the approved variance but rather with a rear setback of 8 feet and a side yard setback of 6'4". She stated the applicant purchased the property on July 10, 2009, and was not advised of any non-conformities, adding staff found strict application of the regulations would produce undue hardship as the house existed with a non-conforming side yard setback and thus had a cloud on the title. She entered her staff report, as denoted within the agenda material, into the record, and displayed an aerial of Sabal Drive, pointing out a number of swimming pools had been constructed fairly close to the seawall, many within the same time frame. She concluded no evidence could be found to determine how the non-conforming setbacks occurred, the non-conformity was not due to any actions by the applicant, and approving the variance would clear title; thus, staff recommended approval of V-03-09. She mentioned the applicant had also requested a waiver of the variance application fee as it appeared the error was made by City staff in the 1980s.
- Mr. Hofmeister asked if the variance, if granted, would be permanent, i.e., if the home was destroyed and then reconstructed, could the pool be rebuilt in the same location.
- Ms. Tubbs replied the variance would apply to the existing pool, adding if it was damaged beyond 50% of its value, it would need to be reconstructed in conformance with City Code.
- Mr. Hofmeister clarified he was asking whether the variance was pertinent to the pool or tied to the house. He cited an example where more than 50% of the home was

damaged but the pool remained undamaged, asking if a new home could be constructed without the pool being brought up to conformity.

- Ms. Tubbs opined if the pool was not damaged and had a variance attached, it probably could remain; however, she would need to verify same with the City Attorney. She explained typically all non-conformities would have to be removed if no variance was in place.
- Mr. Hofmeister asked if the variance could be tied to the structure as well, thus requiring the pool to be brought into compliance in the event more than 50% of the home was damaged.
- Ms. Tubbs replied a variance could be granted with conditions.
- Ms. Matthews clarified the variance was for both the home and the pool as a problem existed in both corners.
- Mr. McClary opined the elevation would be found unsatisfactory in the event more than 50% of the property was damaged.
- Ms. Matthews commented her research revealed at least eight documented owners of this property since 1978. She confirmed the title had been cleared each time, expressing disbelief at same. She mentioned the elevation of the house was at nine feet.
- Mr. Kilmer commented on the Existing Building section of the 2004 Florida Building Code, which was subsequently revised in 2005, 2006, 2007 and 2008, announcing the Federal Emergency Management Agency (FEMA) requirement, experienced by many after Hurricane Charley in 2004, no longer existed. He stated the Florida Building Code had criteria for repair, alterations, Levels 1, 2 and 3, historic buildings, etc., adding the "50% rule" did not exist.
- Ms. Tubbs responded Section 26-17 of the City Code dealt with non-conformities within the City and referenced 50% of the value at the time the damage occurred; thus, it was a stand alone provision separate from the FEMA 50% rule.
- Mr. Kilmer countered the Existing Building section of the Florida Building Code did not exist immediately following Hurricane Charley. He stated he simply wished everyone to keep this in mind when discussing damages in excess of 50% of a property's value.
- Ms. Tubbs acknowledged she was not familiar with the Building Code and would need to defer to the City Attorney or Building Official.
- Mr. McClary stated he had been under the impression the 50% rule remained in effect in the City, requesting clarification of this issue.

- Ms. Tubbs responded the City's regulation was relevant to non-conformities regardless of how the damaged occurred. She stated she understood a municipality could adopt ordinances specific to itself which may be more strict than Federal or State regulations.
- Mr. Rose commented he understood a number of properties on Sabal Drive had existing variances, stating he would find it difficult to place a restriction on the subject property which had not been applied to the others.
- Ms. Tubbs noted the other properties would actually have that requirement depending on the type of variance. She pointed out Lot 17 on the overhead, stating the pool seemed to almost abut the seawall.
- Discussion ensued with regard to variances and non-conformities on other Sabal Drive properties.
- Ms. Matthews disclosed she had driven by the subject property. She expressed sympathy for the homeowner's situation, asserting she found it unconscionable that title companies were allowing these transfers. She commended the applicants for what appeared to be significant investments in property improvements.
- Mr. David Griggs, applicant's representative, stated the need for a variance was revealed when he applied for a permit to work on the pool deck. He explained the existing deck was deteriorating, adding they simply wished to replace it in the exact same location with additional sand set pavers as allowed by City Code.
- Ms. Matthews asked if removal of the existing pool deck would compromise the pool.
- Mr. Griggs replied it would not.
- Mr. Bill Clarkson stated he resided across the canal from the subject home, adding he had planned on voicing an objection until he became aware of the original variance; however, new trees were recently planted between the pool and seawall which he believed were in conflict with the six foot provision denoted in City Code.
- Mr. Griggs confirmed the trees were planted in accordance with City Code.
- Ms. Tubbs mentioned a provision in City Code required trees planted six feet from the seawall to be maintained at that distance in perpetuity.
- Ms. Matthews called three times for any one to speak on V-03-09.
- Mr. Bauman MOVED, Mr. Hofmeister SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Hofmeister MOVED to recommend approval of V-03-09 based upon the evidence and testimony presented with the stipulation that the variance be tied to the house wherein if the home was damaged or destroyed more than 50%, the pool would have to be removed as well.
- Mr. Brower opined the variance should not be made conditional.

- Mr. Hofmeister stated he would not object to removal of the condition if all other members desired same; however, he was simply concerned with the continuous granting of variances. He explained PGI would never be improved if this practice continued.
- Mr. Brower pointed out the error was made by the City in that same should have come to light upon inspection. He asserted denial of the variance application could affect marketability of the property.
- MOTION DIED FOR LACK OF A SECOND.
- Mr. Hofmeister MOVED, Mr. McClary SECONDED to recommend approval based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.
- Ms. Tubbs asked if the Board wished to make any recommendation to Council with regard to the request for a waiver of the application fee.
- Mr. Rose MOVED, Mr. Bauman SECONDED to recommend City Council waive the application fee. MOTION CARRIED UNANIMOUSLY.
- Mr. Rose commented it was unfortunate people were forced to go through the entire variance application process in situations such as this.

#### **OTHER BUSINESS**

- Ms. Matthews announced the City was offering a video presentation, "Understanding Government in the Sunshine," on Monday, October 5, 2009, at 9:00 a.m. in Council Chambers.

#### **MEMBER COMMENTS**

- Mr. Kilmer recalled after Hurricane Charley, questions arose relative to what constituted "50% of the value" of damaged structures, adding many people were under the impression a building must be demolished if costs would exceed 50% of its value; however, the law allowed for such a structure to be repaired as long as it met current Building Code requirements. He asked Ms. Tubbs to research the current requirements of the "50% rule" and report back to the Board.

#### **ADJOURNMENT**

- Meeting Adjourned: 4:38 p.m.

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Lynne Matthews, Chairman

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Mary Kelly, Recording Secretary