

PALM BEACH COUNTY
ADMINISTRATIVE VARIANCE TYPE 1-B
STAFF PUBLIC MEETING

Thursday, April 17, 2008
09:10 a.m. - 9:57am.
2300 North Jog Road
West Palm Beach, Florida 33411

Reporting:

Annette Stabilito
PBC Zoning Secretary

A T T E N D E E S

Annie Helfant, Assistant County Attorney

Larry Roberts, Professional Engineer

Alan Seaman, Principal Site Planner

Aaron Taylor, Site Planner I

Lauren Benjamin, Site Planner I

Annette Stabilito, Secretary

I N D E X

Petition		Page
1	AVB2008-00367	4
2	AVB2008-00368	5
3	AVB2008-00365	5
4	AVE2008-00412	6
5	AVB2008-00366	7

PROCEEDINGS

The Palm Beach County Administrative Variance Type 1-B Staff Public Meeting began at 09:10am. Alan Seaman, Principal Site Planner, opened the meeting. He began the meeting asking the Administrative Approvals Secretary for confirmation of the 300ft manifest. These are notices that are mailed to the neighbors that are affected by the variance requests, informing them of this public meeting. This information was confirmed by the Secretary, Annette Stabilito, who stated that items were entered into the Mailstream of US Certified Letters on March 27, 2008 and was also advertised in the Palm Beach Post on March 30, 2008. Mr. Seaman stated that future legal advertisements for Administrative Variance Staff Public Meetings will most likely no longer be advertised in the Newspaper and that he is currently waiting for proper direction on this decision and will be letting us know.

Mr. Alan Seaman, opened the meeting by giving a brief summary and introduction of the Type 1-B variances under the Administrative Variance Staff Public Meetings.

Mr. Seaman explained the following: "For those of you that are not familiar with how staff conducts our business, the Agenda is divided in two parts, the Consent and Regular Agenda. Items on the Consent Agenda are items that have been approved by staff, the applicant agrees with the conditions and there is no opposition from the public. If there is opposition from the public, or the applicant does not agree with the conditions, an item can be re-ordered to the Regular Agenda. If an item is on the Consent Agenda and remains on the Consent Agenda, the variance is approved and the applicant is free to leave. The next part of the Agenda is the Regular Agenda. That consist of items that have been removed from Consent, or items that have opposition from the public, or the applicant does not agree with the conditions that staff has imposed. Staff will introduce them and the applicant will have an opportunity to give their presentation and then staff will give theirs. Then the public portion of the meeting is open and staff will hear from the public".

It was also informed that "if any information or documents is presented to staff at the meeting from the public, or the applicant provides additional information that may affect staff's decision, a thirty day (30) postponement may be requested to allow staff time to review the new information".

Mr. Seaman then proceeded asking staff if there were any changes to the Agenda, and there were none.

The first item on the Agenda are **Withdrawn Items**, which there were none.

The next item on the Agenda are **Postponed Items**, which there were two (2) items. Project Manager, Lauren Benjamin, read the first postponed item into the record as follows:

AVB2008-00367 James and Sharon Gawlowski, owners. The property is located at 4615 Palo Verde Dr., approx. 0.47 mile N of Old Boynton and approx. 0.38 mile E of Military Trail, in the RS Zoning District (PET: 77-061).

The variance request is to allow an existing structure to encroach into the required rear setback.

The applicant was not present at the meeting, however, they had properly notified staff of their request for a postponement and gave staff the reasons for their request.

Miss Benjamin stated that "the Gawlowski's requested the postponement to allow ample time for them to receive an easement release letter from Lake Worth Drainage District. This letter would inform staff of the actual recording of that easement to approve the abandonment of the easement".

There were no members from the public in opposition for the item to be postponed. Staff found their request for a postponement justifiable, therefore, postponed the variance, by right, for a period of 30 days. The next variance meeting is scheduled for Thursday, May 15, 2008.

The next item under **Postponed Items**, was read into the record by Project Manager, Aaron Taylor, as follows:

AVB2008-00368 Mark Lewis, agent, for William and Marion Holder, owners. The property is at 1333 Wedgeworth Rd., approx. 0.46 mile S of E. Canal St. N., and approx. 0.40 mile W of Duda Rd., in the AR Zoning District.

The variance request is to allow a proposed addition to encroach into the required front setback.

The applicant was not present at the meeting, however, Mr. Seaman asked Mr. Taylor if the owner is aware of the postponement and Mr. Taylor said "yes", that he had had "verbal confirmation over the phone with the agent".

Mr. Taylor stated that the justification for Holder's postponement is that "they had to resolve survey issues with their survey", as per the Survey Department's request. If they request a postponement, it would allow them 30 days to resolve those comments.

There were no members from the public in opposition for the item to be postponed. Staff found their request for a postponement justifiable, therefore, staff postponed the variance, by right, for a period of 30 days. The next variance meeting is scheduled for Thursday, May 15, 2008.

The next item on the Agenda are Consent Items. There were (2) two consent items on **Consent Agenda**. The first item was read into the record by Project Manager, Lauren Benjamin:

AVB2008-00365 Byrnes & Sheila Guillaume, owners. The property is located at 14800 April Drive, E of C Road and approx. 1.73 miles of Okeechobee Blvd., in the AR Zoning District (Pet. 06-166).

The variance request is to allow an existing lake to encroach into the required side setback and to allow lake to exceed minimum allowable surface area.

Sheila Guillaume, the owner, was present. Mrs. Guillaume stated her justification as follows:

"When I bought the land, the lake existed; half was on my property and the other half on my neighbor's property. Due to the layout of the property, there are no other design options. Therefore, if the variance is not granted I will incur financial hardship".

Miss Benjamin explained that "basically they have an existing lake when they went to apply for building permits for the single family dwelling they are proposing on the lot, they where instructed that they must meet ULDC requirements, one for their interior setback, which is traversing two (2) lots, so there's basically a zero setback and per the ULDC Article 4, the maximum surface area of all excavation on all the premises shall be 2/10 or 8712 sq ft and they are proposing 16,763 sq ft, therefore, their variance for the excavation surface area is 8,051 sq ft".

Mr. Seaman asked Miss Benjamin why does staff feel she has met the (7) seven criteria? In response, Miss Benjamin stated that "it was an existing lake that was excavated prior to 1992 and there were no excavation permits at that time and the applicant has sufficed the fact that it is a non-conforming lot and they are proposing their single-family dwelling on the lake that is previously existing and it would need to be filled for both". Mr. Seaman also added that the Guillaume's "would not

be able to get their building permits because the lot is out of compliance because the lake does not have a permit for an excavation and does not meet the setbacks so the only way for the owners to rectify that, is to request a variance".

There were no letters or members from the public present to speak for or against the variance request, therefore, as permitted by Article 2 of the ULDC, staff approved the variance petition with (1) one condition as recommended by the staff report and seven criteria.

Mr. Seaman explained to the applicant that "there would be no development order on this variance since no physical action is required by the applicant since the lake is already existing".

The next item under **Consent Agenda** was read into the record by Project Manager, Lauren Benjamin:

AVE2008-00412 Jonathan and Laura Spalding, owners. The property is located at 3453 Inlet Ct, approx. 0.05 mile E of US Hwy 1, and approx. 0.39 mile S of County Line Rd., in the RS Zoning District (07-049).

The applicant is requesting a 12-month time extension on the Development Order in order to vest the approved variance ZV2007-188, which is to allow reduction of the rear and both side interior setbacks.

Jonathan and Laura Spalding, owners, were present.

The time extension justification statement presented to staff reads as follows:

"We obtained the variance in April 2007. Shortly thereafter we met with an architect and had 3 sets of 'estimate' plans drawn as we were considering 3 scenarios for the shed. Our preferred scenario included adding a partial second story to our home. The plans were completed on or about August 27, 2007. We then began getting estimates for completion of the 'second story scenario'. It took until approximately mid-December to get a complete estimate package. We then spoke to lenders (our current lender as well as several others) to see if we could get the financing to complete the project. Due to the current state of the South Florida real estate market all of the lenders except one turned us down. The proposal presented by the willing lender was simply too expensive for us to afford. This part of the process took approximately 1 month. We have now gone back to our architect and are in the process of having a complete set of plans drawn up for the shed as a single story. We intend to move forward with the project as soon as we can get the plans and the required permits (the financing is already in place) in order".

Mrs. Spalding stated that they are asking for a time extension in order to stay in compliance with the development order associated with their variance, and that there were no conditions associated with their variance. They had asked for the extension of the variance so that they can get their plans in order.

Mrs. Spalding stated as follows:

"We went through various iterations of how exactly we were going to complete the structure and finally decided on a plan and at that time went to go get financing for it and found out that we could not pay for the plan that we were proposing so now we've gone back to rework. We have the plans almost complete with the Architect now and we'll be ready to go as soon as we are done".

Mr. Seaman asked them: "So it was basically a design issue getting things worked out?" "Yes, it was design issues", they replied.

Mr. Seaman read into the record:

"The development order for this particular variance shall lapse on 4-5-2008.

Is hereby amended to read:

The development order for this particular variance shall lapse on April 6, 2009. So that is one year from today's date and that in fact is the first time extension of the two allowable time extensions".

There were no members from the public present to speak in favor or against the time extension request. Therefore, based on this information, and as permitted by Article 2 of the ULDC, staff approved the time extension petition with no conditions, for an additional 12 months, as recommended by the staff report and the applicant's justification.

The next and final item on the Agenda is the **Regular Agenda**. There was (1) one item on the Regular Agenda, which was read into the record by Project Manager, Aaron Taylor, as follows:

AVB2008-00366 Jonathan and Laura Spalding, owners. The property is located at 3453 Inlet Ct, approx. 0.05 mile E of US Hwy 1, and approx. 0.39 mile S of County Line Rd., in the RS Zoning District (07-049).

The variance request is to allow a single family dwelling addition to encroach into both required side interior setbacks.

Jonathan and Laura Spalding, owners, were present.

The justification statement presented to staff reads as follows:

"We purchased the home in April 2002. It is a two bedroom two bath home with approximately 1,600 square feet of living area. The lot measures 120' X 50' wide - nonconforming under the current Code. In order to put in a swimming pool and maintain a safe, reasonable distance from the existing home a 5'5" variance from the setback requirement is requested".

"Our property is located approximately 50 feet from commercial structures/offices and US Highway 1. Granting of the requested variance will greatly improve our quality of life by allowing us to create a safe, healthy environment to raise our children. Part of why we love living in south Florida is the ability to be outside almost year round. Having a swimming pool is a common amenity and one we would like for our children. We love our neighborhood, our family is within a 1-mile radius - with one set of grandparents on the same street. We are trying to create the environment we feel our kids need without having to move - given the current state of the real estate market it really isn't possible".

"The back side (north) of the lot and the west side both are fenced and densely landscaped and severely limit the view of the yard. In addition, we would fence and landscape the east side of the yard with the addition of a pool. Furthermore, neighbors on either side of the property have structures that sit within the rear setback. One neighbor has a very large shed, while the other neighbor has a concrete block 2-car garage with a bathroom. Given the existence of the current structure on the property, as well as the existence of the neighbors encroaching structures, granting the variance would have no negative effect on the neighboring properties".

Mr. Seaman asked the owners to explain to staff their circumstances and why they felt they need the variance.

Mrs. Spalding made their statement as follows:

"We asked for the variance in order to put an in-ground pool and maintain a safe and reasonable use of the remaining open space, given the size constraints of our lot. Our lot is 50 feet wide. Which at the time it was platted, was I guess, conforming, now according to the code it would be non-conforming given the width. With the 10 and a half feet required side setback, as well as the existing location of the house, kind of puts the pool in a place where, between the pool and the house and the requirements of the child safety fence, there is really not a lot of room to move around. And the out-swings of the doors, when you consider that, the doors open 3 feet out, and you have to have the child safety fence 20 inches away from the pool, we want to have a reasonable amount of space to move around there and know that our kids are okay and running around and not running into anything".

Mr. & Mrs. Spalding where asked to read through the seven criteria. Mr. Seaman informed them that they need to convince staff that they meet all of the criteria, since staff's judgment is based on the seven criteria.

Mr. and Mrs. Spalding read through the seven criteria, making their rebuttal and basically trying to convince staff that the recommendation for denial that staff was making on their application, in their opinion, was wrong.

Criteria #1- Special conditions and circumstances exist that are peculiar to the parcels of land, building or structure that are not applicable to other parcels of land, structures or buildings in the same zoning district.

Mrs. Spalding stated that "though staff's answer was 'no' to criteria #1, they would argue 'yes', that "special conditions and circumstances 'do' exist and that the lot is non-conforming and that the lot is 50 feet by 120 feet versus what is the minimum requirement now, which is 65 feet".

Criteria #2- Special circumstances and conditions do not result in the actions of the applicant.

Mrs. Spalding explained that those "circumstances are not from their actions". That is the size of the lot when it was platted, the size of the lot when they bought it. They have not done anything with the house yet so the house is in the state that it was when they bought it.

Mr. Spalding also added that "it was not an issue at the time because the septic tank was previously in the back yard", it was not in consideration for the house to have a pool there, because infill structure was required that is no longer there for the past 2 years.

Mr. Seaman stated that this was new information presented to him and if they can explain some more in regards to the issue with the infill structure.

Mrs. Spalding said that "the septic tank would show in the survey, but it is not there anymore. When houses were originally put in, they were on septic. Many of the houses in the neighborhood do not have pools because septic tanks are in the back yard". She explained that when they bought their house, the neighborhood was already in negotiations with the Village of Tequesta and the Loxahatchee River District to put in city water and city sewer and that kind of made it attractive to them, that "once the septic tank was out of the back yard, now they could put a pool in and adopt the city sewer".

#3 - Granting the variance should not confer upon the applicant any special privileges denied by the comprehensive plan and this code to other parcels of land, buildings or structure in the same zoning district.

Mr. Spalding stated that what they would like, other folks in the neighborhood would not be denied the same option or opportunity. They stated that "there are other houses that have pools in the area, however, those lots are conforming and their lot happens to be the smaller of the ones in the area, so they feel they are not conferring any rights upon them available to others". Their house happens to be "non-conforming to this period of time, not when it was built".

#4 - Literal interpretation and enforcement of the terms and provisions of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district and would work an unnecessary and undue hardship.

They argued that "yes, it would cause an unnecessary and undue hardship" since their lot is only 50 feet wide and if they put the pool in with the setback under the proposed layout that was provided by staff, it leads a little over 7 feet, between the pool and the house.

Mrs. Spalding stated: "Once you put the child safety fence in, which for my understanding in the building code it has to be at least 20 inches away from the pool, you have to also have a fence where there aren't any openings that are lower than 48 inches from the ground, which would be if your dwelling provides part of the barrier...it can be windows or doors. If you look at the picture, we have up the windows and doors, so we also have to have a barrier between the house and the pool, which leaves us about 6 feet. The fences are just about 2-3 inches wide, 52 pound weight at 36-inch height, so whatever that is".

Mrs. Spalding read into the record the following:

"Solid barrier, if you did not have your house there...where a wall of the dwelling serves as part of the barrier, one of the following shall apply: all the doors or windows providing direct access from the home to the pool shall be equipped with an exit alarm...all doors providing direct access from the home to the pool shall be equipped with a self closing, self latching device...with a minimum of 54 inches above...".

She also made a comment about how heavy the impact doors are and that they did not have the opportunity "to thoroughly research it" on how to get the self-closing device on them.

Mr. Seaman gave them two options. He asked them if they felt that they needed a little more time on this, and offered to give them the opportunity to research this a little bit more and asked them if they'd like to take a 30-day postponement. However, he did say that he is not sure that it will change staff's position on it.

Mr. Seaman stated: "If we go forward, I would say that this is not information that would change my opinion. My opinion is that you CAN address this and the fence can go from here to here, it can connect to the edge of your home and around your pool as opposed to what you were hoping. You wanted to put it around here, close to the waters' edge. It is not real clear to me. It does NOT make a difference to our review. It is simply another option that you have chosen NOT to take, that option of putting that sound device on the door should they pop open... 'cause those are all viable options presented to you."

Mr. Larry Roberts stated that basically the arguments they've presented has not justified the variance. "Since you have to satisfy the 7

criteria in order to qualify for the variance and to this point you do not", he commented.

Mr. Spalding explained the need for a fence of whatever type, between the house and the pool, their argument was based on the fact that it is important to them and that they want to do that.

Both Mr. Roberts and Mr. Seaman felt the same way, that that is not a justification for their variance, however, if they want to take the time to get more information to see just what it would be for them to address having mechanisms, whatever it takes, or even withdrawing from the whole process and moving over, they would be done. "That is the sole issue that you have. That you want the pool over here, because you think you need to put a fence around here. Perhaps you should look at the financial balance", commented Mr. Seaman.

Mrs. and Mrs. Spalding clearly stated the way they want their pool and that if they took the postponement, it would not change anything. Mrs. Spalding responded to Mrs. Seaman's request: "So, you are all saying that it is irrelevant to you and it is not going to change it, I guess my thought would be why would should we wait 30 more days?"

Mr. Roberts reiterated his recent comment by saying: "Discretion on the part of an applicant is not justification for a variance. You'd like the pool to be someplace else, but that does not justify you under the 7 criteria, you've got to meet those. Right now you are basing your request on your discretion you'd like the pool to be somewhere else and that does not qualify for a variance".

Mr. Seaman was trying to suggest, as a helpful note, that they'd go back and readdress those issues at home, for example, looking into the costs and financial part of the doors and the mechanisms and if that is something they'd like to discuss more in detail, however, it is certainly up to them on their business decisions. "If you move the pool, you are done, you can go forward", said Mr. Seaman.

Mr. Taylor, interjected by basically making a comment that if they redesigned, they would not even need to get a variance.

To clarify his statement, Mr. Taylor addressed himself to Mr. And Mrs. Spalding and said: "You are in a smaller lot in comparison to the other two homes that have pools, although you are in a smaller lot and the lot is non-conforming, if your lot has sufficient space, not based on the typical size of a pool, the denial of your variance does not mean that you can not have a pool, it just means that that at the size and location in which you want it, it can't be done. My justification when I read your 7 criteria, with a slight redesign of what you are proposing, you can still get what you wanted, maybe not exactly as you wanted it, and still meet the ULDC, and that is what the determination was made on that is why it does not meet the 7 criteria, all 7".

Mr. Seaman also referenced the graphic examples that Mr. Taylor provided in the staff report. Mr. Seaman said: "Graphic example number 3 shows the pool in the configuration in which you would like it and the other example, number 4, shows the pool and the location that meets the setbacks and does NOT require a variance...by nailing the pool down and it also moves it closer to your residence".

Mr. Taylor reiterated what he said before and mentioned that out of the 7 criteria, one of the criteria says: 'Is this the minimum variance that is being requested?' and of course, "there really doesn't even need to be a variance request if you redesign".

Mr. and Mrs. Spalding were asked to continue with their responses to the remaining 7 criteria, since they decided to go forward in the meeting and not take the opportunity for a 30-day postponement.

#5 - Grant of the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure.

Mrs. Spalding stated that she would say "yes", that she thinks it is reasonable to expect that the pool be a reasonable distance from the house and be of a decent width. "So though you said no", she said, "that it is not the minimum variance, for the reasons that Mr. Seaman just stated, that we can make the pool smaller and move it closer to the house. I would say that there is a difference of what we think the decision of reasonable use is".

#6- Grant of the variance would be consistent with the purposes goals, objectives and policies that the comprehensive plans in this code.

Mr. and Mrs. Spalding stated that the code promotes sufficient open space, and that the pool does not affect it, that "it is still an open space and that there is separation between structures".

Mr. Spalding also said: "We thought that the variance is to increase the separation between structures".

Alan made a comment and asked them if they had looked on the other side, referring to their neighbor. And they responded saying that they "spoke to that neighbor and that he has no objection to it" and that there would be a solid fence between the property line, that when they are done they would put a new fence. They also said that when they spoke to the neighbor, their neighbor said that "he does not care".

Alan mentioned to the Spaldings that "consistency is what we are trying to comply with, though that neighbor may not always be there, in the future there may be some other individual there". However, Mr. Spalding, responded by saying that "the fence would always be there".

Mrs. Spalding made a statement by saying that "it is very much a zero lot line neighborhood", that there are "many structures that are inside the setbacks and very close to each other". "It would not be unusual at all for the neighborhood as you would expect in a neighborhood full of lots that are only 50 feet wide", she said.

Mr. Seaman asked her if she knew if those structures are permitted legally with building permits?

"I cannot speak to whether anyone else has permits", she responded. "I don't know, I did not look them up".

Mr. Seaman said: "We are focusing on your issue, and certainly there may be structures out there but rather than using them as a justification for yours, we need to look at your specific case".

Therefore, he asked that they address the last criteria so that staff could make their final judgment.

#7- The grant of the variance would not be injurious to the area involved or otherwise detrimental to the public welfare.

Mrs. Spalding said: "Staff stated that 'yes' it can be injurious to the area involved", however, she said that they disagreed, bringing out the fact that there "were no letters of opposition from the public".

Mr. Seaman said that "the single family residence immediately to the east, at 3443 Inlet Court, would be most affected" and that "the proposed pool would be 5 feet from the property line, although the current owner shows no opposition to the proposed pool, the code is written to protect the rights of present and future property owners".

Mrs. Spalding disagreed by mentioning that "5ft to the property line versus 10 and a half feet to the property line", she does "not think it is injurious to the area involved or detrimental to the public welfare". She clearly stated that they "certainly DO NOT believe that it is detrimental to the neighborhood". She mentioned that "the neighborhood is in a rehabilitation stage, that there are other neighbors who are upgrading, adding second floors, etc". She said she would also be upgrading the neighborhood, and that "putting in a new fence and a pool is the opposite of detrimental or injurious to the area".

Mrs. Spalding also stated that "the neighbor immediately to the east, has NOT voiced his opinion against it, he is very supportive of the variance for the pool as to the majority of our neighbors, very supportive of it that it ADDS to the neighborhood as to oppose to being detrimental".

Project Manager, Aaron Taylor, briefly stated for the record staff's decision on this variance request:

"The property was platted back in 1950. The house was built in 1972 and is a non-conforming lot, according to today's code at 50 x 120. Now the reason staff did not determine that a non-conforming lot IS an issue in this specific case is because although the lot is non-conforming, you DO have enough space to put a pool. Maybe not the typical size pool, but a pool. As you know on pages 9 and 10, there is a graphic of your proposed pool and one of the alternative design option, which reduces your proposed pool by 2 feet and moving the pool closer to the house by 7.9 feet. Here staff determined that all 7 criteria had not been met. And that is really what it all boils down to. All 7 criteria have to be met, for the variance and the ones that stood out the most were criteria #2, redesigning of the pool and the location, the variance is no longer needed. It eliminates the need".

Mr. Seaman reiterated Mr. Taylor's statement by saying: "The key and number one point in this variance is that there IS an alternative design solution that would mean you do not need to get a variance. This is basically built around that".

Mr. Seaman made a comment that criteria #3 and criteria #5, kind of build around the same thing. "Although it is a non-conforming lot", he said, "there is nothing inhibiting about the applicants lot that would prevent the construction of 'a' pool since the applicant has an option to revive the location of the pool and configuration of the pool to granting the variance would be giving the applicant special privileges because in this case, excluding every other lot, if you can meet the 10 and a half foot setback, you'd have to meet it". He also added by saying: "That would be giving a special privilege and #5 just builds on #2, this is not the minimum variance required because with basic redesign and relocation staff determined that there is no need for a variance in the first place".

Mr. Seaman asked if there was anyone one from the public who was present to speak in favor or in opposition of the variance request, and there was none.

Therefore, Mr. Seaman made his final statement by saying: "As permitted by Article 2 of the ULDC, staff recommends denial of application AVB2008-366 based on the staff report and the determination that the applicant has NOT met all 7 criteria. This is the end of our proceedings. You will get a letter stating denial in the mail".

There were no other items on Regular Agenda, therefore, Mr. Seaman adjourned the meeting at 9:57am.

Based on Article 2.A.1.D of the Unified Land Development Code (ULDC) and the applicant's ability to meet the criteria pursuant to Article 2.A.1.F of the ULDC, the Administrative Variance Public Meeting Staff approved only the variances that were requested under **Consent Agenda** at their **April 17, 2008** Variance Public Meeting.

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