

MINUTES
ZONING BOARD OF ADJUSTMENT
THURSDAY, AUGUST 14, 2008
COUNCIL CHAMBERS, BOCA RATON, FLORIDA

The meeting was called to order at 7:06 p.m. by Chairman Jeffrey Barker. Roll was called.

MEMBERS PRESENT: Scott MacLaren
Jason Mankoff
Spencer Siegel
Jeffrey Barker
John Cappeller
Jeffrey McDonough

MEMBER ABSENT: Alfred Gladstone *
* Board member notified the City in advance of his absence.

STAFF PRESENT: Carrie Seltzer, Zoning Officer
Cormac Conahan, Board Attorney

MINUTES: **MOTION** was made by Mr. MacLaren and seconded by Mr. McDonough to approve minutes of July 10, 2008. **MOTION CARRIED 6-0.**

PUBLIC HEARINGS:

Testimony by staff, applicants, petitioners and the public is sworn testimony. Official City files are hereby offered for the purposes of inclusion into the record of these proceedings and are available for inspection at the Development Services Department.

BA-08-05 Petition of Thomas Scott for a variance to Code Section 28-336,
08-87500005 for the rear yard setback, located at 7120 NW 5th Avenue.

Carrie Seltzer presented for the Department recommending approval. It was noted that the petitioner was previously granted a variance in 2007 for 2.25 feet. Staff's opinion is that the petitioner has submitted substantial evidence to meet the variance standards.

Planning and Zoning has no objections to this. There are no environmental concerns for this property. The City has received three items of correspondence regarding this petition that have been forwarded to the Board.

Mr. Barker discussed that the house is not non-conforming since a variance was previously granted.

The Board discussed the variance being requested.

Ms. Seltzer stated that the petitioner did receive a permit for the 2nd story addition without the bay window from the City of Boca Raton.

The Board discussed whether or not the Homeowner's Association approved the variance that was previously granted by the Board.

Tom Scott, 7120 NW 5th Avenue, submitted plans for the project to the City. He also made a presentation to the Homeowner's Association and it was their determination that they needed to have a special meeting concerning his request. At that special meeting, they denied his request but now plan to incorporate covenants and rules and regulations regarding 2nd floor additions. He is asking for the bay windows to have a better view of the lake on the property.

On Board discussion, Mr. Mankoff clarified the reason for the addition of the bay windows is that the windows are for preference and aesthetics. Mr. McDonough clarified that the petitioner is required to have Homeowner's Association approval before he can make the addition.

Mr. MacLaren asked to review the site plan to get a visual of the addition and the location of the bay windows.

Tom Judge, 7100 NW 5th Avenue, stated he is the petitioner's neighbor to the south. He is surprised that Mr. Scott is now proposing to install windows that would overlook his pool area since he was assured by Mr. Scott that he would not install any windows that would overlook his yard. Mr. Judge submitted pictures showing the view from his pool looking toward Mr. Scott's bay windows. He feels this addition of the bay windows would have an adverse effect on his property value and is not in favor of this petition.

On Board discussion, Mr. McDonough stated that Mr. Judge is concerned because the bay window faces his pool area. Mr. Mankoff stated for clarification that Mr. Judge's concern is that the line of sight would be directly on his pool.

Richard Forstani, 7140 NW 5th Avenue, stated he is Mr. Scott's neighbor to the north of the petitioner, and he feels that the addition of the bay windows would take away from the privacy of the two adjacent properties.

Dennis West, 7040 NW 5th Avenue, stated he is the representative of the Homeowner's Association and the Board's position at this time is neutral and are not against or for this petition.

Mr. Mankoff requested to see the original file that was provided by staff.

Ms. Seltzer stated the original review showed the 1st variance request was for 2.25 feet as shown by the stamp from the City of Boca Raton.

Tom Scott, 7120 NW 5th Avenue, passed around pictures of where the bay window would be placed in reference to his neighbor's homes. It is not his desire to invade his neighbors' privacy. He promised his neighbors' that he wouldn't install windows all around the addition but never said he wouldn't install a bay window. His intent is to have a better view of the lake on the property.

Mr. McDonough asked whether or not the fence would be replacing the current landscape buffer.

Mr. Scott stated the hedge would be removed because Mr. Judge stopped maintaining it as he had promised and would be replaced by a 6-foot high fence.

Mr. McDonough asked Mr. Judge if the pictures Mr. Scott submitted are a clear representation of the view of the property.

Mr. Judge stated he couldn't say whether or not these pictures are a fair representation of the view from Mr. Scott's property.

On Board discussion, Mr. Mankoff stated the Board is considering the variance and how it applies to the rear setbacks and all the other issues should be decided by the Homeowner's Association. Mr. Siegel stated that the Board made a decision on the previous variance based on the agreement between the neighbors. The neighbors feel threatened because they feel they would not be able to enjoy the privacy of their properties. From looking at the plans, he can understand the concern of the neighbors and believes the bay windows are ~~necessary but~~* unnecessary and would take away from the value of the properties surrounding the petitioner's house. Mr. McDonough and Mr. MacLaren stated they are not in support of the additional variance. Mr. Mankoff stated that he believes the HOA should govern whether or not bay windows are allowed but the Board needs to consider the actual variance for the setbacks and not the bay windows. Mr. Cappeller stated he agrees with most of the Board and is not in support of the variance request.

*At the September 11, 2008 meeting, the motion to approve these minutes contained the amendment to substitute the words "*unnecessary and*" for "*necessary but*".

Chairman Barker addressed concerns and comments by the Board, stating that the Code does not address types of windows installed and is in support of the petition.

MOTION was made by Mr. McDonough and seconded by Mr. MacLaren to approve **BA-08-05**. **MOTION FAILED 2-4** with four (4) No votes, Mr. Cappeller, Mr. McDonough, Mr. Siegel, and Mr. MacLaren opposed.

BA-08-05 VARIENCE DENIED.

ADJOURNMENT:
ZBA-08-14-08

Page 3 of 4

Meeting adjourned by mutual consent at 8:10 pm.

Daidre Mitchell, Recorder