

TOWN OF LAUDERDALE-BY-THE-SEA

BOARD OF ADJUSTMENT MINUTES

Town Commission Meeting Room

Tuesday, October 4, 2011, at 6:30 P.M.

I. ELECTION OF OFFICERS

Town Attorney Kathryn Mehaffey stated, as a short workshop, she would give a PowerPoint presentation, reviewing the backup material pertaining to the Sunshine Law, public records, ethics, meeting procedures, and voting guidelines and conflicts. She commented the entire presentation was conceptual in nature, and Board members were to use the information as a questioning block should any issue or situation trigger questions in their mind, or they could contact her office at any time if they had questions, particularly in relation to the matter if their responsibilities as Board members. She went on to outline the election of officers procedure, stating the Board needed to elect their chairperson and vice chairperson by a majority vote, and they would serve in those positions for the remainder of their term; the chairperson, or the vice chairperson in the absence of the chairperson, would vote only in the event of a tie vote, but was considered a voting member for the purposes of establishing a quorum. She requested nominations or volunteers for the two positions.

Ms. Swinghammer volunteered for the position of Chairperson.

Mr. Franczak seconded the appointment of Ms. Swinghammer as Chairperson on the Board of Adjustment.

Mr. Overton volunteered for the position of Vice Chairperson.

Ms. Swinghammer seconded the appointment of Mr. Overton as Vice Chairperson on the Board of Adjustment.

There was a unanimous voice vote of approval for the election of Helen Swinghammer to the position of Chairperson of the Board of Adjustment, and for the election of Henry Overton to the position of Vice Chairperson.

II. CALL TO ORDER

Chairperson Swinghammer called the meeting to order at 6:30 p.m. Members present were Arthur Franczak, Henry Overton, Verence Rapaport and Helen Swinghammer. Also present were Town staff Budd Bentley, Assistant Town Manager/Acting Department Director of Development Services, Acting Town Planner Linda Connors, and Town Attorney Kathryn Mehaffey. Board Secretary Colleen Tyrrell was present to record the minutes of the meeting.

III. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

IV. APPROVAL OF MINUTES

Regular Board of Adjustment Minutes of July 15, 2009

A motion was made and seconded to approve the subject minutes as presented. In a roll call vote, the motion passed 3 – 0.

V. NEW BUSINESS

A.. Applicant: Cloisters Co-Op
Location: 1420 South Ocean Boulevard
Request: Description of Variance request:
The Applicant is requesting a variance from the Town's Zoning Code, Chapter 30-313 (4) (h) so they can maintain a fence and gate within the

front setback.

Town Attorney Mehaffey reviewed the quasi-judicial procedures.

Ms. Tyrrell collectively swore in all persons wishing to speak on the subject item.

Town Attorney Mehaffey requested Board members disclose any *ex parte* communications regarding the subject application.

Mr. Franczak stated he stopped by the subject property a number of times and discussed the matter with his parents.

Vice Chairperson Overton indicated he too stopped by the property to get a better picture of the situation.

Chairperson Swinghammer noted she visited the property just prior to the present meeting to get a better handle on what the applicant's request was about versus the impact on the surrounding area.

Ms. Rapaport commented she read the contents of the backup but had not recently visited the area.

Assistant Town Manager/Acting Department Director of Development Services Bud Bentley introduced himself to the Board, giving them a brief synopsis of his time with the Town of Lauderdale-By-The-Sea. He indicated Linda Connors was a contractor currently assisting the Town in the time of transition since the resignation of Jeff Bowman from the position of the Director of Development Services two weeks prior; Mr. Bowman had been with the Town for 11 years and left to take up a post on the west coast. Ms. Connors and he would provide Board members with their contact information, and they should feel free to call upon them both and their staff to answer any questions or provide any needed support.

A male speaker stated he was unfamiliar with the contents of Chapter 30-313, and requested staff read the information if it was available.

Town Attorney Mehaffey pointed out the applicant and staff would give presentations on the application, and staff would read section H containing Chapter 30-313 for clarification. After the presentations, there would be an opportunity for members of the public to speak and ask questions.

Edward Smith, president of the Cloister's Co-Op, referred to the proposed application as detailed in the backup, thanking the Board for hearing their application. He felt it was important for the Board to understand his position on the subject matter, mentioning in 2008 they came to the conclusion at the Cloisters that they needed some protection from the intrusion of various parties who were, for one purpose or another, continuously passing through their property. They had problems related to theft: automobiles, bicycles, appliances, etc. He stated in 2008 they proposed a security provision and project for the Cloisters and, as the testimony in his original presentation illustrated, there were numerous meetings over a period of 20 months as to appropriate measures that would address the problematic situation. He indicated they had three primary points in mind: the preservation of the ecological position of the facility; the preservation of parking; and the installation of a fence and gate to eliminate the continuous traffic traversing the property. After a number of changes to the plans, they received both County and Town approval to move forward with the project and applied for the necessary permits. Mr. Smith remarked there were a number of unanticipated occurrences related to the subject project that arose, one being an almost \$30,000 addition for a French drain that was required. Thus, in the course of the various negotiations, a number of things were brought as necessary, even to the extent of having to move the trash container three feet in one direction. He noted they proceeded with their plans and, after the project was completed, a question arose through research by Town staff as to when the permit was granted for the project did it specifically include the fence and the gates. Several meetings with Town staff took place in this regard, such as that on April 10, 2011, at which he recapped all the details associated with the project, including the history of what transpired. He thought it unbelievable, given the fact that they were speaking about a security project, that the fence and gates were left out of the consideration to grant the permit, as it was the main method by which they hoped to rectify the problem of unauthorized persons passing through their property. The project, as completed, was done in accordance with the precise plan that had been tweaked and finalized over the 20-month period, and the dimensions on the fence and gates were precisely in accordance with those dimensions. They felt the subject project had dramatically improved the area, particularly as it related to their property, and he received many compliments on the significant improvements to the site, so they felt the changes contributed dramatically to the improvement of the general community as well. In light of this evidence, they respectfully requested the Board approve the project as completed in accordance with the design that was approved by both the County and the Town authorities.

Mr. Franczak asked when Mr. Smith was notified the property was out of compliance.

Mr. Smith responded a number of Cloister residents in poor health had called 911 for assistance and, when the ambulance came to pick them up, they had difficulty accessing the property through the gates. He mentioned the lockbox system the Town's fire and police departments were familiar with, and it was this the emergency personnel were looking for to open the gate but could not find one, as there was one. They were eventually able to get through the gates when a resident used their remote to open the gates for them. The situation led to a member of the emergency services going to the Town to investigate the Cloisters and determine whether a lockbox was included in the requirement for the front gate; it was then the discovery was made as to the specifics of the permit for the project; that is, it contained no mention of the fence and gates. He indicated they had spared no expense on the project improvements and had installed a state-of-the-art siren-operated system that allowed any emergency vehicle to hit the siren and open the gate without the need for a key as required with a lockbox. Both the Town's police and fire chiefs visited his property to look at the gate and stated they were unfamiliar with the particular feature, as it did not exist anywhere else in the Town. Mr. Smith reiterated the gate mechanism was state of the art, as any emergency vehicle could easily access the property when needed, mentioning whenever an emergency vehicle drove by with their siren blaring, the gate opened; it responded to all vehicles with a siren. He pointed out, if it were not for the fact that the gate did not have a lockbox, the subject matter would not be before the Board for consideration. Since that time, various types of emergency vehicles accessed the property without incident or difficulty; all emergency vehicles were now familiar with how to access the Cloisters.

Acting Town Planner Linda Connors distributed copies of and reviewed Section 30-8, the code section regarding variances. She went on to discuss the material provided in the backup as it related to the subject variance application; she read for the record Section 30-313 (4) (H). Staff recommended approval of the application for the proposed variance with three staff conditions as noted in the backup. If approved, the matter would go onto the Town Commission for approval at their second regular Commission meeting in November; that meeting would be advertised, and there would be another public hearing at that time.

Mr. Franczak sought clarification the Town was not opposing the proposed variance.

Ms. Connors answered, no, staff had no objection to Board granting the variance with the staff conditions.

Mr. Franczak inquired if the applicant agreed to staff's conditions.

Ms. Connors responded staff spoke with the applicant, and he agreed to satisfy the three conditions.

Ms. Rapaport wished to know if Town staff was satisfied the code's minimum requirements were met by the requested variance.

Ms. Connors clarified the minimum requirement per the code was for a 25-foot setback; as the applicant did not meet that requirement, they were required to come before the Board of Adjustment to request a variance from that minimum requirement. Staff, by their recommendation of approval with conditions, were indicating to the Board that, though the applicant's fence and gates did not meet the Town's current code, they were satisfied with the Board recommending approval to the Town Commission, providing the applicant met the three staff conditions stated in the backup.

Mr. Franczak wondered if the applicant's neighbors had voiced any complaints.

Ms. Tyrrell replied there were no phone calls or written complaints, though the public comment portion of the meeting had yet to be opened.

Ms. Connors indicated there was a notification sent out by the City informing property owners that the item would be coming before the Board and Commission. Normally, if there were any complaints, members of the public either attended the meetings or voiced their objections to Town staff via phone, email or in writing; no complaints from these various sources of communication had been recorded.

Chairperson Swinghammer opened the discussion to the public.

Bonnie Myers, president of Coastal Arms Co-Op, 1410 S. Ocean Blvd., Lauderdale-By-The-Sea, stated they were the Cloisters direct neighbor to the north. She was present on behalf of their board of directors in support of the Cloisters request for the proposed variance, as they felt Mr. Smith's completed project was an enhancement to his property and definitely an improvement to the entire neighborhood. Thus, they not only had no objection to the gates and fence remaining as is, they were very pleased with the end results and hoped the Board would approve their application for the variance.

Chairperson Swinghammer invited Mr. Smith to make any final comments.

Mr. Smith noted he neglected to point out that the entrance gate to the Cloisters was well within the 25-foot setback, as they provided for space to enable easy access to the property and to the visitor parking area. That area of the property was designed so as not to create any obstruction, and the gates allowed emergency vehicles to be off the street when they turned in to access the property.

Mr. Franczak questioned if Mr. Smith objected to any of the three staff conditions for approval of the variance.

Mr. Smith indicated he had no objections to any of the three staff conditions of approval.

Alan Scheiner, a resident of the Cloisters, stated since the subject project had been completed, their community had a complete reversal in the traffic that used to go through their property, using their restrooms, kitchens, etc.; it filled their lives with unease having strangers roaming around the property. The improvements had made living at the Cloisters much easier for the residents, and he urged the Board to approve the application for the variance.

Chairperson Swinghammer closed the public hearing after receiving no further input. She requested a motion to approve or deny the application for the proposed variance.

Mr. Franczak made a motion to approve the proposed variance application with staff conditions as written, seconded by Ms. Rapaport. In a roll call vote, the motion passed 3 – 0.

VI. UPDATES/BOARD MEMBER COMMENTS

Mr. Overton felt the above variance application represented a legitimate request, and the project had been presented and approved, nor would the variance create a problem and was, therefore, in order.

Chairperson Swinghammer echoed the belief it was proper to approve the variance, as installing the fence and gates appeared to be a very good move on the Cloisters part; she was pleased it had improved the quality of life of the residents, both in the Cloisters and the surrounding community.

Ms. Rapaport concurred.

VII. ADJOURNMENT

Having nothing further to discuss, Chairwoman Swinghammer requested and received a motion and second to adjourn the meeting at 7:50 p.m.

Helen Swinghammer, Chairperson

ATTEST:

Date Accepted: _____

Colleen Tyrrell, Board Secretary

CT/cc