

**BOARD OF ZONING APPEALS
MEETING
SEPTEMBER 27, 2011**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, Richard Kilmer, James McClary,
Gene Murtha, Ray Rose, Robert Sween

OTHERS PRESENT: Teri Tubbs, Zoning Official
Dennis Murphy, Growth Management Director
Lisa Hannon, Zoning Coordinator
Michael Haymans, Paul Popper

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
- 1. October 25, 2011

APPROVAL OF MINUTES

- A. Meeting of May 24, 2011
- Mr. Bauman MOVED, Mr. Rose SECONDED approval of the May 24, 2011 minutes.
MOTION CARRIED UNANIMOUSLY.

QUASI-JUDICIAL PUBLIC HEARINGS

- Recording Secretary Kelly swore in all participants.
- A. V-02-11 – Request for a variance to the Land Development Regulations pursuant to Chapter 26, Section 16.10, Punta Gorda Code to demolish an existing single-family structure and allow an existing non-conforming accessory pool, deck, and portion of deck stem wall to remain on the property with a waterward setback of 6.31 feet at its closest point instead of 20 feet as required per Section 26-3.13(d), Punta Gorda Code; and to allow an existing boundary wall, ranging from 3.6 feet to 6.9 feet in height, to remain on the property which is prohibited per Section 26-3.13(m), Punta Gorda Code; and to allow said boundary wall to remain on the property with a streetyard setback of 10.13 feet at its closest point and a waterward setback of 0.0 foot instead of 25 feet as required per Section 26-3.4(g)(3), Punta Gorda Code; and to allow an existing 18.2 foot by 9.0 foot concrete slab and pool equipment located outside of the boundary wall, which is 1.5 feet in height, to remain on the property with a front yard setback of 0.0 foot instead of a 25 foot setback as required per Section 26-3.4(g)(2), Punta Gorda Code; and to allow a 16 foot by 6 foot concrete slab located outside of the boundary wall with a front yard setback of 3.0 feet instead of 25 feet as required per Section 26-3.4(g)(2), Punta Gorda Code; and to allow an existing garbage hide wall and underlying

concrete slab located in the front yard to remain on the property which is prohibited per Section 26-8.14(i), Punta Gorda Code; and to allow said garbage hide wall which is 5.4 feet in height above grade and encroaches up to 5.7 feet into the right-of-way which is prohibited without obtaining a building permit per Chapter 20, Section 20-1 Punta Gorda Code; and to allow an existing 19.5 foot wide paver driveway, parking pad, and apron to remain on the property instead of 16 feet wide as allowed by Section 26-103(h)(6) and Chapter 20, Section 20-7(b), Punta Gorda Code; all of which are accessory structures required to be removed from the property upon demolition of the primary residential structure pursuant to Section 26-17.4, Punta Gorda Code.

LEGAL: A portion of Lot 16, Block 90, being the Westerly 10 feet and parallel to the Westerly boundary of said Lot 16, Block 90 and Lot 17, Block 90 of Punta Gorda Isles Section 10 Replat as recorded in Plat Book 8, Page 23, of the Public Records of Charlotte County Florida; and a portion of Lot 21, Block 90, Punta Gorda Isles Section 10 Replat as recorded in Plat 8, Page 23, of the Public Records of Charlotte County Florida.

Long Legal description on File in the City Hall Annex, Urban Design Division, 126 Harvey Street, Punta Gorda, Florida.

A/K/A: 2100 Jamaica Way, Punta Gorda, Florida.

- Ms. Teri Tubbs, Zoning Official, displayed aerial views, plat maps and several photographs of the subject property, as delineated in the agenda material, stating the primary, single family structure was damaged by Hurricane Charley in August 2004 and was not repaired. She noted staff had received several complaints regarding the condition of the home and unkempt condition of the property in general, confirming a Notice of Violation was issued and received by the respondent on January 8, 2011. She announced staff met with the owner and his attorney, Messrs. Paul Popper and Michael Haymans, respectively, and discussed demolition of the home but keeping in place the non-conforming pool and deck, boundary wall, garbage hide and pool equipment; however, City Code prohibited maintenance of accessory structures after demolition of the primary structure. She stated a variance application was submitted on April 12, 2011, but was determined to be incomplete, confirming Mr. Haymans was so advised. She continued a Notice of Hearing was issued and received on July 30, 2011, adding a completed variance application was then received on August 4, 2011. She submitted staff's findings of fact, as denoted within the agenda material, into the record, outlining the following conclusions: (1) the seawall on the majority of the Harbor side, where the pool was located, was installed in 1971 and was likely to need replacement in the near future; such replacement would require a portion of the wall on each end to

be removed along with the chain link fence; a portion of the deck would need to be removed to replace the deadmen in the seawall and could not be replaced following same; (2) regulations regarding non-conforming structures were designed to curtail substantial investment in non-conformities and to bring about eventual elimination and/or lessen their impact upon surrounding, conforming uses and structures in order to preserve the integrity of the area and intent of the ordinance. She concluded based on the intent of the ordinance and literal interpretation of a variance hardship, staff found the request did not meet the criteria necessary for approval and thus recommended denial of V-02-11. She then provided a detailed review of the eight criteria which must be met in order for a variance to be approved.

- Mr. Sween recalled mention of a land based crane used to replace the seawall; however, he had never personally observed same.
- Ms. Tubbs responded she had obtained that information from the Canal Maintenance Division, adding the Punta Gorda Isles Canal Advisory Committee (PGICAC) had discussed the difference in cost between landward and waterward seawall replacement projects. She clarified the cost of landward seawall replacement was \$39.44 per linear foot while the cost for waterward seawall replacement was \$88.43.
- Mr. Murtha expressed surprise at the number of non-conformities which were existing with no variances.
- Ms. Tubbs responded a variance may not have been necessary at the time the property was developed in 1971, pointing out Mr. Al Johns, Punta Gorda Isles, Inc. President, had been the first owner of the property. She stated the City Code in 1971 was far different than current City Code; thus, it was highly likely a variance was not necessary at that time. She mentioned the older aerials depicted a six foot sidewalk running the entire length of the portion of the property which abutted the seawall; however, the sidewalk was removed some time between 1985 and 1995 due to the its negative impact on the seawall, specifically erosion was found underneath the sidewalk. She stated the sidewalk was most likely removed upon implementation of the section of City Code which required a six foot setback from the seawall.
- Ms. Matthews asked if any of the accessory structures had been approved by the City.
- Ms. Tubbs replied in the negative; however, all were existing non-conformities.
- Mr. Sween clarified all of the accessory structures could be retained if the primary structure was demolished and a new home built.
- Mr. Haymans stated the applicant did not want to be wasteful, i.e., "throwing away" hundreds of thousands of dollars on elimination of the various accessory structures described earlier by Ms. Tubbs, particularly the pool. He noted all of the accessory

structures were put in place by Mr. Johns in the early 1970s. He asserted Mr. Popper's negotiations with his insurance company entailed just under five years, adding the applicant had settled elsewhere in Punta Gorda during that time. He confirmed the property had been put up for sale internationally but had since been withdrawn so as to avoid low bids which were typical after a property was up for sale after a long period of time. He clarified the property would be back on the market upon resolution of the issues under discussion this date. He acknowledged the City had identified several City Code violations, which had since been rectified. He acknowledged the importance of City ordinances but pointed out City Code also provided property owners an avenue for relief from same, i.e., the variance application process. He asserted the pool and boundary wall were significant assets which someone may find valuable. He then reviewed the eight criteria and the applicant's responses to same, both delineated in the agenda material, urging the Commission to make a favorable recommendation to City Council. He opined requiring the removal/destruction of the accessory structures on the applicant's property simply made no sense,

- Mr. McClary commented on the final insurance settlement, asking if the percentage of destruction of the primary structure was more than 50%.
- Mr. Haymans replied affirmatively.
- Mr. McClary stated it appeared a new home would need to be constructed at a higher level in order to meet current regulations, adding same would cause drainage problems for nearby properties.
- Mr. Haymans agreed any new construction must meet Federal Emergency Management Agency (FEMA) elevation requirements.
- Mr. Popper interjected the property already met elevation restrictions per a recently conducted survey. He clarified his home could be re-constructed within the same boundaries.
- Mr. Haymans then commented on the issue of the boundary wall's close proximity to the seawall, reminding members replacement of such structures was the property owner's responsibility. He clarified the City would not incur any additional expense if the boundary wall was allowed to be left in place.
- Mr. Kilmer stated his home was also destroyed by Hurricane Charley, adding he received his final settlement far sooner than had Mr. Popper. He continued his settlement also included funds for demolition of the structure, asking if Mr. Popper had been paid in a similar manner.
- Mr. Popper replied in the negative.
- Mr. Kilmer asked if Mr. Popper was reimbursed for the accessory structures.

- Mr. Popper replied he did not believe so.
- Mr. Kilmer then stated Mr. Haymans had indicated a hardship existed because of the value of the accessory structures. He requested clarification of the point where something was no longer an inconvenience but rather a hardship, specifically questioning the dollar amount of the latter.
- Mr. Popper expressed uncertainty regarding same.
- Mr. Haymans added he was unsure of the specific dollar amount. He opined all parties could agree the loss of \$10 was an inconvenience while the loss of \$1,000,000 represented a hardship; however, the specific point in between was a subject for a lengthy discussion.
- Mr. Murtha questioned the type of pool filtration system.
- Mr. Popper replied it was an ionization system, providing a brief explanation of same.
- Mr. Murtha confirmed the system was operating at normal levels.
- Mr. Murtha questioned the possible issues a new, potential owner would face from the Code Compliance Division.
- Mr. Haymans responded approval of the variance application would eliminate those issues.
- Ms. Tubbs explained if the variance was not granted, the non-conforming structures must be removed.
- Ms. Matthews noted the subject property was actually comprised of four separate lots which had been combined many years earlier. She asked if the four lots could be re-subdivided.
- Ms. Tubbs replied affirmatively.
- Ms. Matthews asked if the Board could vote to allow only the pool to be retained.
- Ms. Tubbs replied affirmatively, reminding members the pool equipment would need to be retained as well.
- Ms. Matthews acknowledged the pool would need to be fenced also. She clarified she was simply confirming same was an option.
- Mr. Sween asked if the home could remain in place.
- Ms. Tubbs replied the structure would need to be brought up to Code; however, she stated same was up to the property owner.
- Mr. Sween stated he felt this was a situation where the government was forcing a person to take certain action relative to his own property and forcing him to destroy a swimming pool in perfect condition. He asserted this represented governmental interference with a person's way of life.
- Mr. Haymans noted rehabilitating the home would be extremely costly.

- Mr. Bauman stated there appeared to be at least eight variances requested. He asked the applicant to identify the most important, core variance(s).
- Mr. Haymans replied the pool; however, accessory uses were not allowed without a principal use; thus, the primary request was to allow accessory structures. He continued the existing pool was closer than 20 feet from the seawall, thus requiring a secondary variance.
- Mr. Popper clarified he wished to retain the pool, adding its integral deck, its filtration system and the privacy wall with the gate were all significant. He explained the remainder was primarily comprised of pavers behind some stemwalls.
- Mr. Bauman commented it seemed the applicant was asking the City to grant a variance based on speculation there still may be someone who desired ownership of the property; however, the City's position was in favor of such properties conforming to current City Code.
- Mr. Haymans countered if Mr. Popper was unsuccessful in finding a buyer, he would ultimately taken some action wherein the property would remain an asset valuable to Mr. Popper.
- Mr. Popper confirmed his intention was to re-market and re-price the property. He explained he had taken the property off the market until resolution of this variance application.
- Mr. Sween referred to the boundary and topographic survey, as delineated in the agenda material, stating it seemed the areas depicted in pink represented the areas for which the applicant was seeking a variance; however, he expressed uncertainty with regard to same.
- Ms. Tubbs interjected Items 1 through 7, as delineated on pages 10 and 11 of the agenda material, related to the areas designated in pink.
- Mr. Murtha asked if the applicant had obtained estimates for the cost of removing all of the accessory structures as required by City Code.
- Mr. Haymans replied in the negative.
- Ms. Matthews asked if a timeframe could be imposed within which the primary structure must be replaced in the event the variance was approved.
- Ms. Tubbs replied conditions could be imposed.
- Mr. Dennis Murphy, Growth Management Director, urged the Board to recommend the applicant secure the north side of the property if they opted to approve all or part of the variance.
- Ms. Matthews called three times for anyone to speak on V-02-11.

- Mr. Bauman MOVED, Mr. Sween SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Sween MOVED to find V-02-11 consistent with the Comprehensive Plan and to recommend approval of the 7 articles relating to the pink portion of the boundary and topographic survey contingent upon the north end of the wall being blocked off from public access and the property maintained.
- MOTION DIED FOR LACK OF A SECOND.
- Mr. Murtha MOVED to find V-02-11 consistent with the Comprehensive Plan and to table this issue until the Board could review the financial exposure inclusive in the presentation.
- MOTION DIED FOR LACK OF A SECOND.
- Mr. Bauman MOVED, Mr. Sween SECONDED to find V-02-11 consistent with the Comprehensive Plan and to recommend approval of the 7 articles relating to the pink portion of the boundary and topographic survey contingent upon the following: the north end of the wall blocked off from public access; the property maintained; if the property was not sold within 1 year from this date, the variance would no longer be in effect and the pool must be removed.
- Mr. Sween MOVED to AMEND the motion to allow for a two year period for the property to be sold due to the current economic climate.
- Mr. Bauman SECONDED the AMENDMENT.
- Ms. Matthews called for a vote on the amendment.
- VOTING AYE: Bauman, Sween.
- VOTING NAY: Kilmer, McClary, Murtha, Rose, Matthews.
- MOTION FAILED.
- Ms. Matthews commented she was not convinced of the value of the pool to a potential, new owner, stating she believed all accessory structures should be eliminated. She then called for a vote on the original motion.
- VOTING AYE: Bauman, Sween.
- VOTING NAY: Kilmer, McClary, Murtha, Rose, Matthews.
- MOTION FAILED.
- Mr. Kilmer MOVED, Mr. Murtha SECONDED to find V-02-11 consistent with the Comprehensive Plan and to recommend denial of same based upon the evidence and testimony.
- VOTING AYE: Bauman, Kilmer, McClary, Murtha, Rose, Matthews.
- VOTING NAY: Sween.
- MOTION CARRIED.

- Mr. Murtha questioned the next step if the City Code violations were not remedied.
- Ms. Tubbs replied the case would be presented to the Code Enforcement Board.

NEW BUSINESS

- Mr. Sween commented the Board's November 2011 Meeting was scheduled 2 days prior to Thanksgiving, asking if it could be re-scheduled.
- Discussion ensued with regard to possible, alternative dates.
- Consensus of the Board was to make no change to the schedule.
- Mr. Sween announced he would be unable to attend the November 22, 2011 meeting.

UNFINISHED BUSINESS

- A. V-01-11 – Results of the June 15, 2011 City Council Meeting
 - Ms. Tubbs advised City Council had approved V-01-11 on June 15, 2011. She noted the applicant, Tropical Pools, was brought before the Building Board on June 28, 2011, and found guilty of willful and deliberate disregard or negligent violation of the Building Code.

ADJOURNMENT

- Meeting Adjourned: 5:23 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary