

**BOARD OF ZONING APPEALS  
MEETING  
OCTOBER 26, 2010**

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

**MEMBERS ABSENT:** Robert Sween

**OTHERS PRESENT:** Teri Tubbs, Zoning Official  
Randy Brodersen, Canal Maintenance Supervisor  
Lisa Hannon, Zoning Coordinator  
Charles Kratz, Jack Basarab

**CALL TO ORDER/ANNOUNCEMENTS**

- A. Roll Call
- B. Next Scheduled Meeting - November 23, 2010

**APPROVAL OF MINUTES**

- A. Meeting of July 27, 2010
- Mr. Kilmer MOVED, Mr. Bauman SECONDED approval of the July 27, 2010 minutes.  
MOTION CARRIED UNANIMOUSLY

**QUASI-JUDICIAL PUBLIC HEARINGS**

- Recording Secretary Smith swore in all participants.
- A. V-06-10 - Request for a variance to the City of Punta Gorda Land Development Regulations pursuant to Chapter 26, Section 26-16.10, Code of Ordinances, City of Punta Gorda, Florida, to allow an existing 4 foot wide paver sidewalk that is located parallel to and within 6 feet of the seawall to remain instead of requiring 6 feet of sod as is required per Chapter 26, Section 26-3.13(e), Code of Ordinances, City of Punta Gorda, Florida. Legal: Block 77, Lots 36, 37 and 38, Punta Gorda Isles Section 7 as recorded in Plat Book 7, pages 48A through 48F of the Public Records of Charlotte County, Florida. A/K/A: 1323 Mediterranean Drive, Punta Gorda, Florida.
- Ms. Teri Tubbs, Zoning Official, stated this request came to staff as a result of discovering the sidewalk after the Certificate of Occupancy (C.O.) had been issued, adding a Code Compliance case was never completed due to various staffing issues. She explained the sidewalk was non-compliant with City Code which required a minimum of six feet of sod adjacent to the seawall. She noted the current property owner had purchased the property out of foreclosure, adding the original developer was no longer involved. She clarified the current owner had assumed the sidewalk was

approved. She mentioned a slope was existing from the rear of the building, displaying a photograph depicting same. She confirmed she had discussed the possibility of moving the sidewalk away from the seawall; however, first floor residents were not in favor of same as it would then be in close proximity to their rear lanais. She advised an initial inspection of the seawalls by the Canal Maintenance Division showed same to be in good condition; however, a waterward inspection done since that time revealed the seawalls must be replaced, mainly due to a large crack at the oyster line. She stated the applicant had submitted a letter to the Canal Maintenance Division expressing their acceptance of full financial responsibility for the removal and replacement of the pavers if any work to the seawall was needed in the future. She stated the Punta Gorda Isles Canal Advisory Committee (PGI CAC) had reviewed V-06-10 and expressed concern regarding the sidewalk causing damage to the seawall, adding due to the literal reading of the interpretation of criteria, staff also had to recommend denial; however, they were sympathetic to the owners situation.

- Mr. McClary confirmed the applicant agreed to pay for removal of the pavers, adding replacement with sod would result in a “wash” with regard to cost. He then stated he understood the sod had to be sufficiently depressed to hold water so as to not cascade over the seawall.
- Mr. Randy Brodersen, Canal Maintenance Supervisor, responded newly installed sod would settle, after which the majority of water would run over the seawall cap and into the canal system, which was the desired result.
- All members disclosed they had visited the site.
- Mr. Kilmer then drew members’ attention to correspondence from Mr. Brodersen, as delineated in the agenda material, reading same into the record. He summarized it appeared the grade of the lawn on the waterside of the palm trees was not so steep so as to not allow a walkway in that location. He pointed out the applicants were seeking approval to re-create a non-conformity.
- Mr. Rose inquired if pavers were permitted along the canal.
- Ms. Tubbs replied pavers were not permitted to run parallel to the canal.
- Mr. McClary stated re-creation of a sidewalk six feet from the seawall would require either a retaining wall and/or tree removal and subsequent relocation, all of which was quite costly.
- Mr. Bauman countered the above mentioned electronic mail indicated a retaining wall would not be required.
- Ms. Tubbs responded staff had done no engineering to confirm the need for same, adding Mr. Brodersen indicated if the primary part of the sidewalk could be moved

back so as to leave the six foot separation, perhaps the variance request could be modified to only require encroachment to accommodate existing trees.

- Mr. Bauman opined the slope was significant enough to make the area difficult to traverse on a wet day.
- Ms. Matthews commented the subject property was the only one in the surrounding area with this type of sidewalk, stating she was opposed to the request.
- Mr. Rose recalled Clipper Cove Condominiums had been required to remove an extensive sidewalk behind their units.
- Ms. Tubbs agreed that was the case.
- Mr. Kilmer questioned the severity of the existing cracks in the seawall, stating he had not observed any cracks along the oyster line.
- Mr. Brodersen responded there were approximately 185 feet of seawall with severe cracking in the oyster line, adding he personally observed same from the water side.
- Ms. Matthews inquired if the docks had to be removed to allow for replacement of the seawall.
- Mr. Brodersen replied in the negative.
- Mr. Charles Kratz, applicant, stated he had much experience in waterfront property ownership, adding this property's lay-out was very desirable, particularly with regard to dock access. He stated relocation of the sidewalk would require a retaining wall which would be cost prohibitive. He noted the sidewalk was handicap accessible which was very desirable to a number of their residents. He distributed a brief timeline of the history of development of the Mediterranean Landing Condominium Association (MLCA), applicant, providing a detailed review of same. He pointed out certain issues were raised by the PGI CAC, submitting written responses to each into the record. He announced the MLCA accepted full financial responsibility for the removal and replacement of the pavers should seawall maintenance be required, displaying written confirmation of this acceptance, as delineated in the agenda material. He presented correspondence from Mr. Brian Stirling, Principal Engineer (PE), who opined the pavers did not detrimentally impact the strength or stability of the seawall, whether existing or new.
- Mr. Jack Basarab, MLCA President and applicant, stated he had recently been made aware of the City's concerns relative to the potential for liability, adding he had confirmed \$1 million in liability insurance was already in place. He concluded the subject condominiums were unique, adding no other properties had the same or similar slope or site restriction problems.
- Mr. Kilmer requested an estimate on relocating and/or removing the pavers.

- Mr. Basarab replied he did not have a figure on hand; however, he confirmed MLCA's acceptance of financial responsibility for same.
- Mr. McClary inquired if there was concrete under the pavers.
- Mr. Basarab replied it was sand.
- Ms. Matthews inquired if Mr. Brodersen was satisfied with regard to any financial liability concerns.
- Mr. Brodersen replied one of his main concern was the ease of repairing sinkholes, which were inevitable. He explained the pavers would have to be removed to repair sinkholes, adding if they were not repaired immediately, a bridge could be created and someone could fall through.
- Mr. McClary confirmed the MLCA had liability insurance.
- Ms. Tubbs interjected approval, if granted, could be conditioned upon a hold harmless agreement.
- Mr. Rose asked if artificial turf was allowed within the six foot space.
- Ms. Tubbs replied affirmatively. She noted artificial turf could not be attached in any way to the seawall but rather could only be laid so as to abut same.
- Mr. Kilmer asked Mr. Brodersen if he felt approval was appropriate.
- Mr. Brodersen replied it could cause problems, acknowledging there were unknown factors involved.
- Ms. Matthews called three times for anyone to speak on V-06-10.
- Mr. McClary MOVED, Mr. Kilmer SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Ms. Matthews acknowledged this situation was very unique to the property; however, she stated she did not believe there were no similar properties in the area. She pointed out a new condominium on Magdalena Drive had a greater slope but did not have this problem. She reminded members the Board must consider eight criteria when deciding upon variance requests, adding applications must adhere to each of the criteria for approval to be granted.
- Mr. Kilmer agreed this was a unique situation, adding most properties had a situation where it was necessary to cross the lawn; however, that was merely an inconvenience rather than a hardship. He opined Mr. Brodersen's comments regarding filtration were appropriate, adding he did not believe the Board should approve the re-creation of a non-conformity.
- Mr. Bauman stated he believed the request satisfied the criteria, adding he felt a substantial hardship existed. He clarified he was in favor of requiring a hold harmless agreement as stated earlier.

- Mr. Murtha commented the paver sidewalk was aesthetically pleasing; however, it was non-conforming.
- Mr. Kilmer MOVED, Mr. Murtha SECONDED to recommend denial of V-06-10 based upon the evidence and testimony presented.
- VOTING AYE: Kilmer, Murtha, Rose, Matthews.
- VOTING NAY: Bauman, McClary.
- MOTION CARRIED.

**STAFF COMMENTS**

- A. Results of City Council Action on August 18, 2010
- Ms. Tubbs reported FV-02-10 was approved by City Council.

**ADJOURNMENT**

- Meeting Adjourned: 4:58 p.m.

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Lynne Matthews, Chairman

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Karen Smith, Recording Secretary