

MINUTES
BOARD OF ADJUSTMENT

July 7, 2010

7:00 p.m.

City Commission Chambers
22 South Beach Street
Ormond Beach, Florida

I. ROLL CALL

Members Present

Jean Jenner
Dennis McNamara
Tony Perricelli
Ron Walker

Staff Present

Steven Spraker, AICP, Senior Planner
Ann Margret Emery, Deputy City Attorney
Chris Jarrell, Minutes Technician

Members Excused

Norman Lane

II. APPROVAL OF MINUTES

The Board members voted to approve the minutes of the June 2, 2010 meeting, as presented.

III. OLD BUSINESS

There was no old business to be discussed.

IV. NEW BUSINESS

A. Case No. 10V-120: 232 South Beach Street – Dock Variance

Mr. Spraker stated that the application was for variances to allow a dock at a vacant riverfront site at 232 S. Beach Street. He said that the site from which the dock would be built has frontage on the east side of Beach Street, whereas the residential building lot is located west of, and with frontage on, the west side of Beach Street. He advised that the applicant had yet to obtain permits for the dock through the City, Volusia County and other jurisdictions, because he first wanted to make sure that he would be able to obtain local government approval.

Mr. Spraker explained that the city's Land Development Code (LDC) identified any property with a width of less than 65 feet as suffering a hardship. He said

that the subject lot width is 52.79 feet and that the applicant sought to construct a dock platform that would be located 20 feet from the south line and to place two mooring posts eight feet (8') from the south side riparian line. The result would be an 8-foot setback on the south side and a 20-foot setback on the north side.

Mr. Spraker displayed photographs to show the location of the proposed dock, as well as the location of the existing dock at 200 N. Beach Street, north of the subject property. He said that the adjacent property to the south at 236 S. Beach Street had no dock at present, but had adequate room for a dock. He said that the location of the subject dock was in keeping with the other properties along Beach Street. Staff had not been contacted, Mr. Spraker said, and had not received any objections to the application from either of the adjacent owners. He clarified for the Board members that the construction of the dock would have to be at the time of, or subsequent to, construction of the principal structure. He added that regardless, the dock (accessory structure) could not be issued a certificate of occupancy until a C.O. was issued for the house (principal structure).

Mr. Spraker stated that staff recommended approval of the variance.

Mr. Bruce Moss, 2409 John Anderson Drive, stated that he was the applicant and confirmed that he had a boat. He acknowledged that he was aware that he had to build the house first, since it was the principal structure. He remarked that he wanted to take advantage of the BOAA forum to voice his objection to that Code requirement, since he was a taxpayer and felt that the dock was a fundamental use of the property.

Chair McNamara advised the applicant that if the board were to grant the variances for the dock, the process to build would have to be started prior to the one-year expiration date.

Mr. Moss explained that the Corps [Army Corps of Engineer's] permit had a one-year expiration, as well.

Chair McNamara opined that it would be a shame if the applicant had a lot on the river and did not have a dock, but pointed out that the setback rules had been established to prevent an owner from infringing upon the rights of neighbors.

Mr. Moss questioned why the rule had been incorporated into the LDC.

Mr. Spraker stated that the city did not want people building docks without houses. He advised the applicant that he could make application to amend the Code to change the regulation, but explained that it was not a matter for the Board of Adjustment and Appeals. He further explained to Mr. Perricelli that the dock was an accessory structure in association with the house (a principal structure) and that the city's Land Development Code did not allow stand-alone accessory structures. He said that the applicant could pull both permits

simultaneously, but that he could not get a certificate of occupancy for the dock if one had not yet been issued for the house.

Mr. Perricelli asked if the applicant was planning to build a house on the vacant lot across Beach Street.

Mr. Spraker said that he believed that they would, but thought that the applicant was struggling like everyone else to sell his house in order to build a new house.

Mr. Moss said that Larry Stevenson of Bunnell had been engaged to design both the house and the dock and that if he built the dock prior to building the house, the city would not sign off on it.

Deputy City Attorney Emery said that building the dock and utilizing it before the certificate of occupancy is issued for the house would not be recommended.

Mr. Moss responded to Mr. Perricelli that he hoped to build the house and dock within a year of obtaining the variance approval, but acknowledged that he plans depended on whether or not the economy turned around. He commented that the fact that he was spending money on having plans drawn showed his intent to do so.

Mr. Perricelli suggested that it might be better to postpone the issue until there was a set of house plans, since the dock might not be built if the house was not constructed.

Mr. Spraker said that the applicant would need other agency permits and therefore needed some assurance that local government would approve the dock. He said that the issue before the Board was simple and that the other factors mentioned were not applicable to the variance. He noted that the applicant could have elected to wait another year before applying for the variance, but said that there was a valid application and a staff recommendation before the Board. He restated that the variance issue was that the lot width was not sufficient to meet setbacks.

Mr. Spraker said that the applicant was taking the risk and it was up to Mr. Moss to follow through with permitting within one year. He also noted that the applicant could apply to amend the LDC if he so desired. He confirmed for Mr. Jenner that the issue had been packaged as a single variance, since both were related to the dock.

Deputy City Attorney Emery explained to Chair McNamara that if the applicant were to build the dock prior to building the house, a Code violation could be issued, which could result in on-going fines being imposed until the situation was corrected. She said that could mean his having to dismantle something for which he had spent a lot of money. She stated that it would simply be a code violation.

Mr. Spraker said that it was not unusual to permit a dock and a house together, similar to building a house and pool at the same time. He explained that if the applicant moored his boat prior to the house being completed, he would be in violation of the Code, which would then result in his being summoned to appear before the Special Master and being fined. He said that was one of many scenarios that could possibly occur.

Mr. Walker said that he understood the economic situation the applicant was facing, but that he was within his rights to take the risk.

Mr. Jenner stated that the Board dealt with variances, not the consequences of someone's actions. He said that the applicant had paid a fee to apply for the variance he needed and that it was not within the purview of the Board to speak to what might happen in the future.

Mr. Walker agreed that the application stood on its own merit. He **made a motion to approve the variance, as submitted.**

Mr. Jenner seconded the motion, which was approved by unanimous vote.

Mr. Moss clarified that he did not plan to build the dock without building the house, but was simply expressing his objection to the regulation.

IV. DISCUSSION

There was no discussion following the presentation of the public hearing item.

ADJOURNMENT

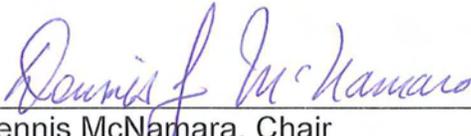
As there was no other business, the meeting was adjourned at 7:15 p.m.

Respectfully submitted,



Steven Spraker, AICP, Senior Planner

ATTEST:



Dennis McNamara, Chair

Minutes prepared by Betty Ruger.

Pursuant to section 286-0105, Florida Statutes, if any person decides to appeal any decision made by the board of adjustment with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

All persons appealing to the board of adjustment must be present, or represented at the public hearing scheduled for the consideration of his request. Failure to be present or to be represented, results in the automatic refusal by this board to grant permission for any variance. In order to allow the meeting to proceed in an orderly fashion, the board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for city staff, the designated representative of the applicant and the designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the board.

Persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance and who wish to attend city commission meetings or any other board of committee meeting may contact the city clerk in writing, or may call 677-0311 for information regarding available aids and services.

Spraker, Steven

From: Spraker, Steven
Sent: Tuesday, October 05, 2010 9:38 PM
To: 'ba1415@aol.com'
Cc: Johnson, Sabrina M; Emery, Ann-Margret
Subject: RE: Variance meeting for 141 Country Club

Tracking:	Recipient	Delivery	Read
	'ba1415@aol.com'		
	Johnson, Sabrina M	Delivered: 10/5/2010 9:38 PM	Read: 10/6/2010 8:05 AM
	Emery, Ann-Margret	Delivered: 10/5/2010 9:38 PM	Read: 10/6/2010 11:45 AM

Mr. Inskeep:

Thank you for your e-mail. I will present the e-mail to the applicant and to the Board of Adjustment and Appeals. I will encourage the applicant/property owner to contact you as soon as possible.

Please note that the Board is scheduled to hear and act upon the application tomorrow night after considering how the application complies with certain criteria and public testimony.

I will provide any updates I receive to you.

Thank you

Steven

From: ba1415@aol.com [mailto:ba1415@aol.com]
Sent: Tuesday, October 05, 2010 6:49 PM
To: Spraker, Steven
Subject: Variance meeting for 141 Country Club

Steven Sparker, AICR

Just a quick follow up to our phone conversation the other day regarding the property behind me requesting for a special variance for a pool enclosure.

I have no problem with Mr Salamon having his enclosure five feet from my fence, however the weed problem on his property is a concern that once the enclosure is up that the weeds will only continue to get worse being that there is only a five foot wide walk area between my fence and new enclosure.

So this is what I would like him to do before I agree with the variance.

1. Some type of REAL weed barrier put down
2. Old weeds dug out and weed barrier is laid with rocks on top of that.
3. I would like a letter stating that this will not be a problem for me in the future.

This may seem a bit OD, a concern over weeds growing through my fence but it is a constant problem that some property owners over look or just don't care.

I happen to be a property owner who respects and takes stellar care of my lawn, house and fence.

If you have any further questions I can be reached at 386-451-8083
Good luck to Mr Salamon and I happy to see he's updating his property.

Brent Inskeep
115 Fairway Drive
Ormond Beach, FL 32176

10/6/2010