

**FLAGLER COUNTY  
PLANNING AND DEVELOPMENT BOARD  
REGULAR MEETING  
Flagler County Government Services Building  
Board Chambers  
1769 East Moody Blvd., Bunnell, FL  
MEETING MINUTES  
Tuesday, July 12, 2016 at 6:00 PM**

*Adopted September 13, 2016*

1 **MEMBERS PRESENT:** Chairman Michael Boyd, Robert Dickinson, Michael Duggins, Laureen  
2 Kornel, and Mark Langello

3

4 **MEMBERS EXCUSED:** Arthur Barr

5

6 **STAFF PRESENT:** Sally Sherman, Deputy County Administrator; Adam Mengel, Planning  
7 Director; Wendy Hickey, Planner; and Gina Lemon, Development Review Planner III

8

9 **BOARD COUNSEL:** Kate Stangle, with Broad and Cassel

10

11 Chairman Boyd called the meeting to order at 6:00 p.m.

12

13 1. **Roll Call.**

14 Attendance was confirmed by Gina Lemon and a quorum was present.

15

16 2. **Pledge of Allegiance.**

17 Chairman Boyd led the Pledge of Allegiance to the Flag.

18

19 3. **Approval of Minutes.**

20 Approval of minutes of the November 10, 2015 and June 14, 2016 regular meetings and  
21 November 16, 2016 Special Meeting.

22

23 *Motion to approve made by Ms. Kornel, seconded by Mr. Dickinson. Motion carried*  
24 *unanimously.*

25

26 4. **Quasi-judicial requiring ex parte communication and disclosures:**

27 **Application #3032 – 2' FENCE HEIGHT VARIANCE IN THE FRONT YARD**  
28 **SETBACK AREA IN THE R-1B (URBAN SINGLE-FAMILY RESIDENTIAL)**  
29 **DISTRICT**; located at 4278 Old A1A, Palm Coast, FL; Parcel #09-11-31-0000-01080-0021;  
30 Owner/Applicant: Richard and Marcia Hendershot.

31

32 No ex-parte communications were disclosed.

33

34 Ms. Hickey presented the staff report noting the location, zoning and Future Land Use  
35 designations of the subject parcel. She went on to give a brief history of the creation and  
36 subsequent rezoning of the parcel which gave the parcel its unique qualities. Outlining the  
37 variance criteria and the staff's findings, she continued reading the staff recommendation into  
38 the record.

39

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1 Staff Recommendation : Based on the provided application and supplemental information, the  
2 Planning Department recommends that the Planning & Development Board make a finding that  
3 all criteria as listed in the guidelines at LDC section 3.07.03E have been met and therefore  
4 recommends approval of a two foot fence height variance with in the front yard setback for the  
5 parcel located at 4278 Old A1A provided that the fence maintain the vision clearance  
6 requirement of section 3.02.05, LDC, within 20 feet of the intersection of the street right of way  
7 of Old A1A with the subject parcel's driveway.  
8

9 Chairman Boyd opened the hearing to public comments. Seeing none, Mr. Boyd opened Board  
10 comments.  
11

12 Ms. Kornel asked how we granted this subdivision. How did we approve the lot split? I don't  
13 understand how did one large parcel become two and one is non-conforming?  
14

15 Ms. Hickey responded the parent parcel was going into foreclosure and the property owner  
16 made a deal with the bank giving them a portion of the property creating a non-conforming lot.  
17

18 Ms. Kornel responded wow.  
19

20 Ms. Hickey stated the rezoning did come before the Planning Board.  
21

22 Ms. Kornel stated I know we voted for it, so I was just trying to understand. So the fence will  
23 be open?  
24

25 Ms. Hickey responded it is the same as you see in the photos provided. It will be a continuation  
26 of what is already there.  
27

28 Mr. Dickinson asked would the 20 foot clearance requirement be an issue?  
29

30 Mr. Richard Hendershot, applicant, responded the fence will be 25 feet from the road. If I put it  
31 exactly where the existing fence is it is 25 feet from the road. There is no vision clearance; you  
32 can pull out a car. There are probably five cars a day that go down Old A1A.  
33

34 Mr. Dickinson asked if staff is comfortable with that.  
35

36 Ms. Hickey responded yes.  
37

38 Mr. Langelo noted that he didn't see in the motion that the fence would match the existing. He  
39 then asked if it can be put in the motion.  
40

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1 Mr. Hendershot responded I am not sure we can match that fence exactly but it will be of the  
2 same style.

3  
4 Ms. Kornel stated as long as it is open.

5  
6 Mr. Hendershot responded yes.

7  
8 Chairman Boyd asked for any more Board Comments? Hearing none, he then requested a  
9 motion.

10  
11 *Motion to approve with staff recommendation adding that the fence be an open style fence by*  
12 *Mr. Langello, seconded by Mr. Duggins.*

13  
14 *Motion carried unanimously.*

15  
16 5. *Quasi-judicial requiring ex parte communication and disclosures:*

17 **Application #3035 – 7’ SETBACK VARIANCE FROM THE REQUIRED 10’ SIDE**  
18 **YARD SETBACK IN THE PUD (PLANNED UNIT DEVELOPMENT) DISTRICT** for  
19 Swimming Pool and Spa; 6 Hammock Beach Court; Lot 58, Ocean Hammock Parcel B-5, Map  
20 Book 32, Page 16, Public Records of Flagler County, Florida; Parcel Number 04-11-31-3505-  
21 00000-0580; Owner: Staci and Ronald Martin / Applicant: Jason Pavlow, Waterside Pools, Inc.  
22

23 No ex parte communications were disclosed.

24  
25 Mr. Mengel presented the staff report noting this is a side setback variance for a pool and pool  
26 deck. He then noted the location, land use and zoning of the subject parcel. He went on to  
27 describe the characteristics of the lot including the minimum setback requirements for the Ocean  
28 Hammock Planned Unit Development (PUD). A copy of the Development Agreement and plat  
29 addendum is included in the Board packet. He went on giving a time line and history of the  
30 pool/pool deck permit, noting the permit was approved in July 2015 by an oversight by staff. At  
31 that time, the pool deck did encroach into the side setback but the pool itself was within the  
32 setback requirements. The building inspector on the first inspection did notice the pool was  
33 flipped and advised the builder that a plan revision was required and would have generated  
34 comments and possibly a resolution before getting to this point. The next time this permit came  
35 to us was during the final as-built survey review where the issue came to light.  
36

37 Staff recommendation is that the variance criteria as listed in the Land Development Code  
38 (LDC) guidelines have not been met noting there are no extraordinary or exceptional conditions  
39 related to the subject parcel and the actions of the applicant created the need for the variance.  
40 Because of this we are recommending denial of a seven foot side yard setback variance for the

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1 subject parcel. The Board could make a determination that the variance criteria have been met.  
2 We acknowledge in our recommendation the role of the contractor here and would ask that if  
3 you opt to approve the variance that you do place the condition that no pool screen enclosure be  
4 added to this parcel unless the enclosure conforms to the minimum setbacks. This is only to  
5 extend to the pool and deck and not to allow a future screen enclosure, as noted in one of the  
6 emails, which would create an additional visual impact.  
7

8 Mr. Ronald Martin, 6 Hammock Beach Court, Palm Coast, property owner, stated I would like  
9 to address the write up that was stating that the house was on the market. I know sometimes  
10 that could be a very negative thing looking for a variance. We are not an investment company  
11 looking to flip and get something by the County, we are homeowners. My mother in-law was  
12 diagnosed with stage four cancer, and I have to move to Maryland for her care and that is the  
13 reason we put the house on the market. We were thinking of doing it in advance of this but that  
14 is the reason why we are doing this so I just wanted to let you know that. From a timeline  
15 standpoint we submitted the application to the Architectural Review Board (ARB) and shortly  
16 thereafter the County. The ARB asked us to flip the design because we had it encroaching into  
17 the 10 foot setback. The ARB only required the 10 foot setback for structures not for pavers for  
18 the pool. So they asked us to flip it and they were fine with it. The contractor definitely made a  
19 mistake by not resubmitting his plans, no doubt about that, but we figured it was the exact same  
20 layout being flipped so it would not be an issue once that approval came back. So that  
21 happened, it was a terrible mistake, and we should have taken care of it. We have had a number  
22 of discussions about that from an impact to us as you can see by the lines. It is not just tearing  
23 out pavers; it is tearing out the spa and part of the pool in order to get it within the 10 foot  
24 setback. These are pavers on sand, they are not a permanent concrete pour or a concrete slab. If  
25 that would be okay, then we are only talking about two feet or so from the spa and the pool that  
26 are infringing on it. So it would be a significant cost to tear that pool apart and put it back in. It  
27 was not intentional, it was a mistake the contractor should not have made, but he made it. We  
28 were not made aware of it until February of this year. It was the first time we heard of anything.  
29 We didn't hear anything about any of these rejections of the plan that were put up there. With  
30 that said I understand your need for setback requirements, they are tight lots. There is no  
31 vertical obstruction and the view is very good from all angles. It is an improvement on the  
32 property and actually if the variance is approved the only one you are going to hurt is us and our  
33 value because we will have to disclose that you can't put a pool enclosure on the property and  
34 so that could affect the value of our home, but it is not going to affect any of the properties  
35 around us or hurt anybody else in any way. So I respectfully request that you approve this  
36 variance.  
37

38 Chairman Boyd asked the Board for questions.  
39

40 Mr. Langello asked if the contractor was present in the chambers?

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1  
2 Mr. Jason Pavlow with Waterside Pools, 15 Hargrove Lane, Palm Coast, introduced himself.  
3  
4 Mr. Langelo stated this is a big problem for your client. Say you don't get a variance tonight,  
5 what do you have to do? I assume remove the pool and put in a new pool, is that the process?  
6  
7 Mr. Pavlow responded the Mr. Langelo was correct, it is 2 feet 2 inches into the setback. To  
8 demolish that portion so we could reconfigure the size and the shape of the pool to be within  
9 that 10 foot setback would basically require everything to be redone.  
10  
11 Mr. Langelo asked I presume you wouldn't be able to do just part of the shell, you would have  
12 to do the whole shell all over again.  
13  
14 Mr. Pavlow responded it would be the tile, it would be the surface material, it would be the  
15 coping material on the edge of the pool top and, of course, shooting in concrete which requires  
16 rebar forms that have to be in place because of the shape of the pool.  
17  
18 Mr. Langelo asked could you leave part of that pool shell and patch that one corner?  
19  
20 Mr. Pavlow responded it is probably a \$50,000 renovation that would have to be done just to get  
21 it to comply, which would put a huge burden obviously on a small family operated business that  
22 I own.  
23  
24 Mr. Langelo asked do you have formal permission from the neighbor on either side to bring  
25 your trucks in at this point?  
26  
27 Mr. Pavlow responded we do not.  
28  
29 Mr. Langelo stated so if no variance is granted, the neighbors may not allow you on their  
30 property. You might not be able to pull this out and fix it.  
31  
32 Mr. Pavlow responded that was correct.  
33  
34 Mr. Langelo stated they cannot put a screen within 10 feet of the property line. It is not that  
35 they cannot put a screen enclosure, it just wouldn't cover the whole pool.  
36  
37 Mr. Mengel stated that if somebody did want to come in later on they could apply for their own  
38 variance; if they wanted a pool screen enclosure, it would have to conform to the setbacks. I  
39 wanted to make sure it was in there so that someone would not assume that since the pool deck  
40 received a variance then if a screen room was desired it would be granted a variance. That is a

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1 vertical element with its own application. You could put one in so long as it conforms to the  
2 setbacks of the district.

3  
4 Mr. Langelo stated that the fact that the parcel is only 40 feet wide and very long is giving us a  
5 problem. It's a unique characteristic and this is landlocked, and for the ability to go in there is  
6 difficult for access. They don't have permission to do anything and for criteria number two that  
7 it is no fault of the owner but fault of the contractor, perhaps not conscious fault. I am not sure  
8 where that delineates itself.

9  
10 Ms. Kornel asked did anyone object neighbor wise?

11  
12 Mr. Mengel responded we have two letters: one from Patti Cohen, the owner of lot 59; and one  
13 from Christopher Ollie, the owner of lot 56. They are part of the packet, and were posted online  
14 and both letters were letters of objection. Ms. Cohen's concerns were it may diminish the value  
15 of her property and surrounding properties. Mr. Ollie's concern was that the setbacks were  
16 already in place that this may lead to other variances. Our response is that each variance is  
17 considered on its own merits so there is no consideration of precedent.

18  
19 Mr. Duggins asked if this pool was built after the home was built.

20  
21 Mr. Pavlow responded yes

22  
23 Mr. Duggins asked how did you get your equipment back there to build the pool and deck? Did  
24 you use one of the other lots?

25  
26 Mr. Pavlow responded we had special permission for that initial entry.

27  
28 Mr. Duggins asked so you think now they would tell you no if you had to go back and do some  
29 rework?

30  
31 Mr. Pavlow responded I don't know. I can't answer that. I honestly don't know.

32  
33 Mr. Duggins stated because every one of those lots in that area are zero one side and 10 on the  
34 other, this is going to be a problem forever.

35  
36 Mr. Pavlow responded the guidelines of the ARB and the Homeowners Association says it's a 5  
37 foot setback, but the PUD says it's a 10 foot setback. We are obviously trumped by the PUD  
38 here and I just didn't realize it at the time. I obviously realized it when I switched it. I totally  
39 understand what you are saying.

40

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1 Mr. Duggins stated the ARB has the tendency to not pay attention to County Code; of all things  
2 this is something we see all the time. The County Code is the code. I was just wondering if you  
3 have another property down there to put in a pool after the house is built: you are going to have  
4 to get an easement; and you are going to have to pay them to use their lot. I have been in  
5 construction all my life; it took some sizable stuff to get back there to do this work. It took up  
6 half their lot just to get the equipment back there.

7  
8 Mr. Pavlow responded yes, it was a major construction project.

9  
10 Ms. Kornel asked [to staff] will you please refresh my memory about an appeal to a variance.

11  
12 Mr. Mengel responded the appeal has to be filed within 30 days following the Planning and  
13 Development Board meeting where the variance is either granted or denied and the appeal goes  
14 to the Board of County Commissioners.

15  
16 Ms. Kornel replied okay.

17  
18 Mr. Pavlow asked can I address one letter from Mrs. Cohen, she had some objection. Her  
19 objection was for the view. I think we have already taken care of it because everything is low-  
20 profile there and there will be no screen enclosure. According to the ARB, they wouldn't allow  
21 a screen enclosure that does not pass through their channels. So, it wouldn't even get to a  
22 variance process because the ARB would not allow it. I just wanted to add that because you  
23 asked about the objection. I think that was the main thing she was reluctant about was the view.  
24 In this case the fence is higher than anything and everything is contained within that fence. And  
25 actually the pavers are four feet from the property line; its six feet of encroachment if you  
26 include the pavers and not seven as noted in the staff paperwork.

27  
28 Mr. Dickinson stated that it is an interesting step in the process with the ARB requesting the flip  
29 because of the fireplace. He asked in the very beginning of the staff report under item number  
30 one, it talks about the setback variance being seven feet. What I want to focus on here is  
31 something that you eluded to earlier that if it were a patio it wouldn't be an encroachment. I  
32 understand it is a pool deck, but the pool deck area being pavers on sand is the encroachment. Is  
33 the variance then two feet for the pool and three feet for the spa and not seven as stated in the  
34 staff report? Is the modification you described for the pool deck element or something  
35 introduced to the plan within the setback you were talking about.

36  
37 Mr. Mengel noted that as the LDC is set up, it is both. It refers to both, so as we determined the  
38 deck is an integrated element of the pool and that in combination the other must meet the  
39 minimum setback of 10 feet.

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1 Mr. Dickinson commented in reviewing site plans like this is that the pool deck and spa element  
2 as shown and presented in the photographs is less imposing than the equipment that is all along  
3 side of the home.  
4

5 Mr. Langelo commented about the deck, stating we could give the owner a little relief here as it  
6 speaks to condition two. This deck was permitted even though it didn't meet the setback  
7 criterion thinking it was fine in the first place. The bigger issue is the pool: the deck you can  
8 almost get a past, they thought they could do this no matter which way they did it. This would  
9 come back to us anyway: we told you can do it, but we were wrong, so I think the deck part of it  
10 is less problematic than the pool side. And I would also like to make the comment that I think  
11 the tearing apart of this pool would be a nuisance to the neighborhood. There would be  
12 additional trucks and to get permission from the neighbor, if that could happen, and the cutting  
13 and the sawing, jack hammering, whatever, would also affect the neighborhood and to what  
14 extent? What are they getting out of that? What is the tradeoff here? It would cause a lot of  
15 expense and aggravation to the neighborhood and what are you getting? That is where I going.  
16

17 Ms. Kornel asked if there were any type of concessions in the County Code in the way of an  
18 administrative variance for this type of situation?  
19

20 Mr. Mengel responded that we do, but not specifically for this. The limit of the administrative  
21 variance when applicable is six inches. The process involves the consent and notice of the  
22 immediately adjacent owners for us to grant the administrative variance after a 30 day notice  
23 period. And if you did have something, we would potentially take it as a variance to the Board  
24 if there was a concern that was raised. It has been discussed at the staff level as to be part of the  
25 LDC rewrite. We would like to have more flexibility on our end especially for something like  
26 this where you maybe only have horizontal elements that are involved.  
27

28 Mr. Dickinson states after looking at the diagrams, Mr. Langelo made a point to all that deck  
29 and the fireplace was approved.  
30

31 Mr. Mengel replied yes sir.  
32

33 Mr. Dickinson asked that the flip happened and the imposition, if you will, became less because  
34 if you saw the fireplace in the original plan, the ARB said that fireplace is going to be an  
35 imposition in the 10 foot setback on that side and it has to go to the other side.  
36

37 Mr. Mengel stated I would agree with that; the left side is that portion, this lot would be able to  
38 enjoy a zero side setback for its vertical elements.  
39

40 Mr. Dickinson stated now that fireplace element will help the zero setback with privacy.



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1  
2 Mr. Langelo stated again we go through number two and it is an ARB request saying it is no  
3 fault of theirs. I think they went into this, I don't think they went into this thing saying I am  
4 going to pull a fast one and the fact the building is there and the lot is the size that it is makes  
5 this lot to me more unique. I think they satisfied both number one and two.

6  
7 Chairman Boyd asked if there were any more Board questions and proceeded to open up to  
8 public comments. Seeing none, he closed public comments and asked the Board for a motion.

9  
10 *Motion made by Mr. Langelo finding the four variance criteria had been met, including all*  
11 *staff recommended conditions, seconded by Mr. Dickinson.*

12  
13 Mr. Dickinson added I just want to say as we go forward the last comment that I made was that  
14 the previous deck plan was approved by staff as an element of the variance.

15  
16 *Motion carried 4 to 1, with Mr. Duggins dissenting.*

17  
18 **6. Staff Comments.**

19 Mr. Mengel announced to the Board that there are no items for next meeting. He went on to ask  
20 if the Board would like to use the time as a workshop and, if not, we will meet again in  
21 September.

22  
23 Mr. Langelo asked you are saying that nothing is in TRC and for a variance or such the time is  
24 up?

25  
26 Mr. Mengel stated we don't have anything that would move forward within the normal ordinary  
27 schedule for us to have a meeting next month.

28  
29 **7. Board Comments.**

30 None.

31  
32 **8. Public Comments.**

33 None.

34  
35 **9. Adjournment.**

36 Motion to adjourn was made by Mr. Langelo at 6:55 p.m.

37  
38 Drafted by: Wendy Hickey

39 Reviewed by: Adam Mengel