



MINUTES

TOWN OF HILLSBORO BEACH BOARD OF ZONING & APPEALS MEETING JANUARY 7, 2020

9:00 A.M.

CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Deborah L. Tarrant called the meeting to order at 9:00 a.m. Roll was called with the Commission members and staff present as listed below.

Town Commission:

Mayor Deborah L. Tarrant
Commissioner Andrew R. Brown
Commissioner Barbara Baldassarre

Vice Mayor Irene Kirdahy
Commissioner Vicky Feaman

Town Staff:

Town Manager Mac Serda
DJ Doody, Town Attorney
Town Clerk Sherry D. Henderson, CMC

I. QUASI-JUDICIAL PUBLIC HEARINGS

- A. Variance Request from Attorney Matthew Scott, from Dunay, Miskel, and Backman, LLP, Agent for Property Located at 965 Hillsboro Mile, Hillsboro Beach, FL 33062

Town Attorney DJ Doody swore in all those presenting testimony at the hearing.

Mr. Doody explained the process and the standards which must be met for the Board to grant a variance to the applicant.

Mr. Doody noted the neighboring property owner is opposing the action, and if they disagree with the decision of the Board, have 30 days to file with the Circuit Court of Broward County.

Joe Arenal presented the request for a variance, which was previously tabled at the December 3, 2019 meeting. Mr. Scott is seeking a variance from the Town of Hillsboro Code of Ordinances as it pertains to section 12 - Land Development Code, Division 5 - Zoning, Section 12-124 Yard Regulations (B) Side Yard. Section 12-124 (B) requires a yard, having a

width of not less than 15 feet, measured from the overhang or six (6) inches per foot of building height, whichever is greater. Based on the building height of 31 feet and an overhang of one (1) foot, eight (8) inches, the required side yard setback is 17 feet, 2 inches. He explained the variance request is to be allowed to encroach four (4) feet into the required setback.

Mr. Arenal stated staff recommends approval with an increased landscape buffer.

Mr. Scott presented on behalf of the applicant, 421 DLC. He reminded the Board the item was previously deferred to give the parties an opportunity to attempt to work out a resolution. He stated the parties went back and forth a few times but were not able to resolve the neighbor's concerns.

Continuing, Mr. Scott reviewed the key items leading to the request for a variance. He explained that at the time of construction, the property line was miscalculated due to surveyor error. Mr. Scott argued the concern only arose because the neighbors engaged a surveyor to survey their property for a separate project and he brought this error to light, it was not brought up due to issues with impact to the neighbors.

Mr. Scott shared images of substantial existing vegetation used to create a buffer between the properties. He noted the homeowner had investigated the option of a wall, but the Town Planner had stated that was not an option. He further noted that the Town Planner, an expert in planning and zoning, was recommending approval of the variance.

Mr. Scott explained the only way to correct the issue other than granting the variance would be to tear down the side of the home, making it a unique situation. He further noted the neighbor's home was constructed prior to the current setback regulations and would not meet those regulations.

Continuing, Mr. Scott stated the Code allowed for variances where unusual conditions are in place and submitted that the current situation is highly unique. Mr. Scott pointed out the argument from the neighbor regarding damages contemplated taking four (4) feet of their property, which was not the case, as it was four (4) feet of the setback which was being requested by the variance.

Vice Mayor Kirdahy asked for clarification regarding a previous correction of an encroachment on the neighbor's property.

Mr. Scott stated a survey found that a portion of a wall and some brick pavers were on the neighbor's property, at which time the owners of 965 Hillsboro Mile corrected the issue by removing the items within a matter of weeks.

Attorney Michael Weiner, from Sachs Sax Caplan, P.L. Boca Raton, FL, presented on behalf of 963 Hillsboro Mile, the property adjacent to that requesting the variance. Mr. Weiner asked that the owner of the property be sworn in, in order to respond to items within Mr. Scott's testimony.

Mr. Doody swore in the witness.

Susan Schneider, beneficiary of the Trust for property at 963 Hillsboro Mile since 2013.

Mr. Doody pointed out Ms. Schneider does not have legal title to the property, as it is held in Trust.

Mr. Weiner stated Ms. Schneider was the beneficiary of the Trust and the occupant, and noted he also represents the Trustee.

Ms. Schneider stated she initiated a rebuild of the home in 2017, at which point landscaping and property line issues were investigated and the previously discussed encroachment was discovered.

Mr. Weiner argued the incorrect Ordinance was being presented by the applicant as their evidence for the variance. He stated he understood that it was a small Town and they were neighbors, but the parties had been unable to work out an equitable solution.

Continuing, Mr. Weiner stated the surveyor had not been present for either of the two (2) hearings, and the Board was accepting on faith that a mistake had been made. He argued they could just as easily argue that the homeowner had not looked at the survey and done their job correctly.

Mr. Weiner reviewed the Ordinance which allows for side yard setback variances, noting he did not believe the testimony fit the requirements. He further argued testimony had not been presented regarding the insurance of the surveyor or the cost of removing the four (4) feet of the house in question.

Mr. Weiner argued the full language of the Ordinance was not being considered and stated substantial competent evidence of each issue was not present. He stated the solution of adding additional landscaping would result in less light, air, and sunshine and did not meet the standard.

Continuing, Mr. Weiner stated he did not believe the location of the existing house at 963 Hillsboro Mile should be discussed, because it met the regulations at the time it was built. He argued a precedent was being set for the rest of the street.

Mr. Weiner asserted the appraiser stated the loss of the use of four (4) feet of the property would result in the loss of \$236,800 to the property owner. He argued this loss impacted resale value.

Mr. Weiner stated if a mistake was made it was by the agent of the applicants, making it a self-created hardship. He argued the definition of hardship, stating none of the factors were true in this case.

Mr. Doody asked if Mr. Scott wanted to cross examine the witness.

Mr. Scott declined the cross examination, then responded to points made by Mr. Weiner regarding the appraisal and stated the scrutiny of the Town's Code was overstated. He respectfully requested that the variance be granted.

Commissioner Feaman asked if Mr. Arenal had any follow-up comments.

Mr. Arenal stated the representation of the hardship was accurate. He noted the original survey was carried out, there was no reason to doubt the information included until the subsequent survey was completed and found the error.

Mayor Tarrant opened a public hearing on the matter, however there being none to speak, closed the hearing.

Mr. Weiner stated the appraisal speaks for itself and argued four (4) feet of the property will be lost if the variance was granted. He again argued the wording of the Ordinance did not allow for the conditions.

Mayor Tarrant recognized this was an unfortunate situation, with multiple errors presented. She reiterated the errors, including the surveyor mistake, the measurements in the original request, and the Ordinance in question.

Continuing, Mayor Tarrant stated being asked to tear down your house is an unusual difficulty and a particular hardship, regardless of the financial implications. She noted the size of the neighboring lot was not being reduced, and she agreed with Mr. Scott that the appraised value of the four (4) feet did not apply to the variance.

Vice Mayor Kirdahy stated her thoughts were not about being neighborly, but about addressing the facts as presented during the hearing. She said the Ordinance was quite clear, and it could be interpreted as unusual difficulty.

Continuing, Vice Mayor Kirdahy asserted the average person is not going to correct the results of a surveyor, as they do not have the same tools, knowledge and expertise. She

noted they would have no reason to believe the information was not correct.

Vice Mayor Kirdahy stated she did not see a hardship of sunlight due to the orientation of the homes and noted the smaller setback did not result in a loss of the property. Commissioner Baldasarre agreed with the statements of Mayor Tarrant and Vice Mayor Kirdahy, stating she had the same information.

Commissioner Feaman stated she did not see a hardship to the neighbor, which would be her main concern.

Mr. Doody provided wording to comply with the provisions of the Code.

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Feaman, that the Board does not find an impairment of light, air, and sunshine to the adjacent property. In a roll call vote, the **motion** passed unanimously. (5-0)

Vice Mayor Kirdahy stated this situation was unidentified for four (4) years. It would cause the property owner at 965 Hillsboro Mile to remove a portion of their structure (house). At this point, that does not make sense. This is an unusual and practical difficulty according to the Town's Code of Ordinance, Sec. 12-283 (c).

Motion made by Vice Mayor Kirdahy, seconded by Commissioner Feaman, that the Board recognizes a hardship exists and approves the application for variance. In a roll call vote, the **motion** passed unanimously. (5-0)

II. ADJOURNMENT

With no further business to come before the Board, **motion** made by Commissioner Feaman, seconded by Commissioner Baldasarre, to adjourn the meeting. In a roll call vote, the **motion** passed unanimously. (5-0)

The meeting was adjourned at 10:00 a.m.



ADOPTED THIS 9th DAY OF MARCH, 2020

By: Deborah L. Tarrant
Deborah L. Tarrant, Mayor

ATTEST:

Sherry D. Henderson
Sherry D. Henderson, CMC
Town Clerk