

**MINUTES OF THE REGULAR MEETING OF THE CITY OF STUART BOARD OF ADJUSTMENT HELD IN CITY HALL, 123 SOUTHWEST FLAGLER AVENUE, STUART, FLORIDA ON MARCH 22, 2007**

**Those present:** John Pasqualone, Chairman  
Bonnie Landry  
Dr. E.E. Griffith

**Those absent:** Philip Harvey  
Mark Mathes

**Also present:** Paul Nicoletti, City Attorney  
Kev Freeman, Development Director

**I. CALL TO ORDER:** Chairman

Chairman Pasqualone called the meeting to order at 7:12 PM.

**II. ROLL CALL:** Secretary

Those answering roll call and others present are referenced above.

**III. APPROVAL OF MINUTES:** February 22, 2007

**MOTION:** Bonnie Landry

**SECOND:** Dr. Griffith

**Motion carried**

Paul Nicoletti, Request to reduce the required lot width from 75 feet to 50.98 feet and 2) Reduce the lot area requirement from 7,500 square feet to 7,186 square feet to allow for construction of a new single family home.

Property Location: 701 S.W. Saint Lucie Crescent

Property Owners: Tom Crowsen / First South Properties

Applicant/Representative: Paul Charette / P. Paul Charette Architecture

BOA Case #06110001

*(Supersedes BOA Case #'s 05070001 & 05120001)*

This will be a quasi-judicial hearing tonight and the standards you apply will be a preponderance of the evidence. Burden of proof is on the petitioner to state a case that makes you believe there is a hardship and that they do not violate any requirement. Parties are here represented by council, Steve Utrech. The City will present the application then make a recommendation, then the Petitioner and any other parties who wish to speak. If there have been any exparte communications, those need to be disclosed by the board members.

Bonnie Landry, I have discussed the case with some of the neighbors and I am still making a decision independently with the information that I hear tonight.

Key Freeman, We discussed with the Board and the applicant at the last hearing that they were to engage with the local community which they did. They held a cooperative workshop on February 21, 2007. A number of items resulted from that which is summarized in the Staff Report. Staff carried out an analysis of the petition and we believe this is in compliance with the Comprehensive Plan and the procedural requirements of law. On the first point of 10.02.02 First: Does the petition authorize any use of the property that is not allowed? The single family residence is consistent with the zoning of the property. 2. Does the density or intensity exceed the maximum permitted in the district? It is in compliance. 3. Does it result in verifiable reduction in property values? No. 4. Does it cause a detrimental effect in supply of light or air to adjacent properties and I think the Board received a letter today to that effect. Staff would point out that there is no variance requested for the setbacks so it would not be negatively affected. 5. Any detrimental drainage effect? None 6. Increase in traffic? Within the usual context of the area. 7. Threat to public safety? No 8. Threat to health or general welfare? No. The present application in its form today reflects the minimum variance required to meet this particular hardship. We have in the packet a petition of 31 signatures in support of the proposed development. Taking all matters into account, Staff recommends that the variance be granted.

Bonnie Landry, Can you clarify that Staff was of the opinion that they are eligible to apply for a variance.

Key Freeman, They were of the opinion that it is compatible with the Comprehensive Plan and they met the eight points of the findings and that the application reflects the minimum variance required.

Paul Nicoletti, Are there any conditions that Staff was recommending or no?

Key Freeman, At this point, no.

Paul Nicoletti, Was a Public Notice carried out?

Key Freeman, Yes, it was carried out and neighbors notified in accordance with the requirements

Steve Utrech, Presentation I just want to verify with Mr. Paul Nicoletti for the record that since there are only three board members present if the vote is not unanimous then it would be a carryover and be continued to another meeting.

Paul Nicoletti, It would be a carryover and require that the meeting be continued.

Paul Charette, Presentation. Presented pictures of the adjacent homes on Riverdale and Cleveland

Paul Nicoletti, We need to mark the photos as petitioners exhibits.

Bonnie Landry, What was the size of the home demolished

Paul Charette, The footprint was roughly 2000 square feet.

Dr. Griffith, What was the square footage of the first floorplan that you proposed?

Paul Charette, The first one was 4400, then 3400 now we are at 3000.

Paul Nicoletti, Using the drawing marked as Petitioners A, where are the differences from the last time they have seen it?

Paul Charette, The garage height was dropped by 1.5 feet and the garage second floor lines have been brought in 2 feet which reduced the roof height.

Bonnie Landry, What is the distance between that garage and the neighbors garage?

Paul Charette, Twenty feet.

Jon Pasqualone, Which house did the petitioners say that they approved of?

Paul Charette, The prior floor plan which was larger than this one.

Bonnie Landry, How many square feet did you take off the one that was presented at the community meeting?

Paul Charette, 120

Mr. Utrech, I would ask for an affirmative vote.

Paul Nicoletti, I assume you are asking for items 1-14 to be entered into evidence.

Steve Utrech, Yes

Paul Nicoletti, Does the City have any objections to that?

Kev Freeman, No

Jon Pasqualone, Are there any intereვენors in this process?

Paul Nicoletti, An intervenor is a person who would have filed to be a party and has paid \$400 to the City to intervene in this matter. The public may testify but you cannot enter evidence, rebut or cross examine.

Marcus Bonshweigel/708 Bryant Avenue. I disagree with the limitations and granting the variances and believe that it would affect the neighbors and the light and air would be affected. Drainage might be a problem. I have a feeling this property is not the reason for the variance because they knew the setbacks were a given so the variance does not

apply. I feel that they should not build a two story house as it would interfere with their neighbors and block the views.

Paul Nicoletti, As a matter of law any person can build a two story home.

Jon Pasqualone, The 50 foot lot width is not unique to this neighborhood.

Richard Guiles/716 St. Lucie Crescent. I am three lots removed from the house in question. The neighborhood has a variety of buildings in it, townhomes with three stories and elevators, commercial properties. With the main concern being visibility at the corner and I don't see this as a problem, the design would be nothing but an improvement for the neighborhood not a detriment and I don't see why there is a big issue with issuing this variance.

Lucille Right/816 St. Lucie Crescent, This is R1, the townhouses are in different zoning. The parties involved purchased the lot knowing the lot was not buildable. They had torn down the house and created their hardship. Flagrant disregard for our zoning laws. If you give permission for this house to be built then you are saying that disregarding the zoning of the City is ok.

Bill Clark/724 St. Lucie Crescent, I live about three lots down the street and feel that the way the house has been designed is in accordance with the code, all they are asking for is the non-conforming lot to be a conforming lot. They have taken great strides to give the neighbors light and visibility. This neighborhood is full of non-conforming uses. We have a two story home on a fifty foot lot that most of the neighbors have told us is a great house and I see no reason why this variance shouldn't be granted.

Keith Wood/701 Cleveland Ave, The townhouses and commercial buildings are not in our zoning. They are talking about a lot of two stories on the water which are R1A zoned. Our R1 zoning in our neighborhood has 2 or 3 two story homes at the most. These people bought this lot knowing the size of it. They knew it was not conforming and tore it down. Under the 50% law and code they could have rebuilt that house. According to that code when they tore that house down, it became a non-conforming lot. The law and the code are not made to be broken or revised.

Jon Pasqualone, Questions from the Board.

Dr. Griffith, So at the meeting where you met with the neighbors you made some of the people happy but not all of them?

Paul Charette, Yes, There is a long history here. First we had a three story house, now we have a two story house. If we go to a one story house, they will only be happy with an 800 square foot house. This house was vacant for 3 years, rat infested, vagrant infested and termite infested.

Paul Nicoletti, Had you walked through the old structure before it was demolished?

Paul Charette, Yes and it was uninhabitable by my client's standards.

Paul Nicoletti, Was it economically feasible to make it habitable?

Paul Charette, No, the roof was structurally unsound and there were several existing setback violations so in valuing the structure at the amount of money we would have had to spend to renovate it was not economically feasible.

Jon Pasqualone, Is it zoned R1?

Kev Freeman, Yes

Jon Pasqualone, How many stories does R1 permit?

Kev Freeman, Three stories or 35 feet high with an additional 15 feet for the roof if it is a pitched roof.

Jon Pasqualone, You went through your eight point checklist of variance criteria and they received a satisfactory response?

Kev Freeman, Correct

Bonnie Landry, I've read the chapter on hardship relief and respectfully disagree that this is not hardship. My basis for this is that the person had a house on the property. They knew that the board was not in favor of a variance because they got two denials. To me it is a little arrogant to knock the house down and say ok now you have to give a variance because I can't use my property. There were two previous occasions when the applicants received two denials. I do respect that the applicant has tried to work with the neighborhood but I think to work with the neighborhood is to work with the same structure which they chose not to do. The principle was, they bought a house with a lot that was within code. I believe a variance is for when something changes To me a hardship would be an infill lot and that was not. I agree with Ms. Right that by demolishing the existing home, this was a dilemma made by them. The home behind them was renovated within the character of the neighborhood. I was touched by the letter of Joseph George who was in favor of keeping the lot 50 feet. He said the architect said that homes that are there will become an anomaly. I think historic preservation is important and this is a historic neighborhood. It was the manner in which it was done that I disagree with and would truly hate to see. So I will not be supporting this variance request.

Jon Pasqualone, Generally in this type of presentation you give us how many variances of this type that have been granted?

Kev Freeman, I don't recall any, no.

Paul Nicoletti, I was reflecting on what Ms. Landry said, and let me read something to you. Reads Section 10.01.03 of the LDR.

Bonnie Landry, How does this become applicable? Are you saying the applicant didn't have a choice to restore that home?

Steve Utrech, The issue as I understand it was that there was an attempt to do renovation on the existing home. They were cited and told they could not do renovation on the existing home because it was non-conforming so we are a little hard pressed to respond to the idea that by trying to comply with 10.01.03 and the citation not to do work on the existing home we are now hamstrung because we are not allowed to work on the house or do the variance. That is my understanding to what transpired. I'm sure City Staff could research that.

Jon Pasqualone, Was the elevation an issue with the former existing structure?

Paul Charette, I don't recall.

Bonnie Landry, Did you buy a house or a lot?

Steve Utrech, They bought an existing home.

Bonnie Landry, With the intent of living in that existing home.

Steve Utrech, I can't speak to what their intent was when they bought it, but like most people there are three intentions. It is going to be a residence, it is going to be fixed up, it is going to be an investment.

Bonnie Landry, I am trying to understand this but I am still not there.

Jon Pasqualone, We heard testimony that this residence was vacated for three years. Mr. Nicoletti pointed out that if it was vacant for one year or longer, it is required to be torn down, altered or otherwise made to conform to the use. Is it my understanding that an attempt was made to renovate this place but permits couldn't be issued because of that provision.

Kev Freeman, I'm not fully aware of the situation behind that. I would say that Staff has the same interpretation of the section.

Paul Nicoletti, Section 10.01.02 A5 that says a non-conforming building destroyed to more than 50% of its assessed value cannot be reconstructed except in accordance to the provisions of this code notwithstanding the foregoing, multi-family buildings which has to do with density which won't show any light. So it is really that first sentence.

Bonnie Landry, On 10.01.02 continuation of... is this applicable? The provision says however no such non-conforming use shall be enlarged or increased nor shall any non-conforming use be extended to occupy a greater area of land than that occupied by the use of the time of the passage of this chapter. I would argue that this is bigger.

Paul Nicoletti, What this talks about is what this owner can do as a matter of right and what I was suggesting to you was, the only relief was to come before this board.

Jon Pasqualone, Under 10.01.02 we have continuation is used in this section and shall be deemed discontinued if all activities related to such use have ceased for a continuous period of not less than 180 days regardless of the intent of the property owner, lessee or other person in charge of the property on which the use is located. The termination of use as cease shall be made by the City Development Director who shall consider among other things, the consumption of utilities services at the property, the existence and maintenance of any required occupational licenses, advertising to the public of any activities on the property, voluntary or intentional cessation of the use by the user required by law for abandonment for a non-conforming use is not relevant to the determination of whether or not the use has been discontinued.

Paul Nicoletti, That is specific to use and there are 3 different types of nonconformity. You have a non-conforming use, non-conforming structure or non-conforming lot. In this case you have a non-conforming structure on a non-conforming lot but the use, single family residence is not an issue.

Jon Pasqualone, The section "nor shall any non-conforming use be extended to occupy a greater area of land than that occupied by such use at time of the passage of this chapter. Does that statement mean the footprint at which a home could have occupied that space?

Paul Nicoletti, No, because it is a conforming use. You have to limit yourself to non-conforming structure on a non-conforming lot. The problem with that is the City requires 75 foot lots and this lot is not 75 feet so for whatever reason the building is demolished, on purpose, an act of God you wind up with a lot that is still substandard. The only relief from that is not through the nonconformity but through the variance process.

Bonnie Landry, Were you the attorney when the owners purchased the property? Did the person purchasing the home do an inspection?

Jon Pasqualone, That isn't relevant to the variance request.

Bonnie Landry, I think it comes down to whether they were going to live in the house or intend to tear it down.

Jon Pasqualone, The applicant has been here three times now and in my other life I see projects come and go, I see good projects, I see bad projects and I believe you trust your Staff and they agree that this meets the criteria for acceptance. Unless we get a five person board up here, we will continue to spin our wheels and I don't think that is why we are here. I have no passionate interest in this place, I do live in the City of Stuart and have been here for a long time myself and have seen two stories all along this street. I don't really think it matters what I think, I think it matters what the law allows and I think the applicant has demonstrated an interest to work through this thing. In the world of democracy sometimes you get what you want, sometimes you don't.

MOTION: Dr. Griffith moved to accept the variance as requested.

SECOND: Bonnie Landry

Motion failed

Jon Pasqualone, Two affirmative votes, one no.

Bonnie Landry, Can I make a substitute motion?

Jon Pasqualone, Yes

MOTION: Bonnie Landry, Moved to deny the request BOA Case #06110001.

SECOND: None

Motion failed

Jon Pasqualone, At this point we don't have three affirmative votes.

Steve Utrech, Request for a time certain so it doesn't have to get public notice.

Paul Nicoletti, That is the correct procedure.

Dr. Griffith, Can we request that we have a full board for the next meeting.

Bonnie Landry, Could staff get some more information about this building permit?

Paul Nicoletti, Rather than put this on your regular meeting what about the April 12<sup>th</sup>?

Jon Pasqualone, We will commit to April 12<sup>th</sup> and if we don't have a full panel then we can move it to our regular meeting on the 26<sup>th</sup>

Steve Utrech, Could we contact the City Clerk a day or so in advance to see if the full quorum can be here? In the past if you haven't heard all of the arguments are you allowed to vote?

Jon Pasqualone, Yes

Paul Nicoletti, It does become somewhat of a do over but I am sure that we have identified the exhibits and the testimony so it would be a shorter hearing but all of those things have to be heard by the board members. We have the minutes, exhibits, cds to listen to so I think any board member can come up to speed if they choose.

Paul Nicoletti, How about we move it to 5:30?

Bonnie Landry, 6:00 would work better for me?

Steve Utrech, April 12<sup>th</sup> at 6:00PM. If there is not a quorum then can it be moved to the 26<sup>th</sup> without my driving up here to make a motion.

Paul Nicoletti, Yes, that is fine.

Jon Pasqualone, I would entertain a motion that if we don't have five people here on April 12<sup>th</sup> we continue it to the next regular meeting.

MOTION: Bonnie Landry, moved to accept that if we don't have a full board on April 12<sup>th</sup>, the meeting will be moved to April 26<sup>th</sup>.

SECOND: Dr. Griffith

Motion carried

Jon Pasqualone, Item for discussion. The City Commission overturned a ruling by this board.

Paul Nicoletti, The City Commission determined that there was no foundation basis for hardship. It might have met the 8 point test, the fundamental issue was there was no foundation to even get to those 8 points because no hardship had been shown. In that particular case there was a fairly substantial vacant lot and the way they had put the four story building was to minimize what everyone thought to be the setbacks that pertained so it kind of pushed the building toward the corner and toward Amerigo.

Dr. Griffith, Wouldn't Staff determine whether it was or wasn't.

Paul Nicoletti, Hardship is a difficult concept. In this case you had two different zones and zoning categories back to back? You have to determine if a hardship exists. The eight questions are there to help you with that but it alone may not be all that is needed. As Mr. Freeman found out, you can meet all those 8 tests, but if you don't have the fundamental basis or the hardship and I think you heard testimony tonight from Ms. Right that there is no hardship here, it is self imposed, well in the right context that's an issue but we don't want to talk about the merits of this case because it is on-going but as a matter of law that can and cannot be true. There are certain circumstances where it can appear to be self-imposed but it is not. Our Code is not very helpful on this. We used to allow 50 foot lots all over the City. You have granted a few variances to people who wanted to build on sub-standard lots. Did the applicant create the lot? No.

Jon Pasqualone, I think we are getting off track, how did the City overturn our decision?

Paul Nicoletti, When the two lawyers on the City Commission understood that no hardship had been shown, former Mayor Waxler made a motion to deny. It was done by re-hearing. There is a provision in the code for re-hearing before the City Commission. I think your best bet as a quasi-judicial board is to sit and hear the evidence, to really pay attention to every word, not go out and look at the properties, not talk to neighbors or applicant. Come in as a blank slate and either the applicant makes their case or they don't and just rule on the evidence before you.

Bonnie Landry, Explain to me what ex-parte means.

Paul Nicoletti, One sided communication, without all the parties being together.

Bonnie Landry, If you declare it, is that the end of your responsibilities or do you have to say that it did not influence my decision today.

Paul Nicoletti, Absolutely and that has to be very clear.

**IV: COMMENTS FROM THE PUBLIC:**

**V: NEXT BOA MEETING:** April 12, 2007

**VI: ADJOURN:** 9:00 PM

Chairman Pasqualone, there being no further business before the Board the meeting is adjourned at 9:01PM.

**APPROVED**

**RESPECTFULLY SUBMITTED**

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**Jon Pasqualone, Chairman**

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**Michelle Vicat, Board Secretary**