

Board of Zoning Appeals
Minutes
January 12, 2010

I. Call to order

Chairman Guy Taylor called the regular meeting of the Board of Zoning Appeals to order on January 12, 2010 at 5:30PM in the Building Department Conference Room, 1301 Palm Boulevard. Other members present were Frances Anderson, Arnold Karig and Tom Miller; also Secretary Douglas Kerr was present. Mike Layman was absent. Mr. Kerr explained that the meeting was advertised in compliance with the Freedom of Information Act.

II. Election of Chairman and Vice Chairman

Mr. Taylor asked for nominations for Chairman and Mr. Karig nominated Guy Taylor. Mr. Miller seconded the motion and the vote was unanimous in favor of the nomination.

Mr. Taylor asked for nominations for Vice Chairman and Mr. Taylor nominated Arnold Karig. Mr. Miller seconded the motion and the vote was unanimous in favor of the nomination.

III. Approval of Minutes

The next item on the agenda was the review of the minutes of the November 10, 2009 meeting. Mr. Miller made a motion to approve the minutes and Ms. Anderson seconded the motion. The vote was unanimous in favor of the motion.

IV. Home Occupations

Mr. Taylor explained that the Board acted as a quasi-judicial body and all comments made were treated in the same manner as court testimony and therefore any person who would like to speak to the Board should be sworn in. He then swore in all members of the audience that would be speaking.

3601 Hartnett Boulevard

Mr. Kerr explained that the applicant is requesting a special exception to allow the establishment of a home office for an architectural services business. He explained that the applicant would be doing office work only at the house and has indicated that there will be no business related traffic coming to the house, no exterior evidence of a business and no employees working at the house.

Mr. Taylor asked the applicant if there was anything she wanted to explain beyond what her written application stated. The applicant, Ms. Lurkin, responded that basically she would be working on her computer in her home. Mr. Miller asked if this was the only business at the house and Ms. Lurkin answered yes. Ms. Anderson asked how documents and plans would be transferred to her clients. Ms. Lurkin answered that they would typically be sent electronically to a printer and then physically taken from the printer to the client. Mr. Karig made a motion to approve the request and Mr. Miller seconded the motion. The vote was unanimous in favor of the motion to approve the request.

V. Variance

#1- 49th Avenue

Mr. Taylor stated that the next case was a request for a variance and he explained that time would be allotted to hearing the applicant's request and then time would be allotted to hearing comments from members of the audience. Mr. Sottile asked what the process would be if members of the audience have questions for the applicant. Mr. Kerr responded that comments from the audience should be directed to the Board and those comments could lead the Board to ask the question of the applicant.

Mr. Kerr explained that the applicant is requesting variances from the front and rear setback requirements to allow the construction of a new house ten feet from the rear property line (30 feet required) and 17 feet from the front property line (30 feet required). He explained that the property is 90 feet deep, which results in a buildable depth of 30 feet when the setback requirements are met. The applicant is requesting that the buildable depth be increased to 63 feet.

Mr. Kerr stated that the applicant claims that the lot is extraordinary and has exceptional conditions pertaining to its shape because the lot is smaller in the front to back dimension than it is in the side to side dimension and that the applicant claims that the hardship that will result if the standards of the ordinance are met is that the house will have to be built in a configuration that has reduced views and exposure to the ocean. He explained that the applicant claims that the authorization of the variance will not be detrimental to adjacent properties because the planned house location and shape will minimize the impact on adjacent properties.

The applicant's attorney, Mr. Leonard Krawcheck, addressed the Board and explained that this property has a history with the Board of Zoning Appeals. He explained that the only other lot with the same conditions as this lot came before

the Board about ten years ago and the same request was made and the Board determined that the situation met the criteria in the ordinance to grant a variance. He added that in the written order for that case, #2-48th Avenue, the Board cited the fact that only two lots in the City had the same conditions and this is the second lot. Mr. Krawcheck explained that the lot's dimensions and orientation result in a very shallow buildable area, which unreasonably restricts the property and results in a building area that is out of character with the neighborhood. He explained that he is requesting that the Board apply the conditions in the ordinance and determine that this case meets the criteria, just as it did with the neighboring property ten years ago.

Mr. Taylor asked to hear comments from the audience and recognized Mr. John Boyd, #10-49th Avenue. Mr. Boyd explained that he had investigated purchasing this property and during his due diligence period, he became aware of the shallow building envelope and he decided not to buy the property. He stated that he strongly disagreed with the applicant's position that this request would not adversely affect the neighboring properties.

Mr. Boyd's attorney, Nick Sottile, asked Mr. Boyd where his property is located. Mr. Boyd answered the southeast corner of Palm Boulevard and 49th Avenue. Mr. Sottile asked what the effect of this variance would be to his property. Mr. Boyd answered that it would be devastating to his property, as it would greatly diminish his view and exposure to the ocean.

Mr. Sottile stated that he believed that the applicants for this property were representing a contract buyer and he wanted to verify this with the applicants. Mr. Taylor stated that he felt this was a fair question and he asked Mr. Krawcheck to answer the question. Mr. Krawcheck answered yes, that his client had a contract to purchase the property, but that the contract specified that the prospective buyer had full permission to request this variance.

Mr. Sottile explained that in *Restaurant Row Associates v. Horry County*, the Supreme Court of South Carolina supports the position that a contract buyer cannot claim that an ordinance that was enacted prior to his purchase of the property results in a hardship.

Mr. Sottile explained that in *Witherspoon v. the City of Columbia*, the Court of Appeals of South Carolina determined that a previous determination of a Board of Zoning Appeals does not establish a legal precedent in the Board's consideration of a subsequent request, so the fact that the Board granted a variance in the past should have no bearing on the outcome of this request.

Mr. Sottile explained that he believed that the graphics provided by the applicant confirmed that the property could have a house of the same overall size built, in a different shape, without the issuance of a variance.

Mr. Sottile explained that in the 1988 deed to the current owner a survey was included that showed that the South Carolina Coastal Council setback line was through the middle of the property and he would argue that the owners have a larger buildable area currently, without a variance, than they had when they purchased the property.

Mr. George Bullwinkle addressed the Board and explained that was the attorney representing the property owners immediately behind this property at #5- 49th Avenue. He explained that as Mr. Sottile has stated, the courts have determined that it does matter who the applicant is when determining a variance and the case that was heard ten years ago does not establish a precedent for the Board's decision on this case.

He explained that even if the Board did want to consider the case at #2-48th Avenue, it was a very different set of circumstances. He presented the Board with photographs looking down 48th Avenue which he said showed that the Citadel beach house provided a large open area, so the neighborhood did not suffer as much as they would if this request was approved. He showed photographs looking down 49th Avenue and explained that the end of 49th Avenue had a much narrower view corridor and therefore, this request would have a much greater impact on the neighboring properties. He showed photos from his clients property and explained that their exposure and views of the ocean would be greatly reduced, if this variance is granted; and they bought their property in reliance on the City's code.

Mr. Elaine Tessler, owner of #3- 49th Avenue, addressed the Board and explained that her property was immediately adjacent to this property and she felt that her property would be adversely impacted, if this variance were granted. She stated that the neighbors are unanimously in opposition to this request and she felt that the fact that the property could be sold at a higher price should not be considered by the Board.

Mr. Bullwinkle explained that he had also been asked to represent the owners of #8- 49th Avenue, the Herndon's, and he read a letter in opposition to the Board explaining that the request would obscure their view and adversely impact their property.

Mr. Jack Sharp, owner of #4- 49th Avenue, explained that he would like to provide the Board with a letter of objection from the owners of #6- 49th Avenue, the Hutchison's; and he felt that the variance would adversely effect his property.

Mr. Phil Sherrill, owner of #11- 49th Avenue, explained that one of the reasons he bought his property is that he understood that the City's zoning code would always provide for an open vista to the beach at the end of the road. He added that he owned and sold a property on Palm Boulevard that had a shallow building envelope because of the City's tree preservation ordinance, but the subsequent owner was able to build a beautiful house that was only 22 feet deep.

Mr. Krawcheck explained that he understood that the neighbors had objections, but he asked that the Board apply the conditions established in the zoning code, which he felt this case met. He asked that the Board consider the fact that many of the neighbors present owned property that was hundreds of feet away and the City's code specified that the Board consider adjacent property owners and the public good; and that most of the owners were not adjacent. He explained that the Board should not be concerned with establishing a precedent by granting this variance, because there are only two properties on the island having the same conditions and the Board has already granted a variance for the other lot. He read the four criteria from the City's code and explained that he felt that this request met all four criteria.

Mr. Herlong added that the case has been made that the property is currently buildable, without a variance, but he explained that he did not feel that it was in anybody's best interest to build the house so much closer to the ocean than the adjacent houses or such a bizarrely shaped house.

Mr. Tessler, the owner of #3- 49th Avenue, addressed the Board and explained that they always knew a house would be constructed, but this proposal was for a house that was too large for the property.

Mr. Karig explained that he would like to receive legal advice and made a motion to go into executive session. Ms. Anderson seconded the motion and the vote was unanimous in favor of the motion.

The Board came out of executive session and Mr. Taylor explained that the Board received legal advice. Mr. Karig made motion to deny the request and stated that he did not feel that the property had extraordinary or exceptional conditions pertaining to its shape and that he does not believe that a hardship that will result if the standards of the ordinance are met, because the applicant has illustrated that a large house can be built, which complies with the standards

Board of Zoning Appeals
January 12, 2010 minutes
Page 6

of the ordinance and he believes that the authorization of the variance will be detrimental to adjacent properties. Mr. Miller seconded the motion and the vote was unanimous in favor of the motion.

VI Adjournment

With no other business, the meeting was adjourned at 6:55PM.