

Board of Zoning Appeals  
Minutes  
July 5, 2011

I. Call to order

Chairman Arnold Karig called the regular meeting of the Board of Zoning Appeals to order on July 5, 2011 at 5:30PM in the Building Department Conference Room, 1207 Palm Boulevard. Other members present were Frances Anderson, Scott Davidson, Mike Layman and Tom Miller; also Secretary Douglas Kerr was present. Mr. Kerr explained that the meeting was advertised in compliance with the Freedom of Information Act.

II. Approval of minutes

The next item on the agenda was the review of the minutes of the June 7, 2011 meeting. Mr Miller made a motion to approve the minutes and Mr. Layman seconded the motion. The vote was unanimous in favor of the motion.

III. Variance

#1-49<sup>th</sup> Avenue

Mr. Karig 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.

Mr. Karig asked Mr. Kerr to read the statutes that pertain to granting a variance, which he did.

Mr. Kerr explained that the applicant is requesting variances from the front and rear setback requirements to allow the construction of a new house 15 feet from the rear property line (30 feet required) and 20 feet from the front property line (30 feet required). 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 55 feet.

Mr. Kerr stated that the applicant claims that the lot is extraordinary and has exceptional conditions pertaining to its shape because the lot fronts the beach, has wide street frontage and narrow depth. The applicant claims that the home will be unreasonable confined to a 30-foot deep building envelope and would result in that a structure will be out of character with neighboring properties. The applicant claims that the construction of any home will have an impact on the view corridors of the adjacent properties and that a 30-foot deep home would be out of character and detrimental to the surrounding areas.

Mr. Kerr explained that the statutes that were pertinent to the request were:

Section 5-4-2. Definitions. (17) Front yard. An open area between the front of the building and the front lot line.

Section 5-4-2. Definitions. (32) Rear yard. An open area, excluding accessory buildings, between the rear line of the building and the rear lot line.

Section 5-4-32. SR1- Single family residential district. (6) Minimum yard requirements. (a); Front yard: 30 feet

Section 5-4-32. SR1- Single family residential district. (6) Minimum yard requirements. (c); Rear yard: 30 feet

The applicant's attorney, Mr. Ronnie Richter, explained that his client has been paying taxes on the property since 1986. He explained that the property is unique because it is ocean front, it is in a "v" flood zone and it is very narrow facing the ocean.

He explained that the only similar lot is #2- 48<sup>th</sup> Avenue, which the Board of Zoning Appeals granted a similar variance in 2004. He distributed a copy of the order for #2-48<sup>th</sup> Avenue to the Board. He explained that there are also flag lots in the vicinity of this lot and that for those properties, the City established that the side property lines were those lines perpendicular to the shore, which requires a setback of only 10 feet, while his client is being required to meet a setback of 30 feet from those lines.

He explained that while he knew neighbors in the audience would speak against this application, he wanted the Board to be aware that no one is promised a view corridor in South Carolina.

Mr. Karig asked for comments from Board members or the audience.

Mr. Nick Sottile asked the applicant if the same size could be built whether the Board granted the variance or not. Mr. Richter answered in overall size it would be the same, but it would be of a shape that was out of character with the neighborhood. Mr. Sottile asked if the applicant was requesting an aesthetic variance. Mr. Richter answered yes.

Ms. Elaine Tessler addressed the Board and asked if the owner paid less because of its limitations. Mr. Richter answered that he did not know, but he did

know that the assessed value of the lot had been reduced based on the City's setback limitations.

Mr. Karig asked if the applicant was aware of the size of the lot when he purchased the property. Mr. Richter answered yes.

Mr. Karig asked what the difference was between this application and the application that the Board had recently denied. Mr. Richter answered that the last request was filed by a prospective buyer and this request was being made by the owner.

Mr. Karig asked for general comments on the application. Ms. Collette Holmes addressed the Board and explained that she purchased the property behind this property after researching the setbacks and learning that the lot would be limited to a narrow lot. She stated that the value of her property would be significantly reduced if the Board granted the variance.

Mr. John Boyd addressed the Board and explained that he owned #10- 49<sup>th</sup> and he believed that a variance would greatly depreciate the surrounding areas and it would be detrimental to the neighborhood.

Mr. Sottile addressed the Board and explained that he was present to represent the Holmes' and the Boyd's. He explained that the variance that was granted for the lot that is the mirror image of this property at #2-48<sup>th</sup> Avenue was very different because there was a wide open area next door at the Citadel Beach Club. He explained that the Witherspoon case established that there is no precedent established by past rulings of the Board and he distributed a copy of the case. He explained that the Board must adhere to the standards in the City and State code for granting a variance, which require that all four criteria be met, not just one. He explained that on the order for the previous variance request for this same property, the Board found that a house of reasonable size could be built and he stated that nothing has changed since that time.

Mr. Sottile explained that when the owner purchased the property there was a plat attached to the deed that showed that the 1988 OCRM setback line was right in the middle of the property and therefore the owner bought a property that had significantly more obstacles to development than it currently does.

Mr. Richter stated that it may be accurate that the decision at #2-48<sup>th</sup> Avenue is binding to this property, but he stated the Board can not act arbitrarily or prejudicially in this matter. He stated that the issue of breezes and vistas is a farce and that they are not protected by State or City statutes.

Mr. Sura Tessler, #3- 49<sup>th</sup>, addressed the Board and he explained that the applications were signed by the same person for both hearings on this property and he did not feel there was any difference. He stated that this variance creates a hardship on the surrounding area.

Mr. Sharpe explained that he was here about a year ago to hear a request that he believed was identical to this request and that there are two more properties and if this variance is granted, he was sure the other two properties would ask for the same variance.

Mr. David Somers addressed the Board and explained that he lives on 51<sup>st</sup> Avenue and he explained that if an owner purchases a property with shortcomings, he did not think it was appropriate to give relief to the ordinances so that the property can be used more profitably. He added that financial hardships cannot be considered by the Board.

Mr. Sherrill, #11-49<sup>th</sup> Avenue, addressed the Board and explained that when he bought his property he checked the setbacks and he knew it would be uniformly applied.

Mr. Karig explained that case law had been brought up and he asked for a motion to go into executive session for legal advice. Ms. Anderson made a motion, the motion was seconded and the vote was unanimous to go into executive session.

The Board came out of executive session and explained that they had received legal advice and no deliberation had taken place and no decisions had been made.

Mr. Davidson explained that he appreciated the arguments made by the applicant, but he does not think he can apply the outcome of other cases to this case.

Mr. Miller explained that when he considers the fact that profitability should not be considered, it is hard to see a rationale to grant the variance.

Mr. Davidson made a motion to deny the variance.

Mr. Layman made a motion to amend the motion to state that the variance be denied based on the fact that the request does not meet the third criteria required by the ordinance because a house of reasonable size can be built without the granting of the variance.

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The amendment was seconded, the original motion was seconded and the vote was unanimous in favor of both motions.

#### IV. Adjournment

With no other business, the meeting was adjourned at 6:40PM.