

Minutes of Board of Adjustment Meeting
held Tuesday, March 17, 2015, 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 Chairman Osewalt.

Roll Call

Tom Buck
Joseph Loretta
John Moreland *Absent*
Sylvia Osewalt, Chairman
Scott Cummings, Vice-Chairman *Absent*

Alternates:

Jeff Truhlar
Francis Reddington

Ex parte Communications

There were no ex parte communications reported by the Board members.

Approval of Minutes

It was moved by Mr. Loretta, seconded by Mr. Buck, and passed, to approve the February 3, 2015 minutes as presented.

Correspondence

There was correspondence that would be reviewed during the case in which it pertained.

OLD BUSINESS:

There was no old business.

NEW BUSINESS:

- (A) **Case Number:** **BOA#14-100204**
Applicant/Owner: Pam and Greg Gundlach
Property Address: 3764 Ponte Vedra Boulevard
Motion to Approve: It was moved by Mr. Buck, seconded by Mr. Loretta, to approve a request for 48% lot coverage in lieu of 35% maximum to allow for a new single family dwelling and pool **for property legally described as Lot 15, The Gates of Ponte Vedra Unit 2.**

Applicant:

Minutes of Board of Adjustment Meeting
Held Tuesday, March 17, 2015

Mark Macco, 476 Osceola Ave., Jacksonville Beach, took the floor as agent for the applicants. Mr. Macco stated the plans are for a 2 story, 4 bedroom home with a swimming pool. There will be a garage and driveway accessible at the rear of the property on 2nd Street.

Discussion ensued about the existing lot size of 14,000+ square feet being over the RS-1 allowable 10,000 square feet, thus questioning the hardship. Also discussed was the percentage of permeable surface.

Public Hearing:

Ms. Osewalt opened the public hearing and stated there were no speaker cards submitted to address the Board.

There was correspondence (on file) submitted by Mark Cappel, that was read into the record, which stated his opposition to the project.

Discussion:

There was discussion about the probability of installing a loop driveway in the front yard and using gravel instead of concrete. Also, it was noted the proposed pool deck creates the biggest burden on the lot coverage. Suggestions were made to use pavers in lieu of decking around the pool.

The consensus of the Board was that an oversized lot is not a hardship.

Amended Motion: An amended motion was made by Mr. Buck to approve a request for 40% lot coverage in lieu of 35% maximum to allow for a new single family dwelling and pool **for property legally described as Lot 15, *The Gates of Ponte Vedra Unit 2***. The amended motion was seconded by Mr. Loretta.

Roll Call Vote: Ayes – Buck, Loretta, Truhlar
Nays - Reddington, Osewalt
Amended motion passed with a 3 to 2 vote.

- (B) **Case Numbers:** **BOA#15-10001, BOA#15-100027, BOA#15-100028, BOA#15-100029**
- Applicant: Pablo Run Villa’s Units B, C, D & E
Owners: Mike Watson, Susan King, Adam McDonald, Mark Dych
Property Addresses: 1330 2nd Street South (Units B, C, D and E)
Motion to Approve: It was moved by Mr. Buck, seconded by Mr. Loretta, to approve a request for 87% lot coverage for interior town house units B, C, D, and E in lieu of 65% maximum to allow for grade level deck additions to each unit **for properties legally described as Lots 2-B, 3-C, 4-D, and 5-E, *Pablo Run Villas***.

Minutes of Board of Adjustment Meeting
Held Tuesday, March 17, 2015

Miscellaneous Info: Two previous variance requests (reference BOA# 102-99 and BOA# 103-2003).

Mike Watson, 1530 2nd Street South, #B, Jacksonville Beach, took the floor as spokesperson for the applicants. Mr. Watson stated the plans are to build a 19 ft. X 12 ft. grade-level composite wood deck addition for each unit. He stated that the existing backyard property is dysfunctional due to the slope and storm water retention gully. The proposed deck addition will not affect water runoff because the ground will not be disturbed.

Public Hearing:

Ms. Osewalt opened the public hearing and stated there were no speaker cards submitted to address the Board.

Discussion:

A brief discussion ensued about the deck material, the required swail, and the consensus of the Board what that this was a reasonable request.

Amended Motion: An amended motion was made by Mr. Loretta to approve a request for 85% lot coverage for interior town house units B, C, D, and E in lieu of 65% maximum to allow for grade level deck additions to each unit **for properties legally described as** Lots 2-B, 3-C, 4-D, and 5-E, *Pablo Run Villas*, as shown and submitted. The amended motion was seconded by Mr. Buck.

Roll Call Vote: Ayes –Loretta, Truhlar, Reddington, Buck, Osewalt
Amended motion passed unanimously.

(C) **Case Number:** **BOA 15-100017**

Applicant: John Atkins

Owner: ARS Investors I LP 2011 Jax

Property Address: 107 3rd Avenue South

Motion to Approve: It was moved by Mr. Buck, seconded by Mr. Loretta, to approve a request for side yards of 3.5 feet in lieu of 10 feet required and for a corner side yard of 10 feet in lieu of 20 feet required; 34-340 (e)(1)c.3, for a rear yard of 8 feet in lieu of 30 feet required; and 34-340(e)(1)f, for 61% lot coverage in lieu of 35% maximum to allow for two, two-family dwellings **for property legally described as** the South 80 feet of Lots 7 and 8, Block 22, *Pablo Beach South*.

Miscellaneous Info: One previous variance request (reference BZA#32-92).

John Atkins, 731 Holly Ln., Jacksonville Beach, took the floor to address the Board. Mr. Atkins stated the plans are to build 2 duplexes, each consisting of a 2-family dwelling. The

Minutes of Board of Adjustment Meeting
Held Tuesday, March 17, 2015

current lot coverage is at 95% and Mr. Atkins stated his proposed plan will reduce the lot coverage to 61%. Mr. Atkins submitted a drawing for the record (on file) showing the proposed plan.

There were some questions and comments from the Board about the proposed orientation of the Structures.

Public Hearing:

Ms. Osewalt opened the public hearing and stated there were no speaker cards submitted to address the Board.

Discussion:

A brief discussion ensued about the side yards.

Amended Motion: An amended motion was made by Mr. Reddington to approve a request for side yards of 4 feet in lieu of 10 feet required and for a corner side yard of 10 feet in lieu of 20 feet required; 34-340 (e)(1)c.3, for a rear yard of 8 feet in lieu of 30 feet required; and 34-340(e)(1)f, for 61% lot coverage in lieu of 35% maximum to allow for two, two-family dwellings **for property legally described as** the South 80 feet of Lots 7 and 8, Block 22, *Pablo Beach South*. The amended motion was seconded by Mr. Truhlar.

Roll Call Vote: Ayes –Truhlar, Reddington, Loretta, Osewalt
Nays - Buck
Amended motion passed with a 4 to 1 vote.

(D) **Case Number:** **BOA 15-100018**

Applicant: Mali Vai Washington

Owner: Jacksonville Investments, LLC.

Property Address: 403 5th Avenue South

Motion to Approve: It was moved by Mr. Buck, seconded by Mr. Loretta, to approve a request for 45% lot coverage in lieu of 41% maximum to allow for a two-family dwelling on each of Lots 10, 11, and 12, **for property legally described as** Lots 10, 11, and 12, Block 45, *Pablo Beach South*.

Miscellaneous Info: One previous variance request (reference BOA#06-100033).

John Dineen, 1254 Neck Rd., Ponte Vedra Beach, took the floor to address the Board. Mr. Dineen stated the proposed plans are to build 2-family dwellings on each of the lots. The current Lot coverage will prevent building structures that are identical to existing structures which have received similar variances.

There were no questions or discussion.

Public Hearing:

Ms. Osewalt opened the public hearing and stated there were no speaker cards submitted to address the Board.

Discussion:

A brief discussion ensued about consistency with the existing neighborhood.

Amended Motion: An amended motion was made by Mr. Loretta to approve a request for 45% lot coverage in lieu of 41% maximum to allow for a two-family dwelling on each of Lots 10, 11, and 12, **for property legally described as** Lots 10, 11, and 12, Block 45, *Pablo Beach South*, as shown and submitted. The amended motion was seconded by Mr. Buck.

Roll Call Vote: Ayes – Reddington, Buck, Loretta, Truhlar, Osewalt
Amended motion passed unanimously.

(E) **Case Number: BOA 15-100019**

Applicant: JWB Construction Group

Owner: JWB Real Estate Capital, LLC.

Agent: Lisandro Rosales

Property Address: 1015 South 2nd Avenue

Motion to Approve: It was moved by Mr. Buck, seconded by Mr. Loretta, to approve a request for a front yard of 11 feet in lieu of 20 feet required; 34-338(e)(1)c.2, for a corner side yard of 6 feet in lieu of 10 feet required and total side yards of 11 feet in lieu of 15 feet required; 34-338(e)(1)c.3, for a rear yard of 5 feet in lieu of 30 feet required; and 34-338(e)(1)e, for 55% lot coverage in lieu of 35% maximum to allow for a new single family dwelling in accordance with the Special Magistrate's Recommendation **for property legally described as** A portion of Government Lot 7, Section 33, Township 2 South, Range 29 East.

Miscellaneous Info: Two previous variance requests (reference BOA#14-100067 and BOA#14-100135).

Brenna Durden, Attorney representing the City of Jacksonville Beach, LEWIS, LONGMAN & WALKER, PA, 245 Riverside Ave., #150, Jacksonville, took the floor to address the Board. Ms. Durden reviewed the history of the conditional use and variance applications (on file), by the applicant, JWB Construction Group. In June 2014 and October 2014 the applicant applied for variances and was denied unanimously by the Board of Adjustment. Then the applicant filed a request for relief from the Board of Adjustment's development order denial. (COJB Land Development Code). The owner of the property alleged that the denial of the variance applications was unreasonable, unfair, and inordinately burdened the use of the property.

Ms. Durden provided an overview of the Burt J. Harris Act, the Land Use and Environmental

Minutes of Board of Adjustment Meeting
Held Tuesday, March 17, 2015

Resolution Dispute Act, and the Florida Statutes relating to property development. As per the statutes there was a Special Magistrate Proceeding on January 27, 2015, held at the City of Jacksonville Beach, City Hall. Mr. W. O. Birchfield was the appointed Magistrate to conduct the mediation proceeding. Ms. Durden stated this is an historical event for the City of Jacksonville Beach, as this is the first time a variance case has been taken to Special Magistrate.

Included is the Special Magistrate Recommendation (on file), dated January 29, 2015, that Ms. Durden reviewed for the Board. In paragraph 3 the Special Magistrate finds the denial of the variance BOA 14-100135 was unreasonable and unfairly burdened the property.

Ms. Durden continued from the Special Magistrate Recommendation, noting that in paragraph 4 (a) (b) (c) it states that the City is required to find that the Petitioner (JWB Real Estate Capital, LLC) has met the variance standards and conditions per LDC Sec. 34-286, and that the City grant the variance.

In closing, Ms. Durden urged the Board of Adjustment to approve the variance application that is before them. This is a legal lot of record. All parties involved have worked in good faith and spent a great deal of time to reach a resolution that addresses the concerns set forth in the prior meetings.

Discussion:

Discussion ensued about attorney fees, lot coverage and driveway, and notice requirements of the Special Magistrate Hearing.

Mr. Loretta questioned why the application did not include a floor plan and why the lot coverage increased from 51% to 55%.

Emily Pierce, Attorney for JWB Real Estate Capital, LLC, 1301 Riverplace Blvd. #1300, Jacksonville, addressed Mr. Loretta's questions. The original plan had pervious driveway and now it has strips which changed that amount of lot coverage. Ms. Pierce continued about the floor plans stating there were 4 different floor plans presented to the Special Magistrate during the mediation process. The Magistrate did not include them as part of the record with the Recommendation.

Mr. Reddington stated that he wished to defend the Board of Adjustment and that he felt their decision to deny the variance request on the two prior occasions was not unreasonable. The Board members are all volunteers, meeting two nights per month, and do what is right for the City of Jacksonville Beach and for the residents of the neighborhoods involved. Mr. Reddington said that he believes this will set a precedent going forward that if people don't like what they hear they will just go to the appeals board.

Ms. Durden assured Mr. Reddington, and all the members of the Board of Adjustment, that in no way was the Special Magistrate, Mr. Birchfield, referring to the Board members as unreasonable. That word is taken from the language in the statute which pertains to this issue

Minutes of Board of Adjustment Meeting
Held Tuesday, March 17, 2015

and the result of the mediation is explained by the use of the exact language in the statute.

Discussion continued about the property, the Burt J. Harris Act, and the variance procedures in place are for times when the code is not appropriate.

Emily Pierce, Attorney for JWB Real Estate Capital, LLC, thanked the Board for their consideration in hearing this case again and thanked Mr. Mann and Mr. Hays for their time spent on this as well.

Public Hearing:

Ms. Osewalt opened the public hearing and stated Samuel Thomas submitted a speaker card to address the Board.

Samuel L. Thomas, 2249 South Beach Parkway, Jacksonville Beach, thanked the Board for their comments and everyone involved in this case. Mr. Thomas questioned why have a Board? The case was denied two different times, then appealed, and now the Board has received a Recommendation to approve the variance.

Mr. Thomas said he was against approval of this variance, stating the previous use was for commercial use and this residential project does not fit into the neighborhood.

Rebuttal:

Emily Pierce took the floor to address the Board. She reviewed the proposed construction specifications of the single family dwelling with a garage to be built on this legal non-conforming lot of record. Ms. Pierce reviewed the mediation process with the Special Magistrate stating the process brought everyone together – the neighbors, the City staff, the applicants – to answer all their questions in a public forum.

Mr. Reddington commented that the people in this neighborhood do not want this project and questioned why that is not taken into consideration.

Ms. Durden responded to Mr. Reddington's question stating there is a part of the Florida Land Use Law called the 'Applause Meter'. This prohibits public officials, such as this Board, from ruling based on the applause meter. The decision is based on facts, not if people like or dislike an issue. Ms. Durden urged the Board to accept the Recommendation of the Special Magistrate and approve the variance before them.

Discussion:

A brief discussion ensued about the decisions made by the Board and the Special Magistrate process.

Roll Call Vote: Ayes – Buck, Loretta, Truhlar, Osewalt
Abstain – Reddington

Minutes of Board of Adjustment Meeting
Held Tuesday, March 17, 2015

Motion passed with a 4 to 1 vote.

(F) **Case Number: BOA 15-100024**

Applicant/Owner: Joseph & Debbie Nordt

Property Address: 1041 11th Street N

Motion to Approve: It was moved by Mr. Buck, seconded by Mr. Loretta, to approve a request for 36% lot coverage in lieu of 35% maximum and 34-373(f), for a gravel driveway in lieu of paving to allow for a new single family **for property legally described as** Lots 1 and 2, Block 63, *Section A Jacksonville Beach*.

Miscellaneous Info: No previous variance requests.

Debbie Nordt, 1015 11th Street No., took the floor to address the Board. Ms. Nordt stated she lives next door to where she wants to build a single story home. She stated this will be their retirement home. Ms. Nordt said they are putting in a gravel driveway and walkway.

There were no questions or discussion.

Public Hearing:

Ms. Osewalt opened the public hearing and stated there were no speaker cards submitted to address the Board.

Roll Call Vote: Ayes – Loretta, Truhlar, Reddington, Buck, Osewalt
Motion passed unanimously.

Building Department Report:

The next scheduled meeting is Tuesday, April 7, 2015. There are 7 cases.

Adjournment

There being no further business coming before the Board, Ms. Osewalt adjourned the meeting at 8:35 PM.

Submitted by: Nancy J. Pyatte
Assistant City Clerk

Approval:

/s/ Sylvia W. Osewalt
Chairperson

Date: April 7, 2015