

**PALM BEACH COUNTY
ADMINISTRATIVE VARIANCE MEETING
MONDAY, April 2, 2012 at 9:00 a.m.**

MINUTES OF THE MEETING

The Variance Public Meeting was held on the 1st Floor of Vista Center, 2300 N. Jog Road, West Palm Beach, FL 33411.

ATTENDEES

County Staff Present:

Barbara Pinkston-Nau, Principal Site Planner

Juanita James, Zoning Technician

Lorraine Cuppi, Senior Secretary

Proof of Publication: Barbara Pinkston-Nau asked if there was confirmation of the 300 foot notices. Lorraine Cuppi stated yes, the manifest was mailed on February 28, 2012.

Changes to Agenda: Barbara Pinkston-Nau inquired if there were any changes to the agenda, and Lorraine Cuppi stated there was none.

Disclosures

Barbara Pinkston-Nau explained the following: "For those of you who are not familiar with how staff conducts our business, the Agenda is divided in two parts, 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, after receiving their result letter. The next part of the Agenda is the Regular Agenda, that consists 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 imposed by Staff. We begin with Staff's presentation, Findings of Fact, and recommendation, followed by the owner's presentation. We will then open the public portion of the meeting and hear from the public."

CONSENT ITEM(S):

AVB2012-0299

Legal Ad: Ward, Damon, Posner, Pheterson and Bleau, P.L., agent, for Ira Kitzen, owner, to allow a dock to encroach into the required side setbacks. LOC: 2317 Palm Harbor Drive, approximately .21 miles east of Prosperity Farms Rd in the RS Zoning District. (Control 2011-257)

Public Correspondence: Yes, one letter in opposition.

Staff: Juanita James explained the variance and presented the Findings of Fact. Staff is recommending approval, subject to conditions as amended. The owner, Ira Kitzen and his agent, Conrad Damon were present. Barbara asked if anyone wanted to speak on the variance.

Conrad Damon, Agent for Ira Kitzen: Conrad Damon said there was ample evidence and all criteria necessary that the variance should be granted.

Chance McClain, Attorney for neighbor, Dominique Barteet: stated "Petitioner, Ira Kitzen, has to prove a burden based on Ordinance 2006-036. All seven criteria have been satisfied by the applicant, prior to making a motion for approval for rezoning or subdivision variance under Palm Beach County ULDC Article 2, Chapter B, Section 3. If the petitioner, Ira Kitzen, fails to satisfy one of the seven, he is not allowed by law to have a variance. By law, the 4th District Court of Appeal, in regards to number 5 of the 7 burdens that have to be proved that is stated, that the applicant must satisfy that granting the variance is the minimal variance that will make possible the reasonable use of the parcel of land, building or structure. Bernard vs. Town Council of Town of Palm Beach Court of Appeal says it must be virtually impossible to use the land for the purpose for which it is zoned.

Chance McClain submitted to PZ&B, Exhibit C. Before Ira Kitzen purchased property at 2317 Palm Harbor Drive, there was a dock already existing with a boat lift. Therefore, it is not impossible to have reasonable use of the utility of the water. That is one of the 7 points that has to be satisfied. The 4th is the literal interpretation and enforcement of the terms and provisions of this code will deprive the applicant of rights commonly enjoyed by other parcels of land in the same district and would place unnecessary and undue hardship. Emphasis is placed on hardship. Once again, defining law for the area Bernard vs. Township of Palm Beach, must virtually be impossible to use the land for the purpose for which it is zoned. A hardship must be such that it renders it virtually impossible to use the land for which it is intended. A hardship is necessary to obtain zoning variance and may not be found unless the present zoning no reasonable use may be made of the property and self-created hardship cannot constitute a basis for a zoning variance. As stated before, there was a dock, there was a boat lift. Ira Kitzen allowed upon himself with his contracting company, to extend the dock, whether it was intentional to encroach or not, it was intentional to be on the line and ignorance is not a defense of the law. If the zoning was abided by, the speed of the encroachment on

Barteet's property would not be an issue which is why zoning codes are in place and why they should be abided by. This has caused an undue burden and unfortunately caused Ms. Barteet to have to litigate just to defend her private property rights.

Other five points.

- 1) The applicant must satisfy that special conditions and circumstances exist that are peculiar to the parcel of land, building or structure, that are not applicable to other parcels of land, structures or buildings in the same district;

There are no circumstances that prevent the applicant from having a dock with a boat, without violating the five (5) foot setback on the south and north side. Counsel will not speculate if an architect could place a dock with two (2) boats without violating the five (5) foot setback. The circumstances to the land must be circumstances peculiar to the realty alone, unrelated to the conduct or to the self-originated expectations of any of its owners or buyers. *Maturo vs. City of Coral Gables*. *City of Coral Gables vs. Geary*.

- 2) The applicant must satisfy that special circumstances and conditions do not result from the actions of the applicant;

The special condition requiring the variance occurred as a direct result of Mr. Kitzen unilaterally extending the dock and adding a second (2nd) boat lift to an already existing dock and boat lift, Exhibits A, B & C. The additions are in violation of the code and it is stated that, self-created hardship cannot constitute basis for zoning variance. *Bernard vs. Town Council of Town of Palm Beach*, 4th District Court of Appeal.

- 3) The applicant must satisfy that granting the variance shall not confer upon the applicant any special privilege denied by the plan and this code to other parcels of land, buildings, or structures, in the same district;

As stated and shown above, Ira Kitzen had a dock and boat lift like other similarly situated property owners in the same zoning district, but Mr. Kitzen did not follow the necessary procedures to ensure that the dock, dock platform, deck and seawall additions were properly built. Hence this administrative variance public meeting over a year after the dock was unlawfully built. It would be inconceivable to confer upon Mr. Kitzen the special privilege of allowing this unlawful act because of ignorance of the law of him and of Treasure Coast Building, Inc. and any other Administrative agency. Ira Kitzen has been aware of the violation and has ignored numerous requests to remove the violation dating back over one hundred eighty (180) days before suit was brought against Mr. Kitzen on October 20, 2011, in the Fifteenth Judicial Circuit, in and for Palm Beach County. The variance must be denied. It would be inconceivable that public officials could issue a permit, either inadvertently, through error, or intentionally, by design, which would sanction a violation of an ordinance adopted by the legislative branch of the government.

- 4) The hardship must be such that it renders it virtually impossible to use the land, boat and dock before he purchased it. Reasonable use.
- 5) Satisfied by Ira Kitzen that it is virtually impossible to use the land for the purpose for which was zoned. There was a dock, there was a boat.
- 6) The applicant must satisfy that granting the variance will be consistent with the purposes, goals, objectives and policies of the plan and this code;

Obviously, it was not within the policies of the code because we are here today, one year later. Unfortunately I've been told by Mr. Kitzen's counsel, Conrad Damon, that the building inspector said that you only have to remove five (5) feet from the upland portion. Later I was told by Conrad Damon's friend that the same building inspector or another building inspector came back and said, "no I'm sorry you have to remove everything over 5 because that is what the code is". Ms. Barteet is not responsible for the incompetent hiring or actions of a third party. Ms. Barteet should not have to suffer because of errors of ignorance of law of an official employee of an administrative agency because of Treasure Coast Inc. or because of Mr. Kitzen. That most definitely would be against the goals and common sense of the laws. Once again, by the Court of Appeal, Town of Lauderdale by the Sea vs. Meretsky, it would be inconceivable that public officials could issue a permit either inadvertently, by error or intentionally sanction by design which would be a violation of ordinance adopted by the legislative branch of the government. PZ&B is a police power. It's not a legislature. It doesn't make the laws, it's not the judicial system, it doesn't interpret. By law, Mr. Kitzen is not allowed to have a variance.

- 7) That Mr. Kitzen must prove or show to have a variance, the applicant must satisfy that granting a variance will not be injurious to the area involved or to other's detriment to the public welfare. I don't know what Mr. Kitzen, Conrad Damon or the Treasure Coast Company has done, whether they are the other people, officials, experts, etc., but it was read today that the sea wall, berm, bulk head on the north side of his property may harm or affect the land.

The unlawful placement of the dock, deck and side seawall creates an obstruction of Ms. Barteet's view and decreases the aesthetic appeal of Ms. Barteet's property, increasing the aesthetic appeal of Ira Kitzen's property. Once again, Ms. Barteet is a victim because of other people's ignorance of the law. All of this is in regards to a five (5) ft. setback. This is not related to the fact there is a dispute of encroachment that Ira Kitzen's dock is on her property. To grant such would be giving private property to another person.

Nevertheless, as stated in Mr. Kitzen's sixth burden to prove the above, the granting of unlawful action that has resulted in the undue burden that Ms. Barteet's compliance with an erroneous order not in compliance with the code, public officials could demand that represents a detriment to public welfare. Town of Lauderdale-by-the-Sea vs. Meretsky.

In conclusion, Mr. Kitzen has not satisfied all 7 criteria and should not have a variance."

Barbara Pinkston-Nau: stated "This body is not the Zoning Commission. Type 2 Variances are reviewed by the Zoning Commission. This is a Type 1B Zoning Variance request that is approved administratively. There is a difference between the two. The section that you quoted from the ULDC was incorrect. Staff reviewed the initial request submitted by Mr. Kitzen. At that time, staff recommended approval of the request. Based upon objection by Mr. Chance McClain at the March 15th meeting, this meeting was continued to today, April 2, 2012. We continued in order to allow Mr. McClain to submit additional documentation that he indicated would prove the variance should not be approved. Information was submitted to us on March 20, 2012. Staff reviewed the documents and the County Attorney's office, we are still recommending approval of this request. A letter went out which Mr. McClain was copied, addressed to Mr. Damon that explained staff's standing. If there is some outside litigation, civil issues going on, we do not get involved, as county, the variance is to allow 0 foot setbacks on both sides. Based upon what was submitted and based upon staff's analysis and review of the application submitted, our findings are that the variance is warranted. We recommend approval of this variance. "

Chance McClain: Objected to the decision.

MEETING ADJOURNED AT 9:20 AM

Minutes Prepared by

 
Lorraine Cuppi, Senior Secretary April 9, 2012