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

MEMBERS EXCUSED:  Arthur Barr

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

BOARD COUNSEL:  Kate Stangle, with Broad and Cassel

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

1. Roll Call.
   Attendance was confirmed by Gina Lemon and a quorum was present.

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

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

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

4. Quasi-judicial requiring ex parte communication and disclosures:
   Application #3032 – 2’ FENCE HEIGHT VARIANCE IN THE FRONT YARD SETBACK AREA IN THE R-1B (URBAN SINGLE-FAMILY RESIDENTIAL) DISTRICT; located at 4278 Old A1A, Palm Coast, FL; Parcel #09-11-31-0000-01080-0021; Owner/Applicant: Richard and Marcia Hendershot.

   No ex-parte communications were disclosed.

   Ms. Hickey presented the staff report noting the location, zoning and Future Land Use designations of the subject parcel. She went on to give a brief history of the creation and subsequent rezoning of the parcel which gave the parcel its unique qualities. Outlining the variance criteria and the staff’s findings, she continued reading the staff recommendation into the record.
Adopted September 13, 2016

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

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

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

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

Ms. Kornel responded wow.

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

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

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

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

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

Mr. Dickinson asked if staff is comfortable with that.

Ms. Hickey responded yes.

Mr. Langello noted that he didn’t see in the motion that the fence would match the existing. He then asked if it can be put in the motion.
These minutes are unofficial until adopted by the Planning and Development Board.
subject parcel. The Board could make a determination that the variance criteria have been met. We acknowledge in our recommendation the role of the contractor here and would ask that if you opt to approve the variance that you do place the condition that no pool screen enclosure be added to this parcel unless the enclosure conforms to the minimum setbacks. This is only to extend to the pool and deck and not to allow a future screen enclosure, as noted in one of the emails, which would create an additional visual impact.

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

Chairman Boyd asked the Board for questions.

Mr. Langello asked if the contractor was present in the chambers?
1. Mr. Jason Pavlow with Waterside Pools, 15 Hargrove Lane, Palm Coast, introduced himself.

2. Mr. Langello stated this is a big problem for your client. Say you don’t get a variance tonight, what do you have to do? I assume remove the pool and put in a new pool, is that the process?

3. Mr. Pavlow responded the Mr. Langello was correct, it is 2 feet 2 inches into the setback. To demolish that portion so we could reconfigure the size and the shape of the pool to be within that 10 foot setback would basically require everything to be redone.

4. Mr. Langello asked I presume you wouldn’t be able to do just part of the shell, you would have to do the whole shell all over again.

5. Mr. Pavlow responded it would be the tile, it would be the surface material, it would be the coping material on the edge of the pool top and, of course, shooting in concrete which requires rebar forms that have to be in place because of the shape of the pool.

6. Mr. Langello asked could you leave part of that pool shell and patch that one corner?

7. Mr. Pavlow responded it is probably a $50,000 renovation that would have to be done just to get it to comply, which would put a huge burden obviously on a small family operated business that I own.

8. Mr. Langello asked do you have formal permission from the neighbor on either side to bring your trucks in at this point?

9. Mr. Pavlow responded we do not.

10. Mr. Langello stated so if no variance is granted, the neighbors may not allow you on their property. You might not be able to pull this out and fix it.

11. Mr. Pavlow responded that was correct.

12. Mr. Langello stated they cannot put a screen within 10 feet of the property line. It is not that they cannot put a screen enclosure, it just wouldn’t cover the whole pool.

13. Mr. Mengel stated that if somebody did want to come in later on they could apply for their own variance; if they wanted a pool screen enclosure, it would have to conform to the setbacks. I wanted to make sure it was in there so that someone would not assume that since the pool deck received a variance then if a screen room was desired it would be granted a variance. That is a
vertical element with its own application. You could put one in so long as it conforms to the
setbacks of the district.

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

Ms. Kornel asked did anyone object neighbor wise?

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

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

Mr. Pavlow responded yes

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

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

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

Mr. Pavlow responded I don’t know. I can’t answer that. I honestly don’t know.

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

Mr. Pavlow responded the guidelines of the ARB and the Homeowners Association says it’s a 5
foot setback, but the PUD says it’s a 10 foot setback. We are obviously trumpsed by the PUD
here and I just didn’t realize it at the time. I obviously realized it when I switched it. I totally
understand what you are saying.
Mr. Duggins stated the ARB has the tendency to not pay attention to County Code; of all things this is something we see all the time. The County Code is the code. I was just wondering if you have another property down there to put in a pool after the house is built: you are going to have to get an easement; and you are going to have to pay them to use their lot. I have been in construction all my life; it took some sizable stuff to get back there to do this work. It took up half their lot just to get the equipment back there.

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

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

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

Ms. Kornel replied okay.

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

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

Mr. Mengel noted that as the LDC is set up, it is both. It refers to both, so as we determined the deck is an integrated element of the pool and that in combination the other must meet the minimum setback of 10 feet.
Mr. Dickinson commented in reviewing site plans like this is that the pool deck and spa element as shown and presented in the photographs is less imposing than the equipment that is all along side of the home.

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

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

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

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

Mr. Mengel replied yes sir.

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

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

Mr. Dickinson stated now that fireplace element will help the zero setback with privacy.
Mr. Langello stated again we go through number two and it is an ARB request saying it is no fault of theirs. I think they went into this, I don’t think they went into this thing saying I am going to pull a fast one and the fact the building is there and the lot is the size that it is makes this lot to me more unique. I think they satisfied both number one and two.

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

Motion made by Mr. Langello finding the four variance criteria had been met, including all staff recommended conditions, seconded by Mr. Dickinson.

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

Motion carried 4 to 1, with Mr. Duggins dissenting.

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

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

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

7. Board Comments.
None.

8. Public Comments.
None.

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

Drafted by: Wendy Hickey
Reviewed by: Adam Mengel