

**Minutes of Board of Adjustment Meeting
Held Tuesday, June 21, 2005, at 7:00 P.M.
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida**



Call to Order

The meeting was called to order by Chairperson Steven Hartkemeyer.

Roll Call

Keith Hall
Steven Hartkemeyer (*Chairperson*)
Bobby Jolley
Terry McGill (*Vice Chairperson*)
John Moreland

Charlie Sellers, Alternate
Vicki Gilliom, Alternate

Jon Hays, Building Official, and Steve Lindorff, Planning and Development Director were also present.

Mr. Hartkemeyer read the following statement into the record:

“These variance applications are before the Board of Adjustment for public hearing and consideration. A variance is an approved deviation from the terms of the LDC that will not be contrary to the public interest when owing to special circumstances or conditions where the literal enforcement of the provisions of the LDC would result in undue and unnecessary hardship.

Under the laws of the State of Florida, a public hearing for a zoning variance application is handled as a “*quasi-judicial*” proceeding. A quasi-judicial proceeding means that the decision-making group is functioning in a manner similar to a court with the voting members sitting as impartial decision makers hearing testimony and questioning presenters, who are to provide substantial and competent evidence to support their side of the issue under consideration. It is the duty of the Board of Adjustment to arrive at sound decisions. This includes receiving citizen input regarding the effect of the variance on the neighborhood, especially where the input is fact-based and not a simple expression of opinion.

It is the applicant’s burden to demonstrate that their application is consistent with the Land Development Code and Comprehensive Plan. If the applicant is successful in showing consistence, then it is up to the Board of Adjustment to produce competent, substantial evidence of record to the contrary, if the application is to be denied. The Board of Adjustment’s decision on a variance application is to be based on the criteria contained in Section 34-286 of the Land Development Code. Each member of the Board of Adjustment has been provided a copy of the criteria. In addition, the Board of Adjustment has received a copy of the application being presented.”

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“Before opening the meeting and requesting a motion on any of the applications before us this evening, beginning with myself, each of the members is requested to indicate for the record both the names of the persons and the substance of any ex-parte communications regarding any of the applications. An ex-parte communication refers to any meeting or discussion with person or citizen who may have an interest in this decision, which occurred outside of public hearing process.”

The Board Members advised that they had the following ex-parte communications:

Hartkemeyer – Many phone calls on his answering machine concerning BOA #100139.

Gilliom – Spoke to Zan Williams and received phone calls concerning BOA #100139.

Sellers – Received phone calls concerning BOA #100139.

Moreland – Spoke with Eileen Krinsky concerning BOA #100139.

McGill – Received phone calls concerning BOA #100139.

Jolley – Received phone calls concerning BOA #100139.

Hall – Advised he had no communications.

Approval of Minutes

It was moved by Mr. Jolley, seconded by Mr. Hall, to approve the Minutes of the May 3, 2005, and the May 17, 2005, meetings as presented.

Correspondence

There was no correspondence.

Old Business

There was no old business.

New Business

Case: BOA #05-100133

Location: Lot 1 & 2, Block 21, Atlantic Shores; 257 32nd Avenue South

Applicants: David F. & Judith D. Mahoney

Motion: It was moved by Mr. McGill, seconded by Mr. Jolley, to approve a request for a front yard of 19 feet in lieu of 25 feet required and for a rear yard of 26 feet in lieu of 30 feet required; to allow for a new single family dwelling.

The applicant stated that they wish to build a single family dwelling with a front porch and a detached garage in the rear. The house would face 32nd Avenue South. They advised that they are requesting the variances because the lot is irregular in shape.

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Mr. Hartkemeyer opened a public hearing and asked if anyone wished to speak either in favor of or in opposition to the request?

Mike Quick, 3869 Grande Boulevard, Jacksonville Beach, spoke in favor of the request.

Seeing no one else who wished to address the Board, Mr. Hartkemeyer closed the public hearing.

Mr. Moreland made an amended motion, which was seconded by Mr. Jolley, to approve a request for a front yard of 19 feet in lieu of 25 feet required, for a rear yard of 26 feet in lieu of 30 feet required, and to limit the dwelling to the survey as submitted.

Roll call vote: Ayes – Hall, Hartkemeyer, Jolley, McGill and Moreland. Motion carried unanimously.

Case: BOA #05-100134

Location: North ½ of Lot 1, Block 43, Cooks R/P; 422 2nd Street North

Applicant: Ramin Partow

Motion: It was moved by Mr. McGill, seconded by Mr. Jolley, to approve a request for a corner side yard of 10 feet in lieu of 20 feet required, for a rear yard of 10 feet in lieu of 30 feet required and for 68% lot coverage in lieu of 65% maximum; to allow for construction of a new multi-family residential development.

Mr. Hartkemeyer advised the Board that the applicant had requested that this item be carried over to the July 19, 2005, meeting.

Case: BOA #05-100136

Location: Lot 3, Block 63, Pablo Beach South; 226 6th Avenue South

Applicant: Scott A. Worthley

Motion: It was moved by Mr. McGill, seconded by Mr. Jolley, to approve a request for side yards of 7 feet each in lieu of 10 feet required; to allow for construction of a new 3-unit multi-family dwelling.

The applicant stated that, because the setbacks are greater for residential development than for commercial, he elected to construct a residential building which would allow for more green space and would be a better fit for the neighborhood.

Mr. Hartkemeyer opened a public hearing and asked if anyone wished to speak either in favor of or in opposition to the request? Seeing no one, he closed the public hearing.

Roll call vote: Ayes – Jolley, McGill and Hall. Nays – Hartkemeyer and Moreland. Motion carried by a vote of 3 to 2.

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Case: BOA #05-100139
Location: 3790 South 3rd Street
Applicant: Home Depot

Motion: It was moved by Mr. McGill, seconded by Mr. Jolley, to approve a request for an appeal of Director of Planning and Development's Interpretation of the Land Development Code as applied to the South Beach Regional Shopping Center Planned Unit Development (PUD) Ordinance No. 7411, adopted April 24, 1989, as amended by Ordinance No. 95-7653, adopted September 18, 1995.

Paul Harden, agent for the applicant, advised that he would like the following documents entered into the record:

1. A 2 page document dated July 10, 1989, entitled "South Beach Regional Shopping Center Final PUD Development Plan" executed by Bruce Corbitt, City Clerk.
2. South Beach Regional & Sandcastle Final PUD Development and Site Plan approved by the Jacksonville Beach City Council on July 10, 1989.
3. J. D. Payne affidavit dated June 20, 2005.
4. Memorandum from Bill Mann, Senior Planner, to George Forbes, City Manager, dated January 25, 2005.
5. 1987 SIC definitions.

Mr. Harden gave a presentation explaining the reasons that Home Depot considered Mr. Lindorff's interpretation to be inaccurate and why they wish to appeal that interpretation.

Mr. Lindorff presented his case and explained the background which governed his interpretation.

Mr. Hartkemeyer opened a public hearing and asked if anyone wished to speak either in favor of or in opposition to the request?

Mr. Harden advised that he would like to register a standing objection to evidence presented during the public hearing which is outside the scope of what was advertised concerning this meeting.

The following people spoke in favor of approving Mr. Lindorff's interpretation:

Wendell Fenner, 420 Lower 8th Avenue South, Jacksonville Beach
Sid Ansbacher, 780 North Ponce De Leon, St. Augustine, attorney representing Turner Ace Hardware
Dr. Jamie Fletcher, Atlantic Beach
Ward Kupenik, 6620 Southpoint Drive, Jacksonville
Corrine Sellers, 1901 North 1st Street, Jacksonville Beach
Dean Thompson, 2067 Green Heron Point, Jacksonville Beach
Debbie Young, 436/410 Jacksonville Drive, Jacksonville Beach
Jeannie Caldwell, 3720 Ponte Vedra Boulevard, Jacksonville Beach

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The following people spoke in favor of overturning Mr. Lindorff's interpretation:

Polly Baxter, 2980 Seahawk Drive, Ponte Vedra Beach
William Cross , 701 10th Place South
Sylvia Osewalt, 3 Freedom Way, Jacksonville Beach
Todd Smith, 132 11th Avenue South, Jacksonville Beach
Greg Birdsong, 781 Cavalla Road, Jacksonville

Seeing no one else who wished to address the Board, Mr. Hartkemeyer closed the public hearing.

There followed a lengthy discussion concerning the pros and cons of the appeal.

Roll call vote: Nays – Jolley, McGill, Moreland, Hall and Hartkemeyer. Motion to appeal Mr. Lindorff's interpretation was denied unanimously.

Adjournment

There being no further business coming before the Board, Mr. Hartkemeyer adjourned the meeting at 9:58 P.M.

Chairman

/lmw