



AGENDA ITEM MEMORADUM

Item No. 14a

Development Services

Department

Linda Connors *LC*

Town Planner *BBB*

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> Jan 10, 2012	Dec 30 th

**Subject to Change*

- | | | | |
|---------------------------------------|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Variance application to allow a generator and maintain a pool deck within the front setback.

EXPLANATION: At the December 7, 2011 meeting, the Board of Adjustment reviewed an application from Steven Dobrofsky (3280 Oleander Way) to provide relief from Chapter 30-313 (29) and 30-313 (32) of the ULDR regarding the location of pool decks and generators. A variance was necessary as the property owner applied to replace an existing deteriorated wooden deck and staff determined the application did not meet current code. At the same time, the applicant applied to install a generator in the front yard, which also did not meet code requirements. The decking and the generator would both be located behind an existing fence and would not be visible to the public. The staff report (**Exhibit 1**) and minutes from the BOA meeting (**Exhibit 2**) are attached.

BOARD RECOMMENDATION: After hearing testimony from the applicant and Town staff, the Board of Adjustment voted 4-0 to approve the variance requests with the following conditions:

1. The applicant shall be required to secure a building permit that meets all zoning requirements except for the pool deck's 12.5' encroachment into the front setback and the placement of the generator in the front setback as depicted on the site plan dated October 18, 2011 (**Exhibit 1**), within 60 days of the approval of the Variance.
2. The Variance Order (**Exhibit 3**) shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days from the effective date of the development order. If the applicant fails to record within the specified time frame, the variance will become null and void.

RECOMMENDATION: If the Commission approves the variance, staff recommends approval of the attached Order (**Exhibit 3**).

- EXHIBIT 1:** Staff Report
- EXHIBIT 2:** Board of Adjustment Minutes
- EXHIBIT 3:** Variance Order

Reviewed by Town Attorney
 Yes No

Town Manager Initials *CM*



Town of Lauderdale-by-the-Sea

Development Services
 4501 N. Ocean Drive
 Lauderdale-by-the-Sea, FL 33308
 Phone (954) 776-3611
 Fax (954) 776-3431

To: Board of Adjustment
 Thru: Bud Bentley, Assistant Town Manager *TBB*
 From: Linda Connors, Town Planner *Linda*
 Date: November 28, 2011
 Meeting Date: December 7, 2011
 Re: Steven Dobrofsky / Variance Request Application for Pool Deck and Generator in the RS-4 Zoning District.

STAFF REPORT

The purpose of this memorandum is to provide findings and recommendations regarding the application submitted for the residential property located at 3280 Oleander Way for a Variance from Chapter 30 Town of Lauderdale-By-The-Sea Unified Land Development Regulations (**Exhibit 1**). The applicant and owner, Steven Dobrofsky, is requesting relief from the requirements of Section 30-313 (29) to allow a pool deck in the front set back and from the requirements of Section 30-313 (32) to allow a generator in the front and street side setback. For your information copies of the applicable code sections are attached (**Exhibit 2**).

The applicant has paid the appropriate fee and submitted the required documents. Staff reviewed the application and deemed it complete. The review of a variance is a quasi-judicial proceeding and as such, the Town is required to advertise the public hearing. Notice of this hearing was published in the Sun Sentinel on November 12, 2011 (**Exhibit 3**). In addition, notice to all property owners within 300 feet has been given pursuant to Section 30-13 of the Code of Ordinances. A map depicting the notice area is attached (**Exhibit 4**).

Description of the Variance Requests

The subject property is a single-family home located within the RS-4 zoning district. It is a corner lot bounded by both Oleander Way and East Terra Mar Drive. Although the home faces East Terra Mar Drive, the official address of the property and the legally identified front property line is Oleander Way.

In order to properly review the variance request, it is important to be familiar with the definition of "front lot line." Section 30-20 (4) of the ULDR includes the following definition:

Lot line, front. The line dividing a lot from a street that provides direct access to the lot. On a corner lot, the shorter of two front lot lines as above defined shall be considered to be the front lot lines for the purposes of determining required lot width and required front yard depth unless the property owner executes and records a designation of a different side, provided that prior to recording a designation the designation must be reviewed and approved by the Town Commission

following a public hearing. On through lots, both front lot lines as above defined shall be considered to be front lot lines for the purpose of determining required yards. A front lot line must have a minimum 25-foot setback from the adjacent right-of-way.

The subject property is a corner lot with 102' frontage on East Terra Mar Drive and 87.5' frontage on Oleander Way. As Oleander Way is the shorter of two front lot lines, Oleander Way is the designated front property line. The property owner has not applied for a designation considering East Terra Mar Drive as their front property line.

While the front of the home faces East Terra Mar Drive, the home and pool were constructed to meet the setback requirements considering Oleander Way as the front property line. A review of the permit files and the current survey confirms the pool and home conform to the setback requirements with Oleander Way designated as the front yard.

Variance Request #1 – Pool Deck

The applicant is requesting a variance from the Town's Zoning Code, Chapter 30- 313 (29) which regulates swimming pools, decks, patios, hot tubs and spas. The entire code section is attached as Exhibit II with the specific requirement addressing the issue listed in the Table I.

Table I

Variance	Code Requirement	Code Section
Paver deck in front setback	Screen enclosures, pool decks, patios, porches and terraces shall be permitted in the required side yard or rear yard only or in the front yard of a corner lot with a pool located in the front yard and shall be located at least two and one half feet from lot lines.	30-313 (29)

The pool was constructed with the water bearing wall being 25' from the property line and having the same setback as the primary structure. Therefore, staff has determined that the pool is not located in the front yard. There is an existing wooden deck surrounding the pool that extends approximately 12.5' into the front setback. The pool and deck are surrounded by a 6' fence and are not visible to the public. The new property owner would like to replace the deteriorated deck with pavers surrounding the pool.

In applying for a permit, staff determined that a variance would be necessary to allow the deck to encroach into the front setback since the code only allows decks in the front yard if a pool is located in the front yard. A copy of the property survey, highlighting the setback areas (**Exhibit 5**) and a copy of the site plan, submitted with the permit application and highlighted to show the variance request (**Exhibit 6**), are attached for your review.

Criteria and Analysis

Section 30-8 of the Town code addresses the criteria for considering an application for a variance. In considering an application for a variance, an application shall be evaluated by considering the following criteria:

1. Special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of such land, structure or building.

Findings: The house was constructed to face the side setback, which left little room for the existing pool to be constructed. Although the pool meets the setback requirements, the deck does not. The pool's location prevents the reasonable use of the property to be utilized for a pool deck, which is a normal pool feature.

2. The circumstances, which cause the hardship, are peculiar to the property or to such a small number of properties that they clearly constitute marked exception to other properties in the district.

Findings: The property is a corner lot and the home was constructed to front the side yard. The circumstances are peculiar to a small number of properties and as such the request constitutes an exception to other properties in the district.

3. The literal interpretation of the provisions of the applicable regulation would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.

Findings: A deck surrounding the pool is necessary for its reasonable enjoyment and maintenance. The literal requirement prohibiting the pool deck in the front setback unless the pool is located in the front setback will result in a hardship upon the owner.

4. The hardship is not self-created or the result of mere disregard for, or ignorance of the provisions of the regulations.

Findings: The pool and a deteriorated wooden deck existed when the property was purchased by the current property owner. The existing hardship was not self-created or a result of a disregard of the code provisions by the current owner.

5. The variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Findings: The request is to replace the existing deck. The deck, as proposed, would extend 12.5' into the front setback. The deck would not be visible from the right-of-way as it is completely enclosed by a fence. It would not be injurious to the neighborhood or to the public welfare.

6. The grant of the variance does not permit a use not generally permitted in the district involved or a use expressly or by implication prohibited by the terms of the regulations of the district in which the affected property lies.

Findings: Decks are allowed in the district, the property owner is merely requesting a variance to allow for replacement of a deteriorated wooden deck.

7. Financial hardship is not a basis for granting a variance unless the failure to grant the variance will render the property unusable as a permitted use in the zoning district in which the property lies.

Findings: The property would not be rendered unusable if the variance is not approved.

STAFF RECOMMENDATIONS: If the Board recommends approval of the variance request, staff recommends that the following conditions are included in the recommendation:

1. The applicant shall be required to secure a building permit that meets all zoning requirements except for the 12.5' encroachment into the front setback and any other approved Order, for the pool deck within 60 days of the approval of the Variance.
2. The Variance Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days of the close out of the building permit.

Variance Request #2 – Generator

The applicant is requesting a variance from the Town's Zoning Code, Chapter 30-313 (32) which regulates generators. The entire code section is attached as Exhibit II with the specific requirement addressing the issue listed in Table II.

Table II

Variance	Code Requirement	Code Section
Generator located in front setback	...portable or permanent generators shall not be placed in the required front setback or any street side setback...	30-313 (32)

The applicant has applied for a permit to locate the generator in the Town defined front setback (Section 30-20 (4) of the ULDR) (see previous front yard setback discussion in this staff report). Its proposed location is behind an existing fence and in an area that would cause the least disruption to the neighbors.

Criteria and Analysis

Section 30-8 of the Town code addresses the criteria for considering an application for a variance. In considering an application for a variance, an application shall be evaluated by considering the following criteria:

1. Special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of such land, structure or building.

Findings: The house was constructed to face the side setback which left little room for the proposed generator to be constructed within Town Code parameters. Placement of the generator in the location allowed by code would cause unnecessary hardship to the surrounding property owners.

2. The circumstances, which cause the hardship, are peculiar to the property or to such a small number of properties that they constitute marked exception to other properties in the district.

Findings: The property is a corner lot and the home was constructed to front the side yard. The circumstances are peculiar to a small number of properties and as such clearly constitute an exception to other properties in the district.

3. The literal interpretation of the provisions of the applicable regulation would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.

Findings: A generator could be installed in the rear or side setback as required by code. However, placement in these areas would be very close to adjacent neighbors. The best location for the generator in order to minimize the impact on the surrounding neighbors is as proposed in the front setback.

4. The hardship is not self-created or the result of mere disregard for, or ignorance of the provisions of the regulations.

Findings: The proposed placement of the generator in the front setback is necessary due to the front of the house being situated on East Terra Mar Drive which is the side street per Town code definition. The home was previously constructed and, therefore, its current configuration on the lot which necessitates the variance is not the result of the current owner.

5. The variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Findings: The request would benefit the neighbors and would not be injurious to the neighborhood or to the public welfare.

6. The grant of the variance does not permit a use not generally permitted in the district involved or a use expressly or by implication prohibited by the terms of the regulations of the district in which the affected property lies.

Findings: Generators are allowed in the district; the property owner is merely requesting a variance to allow for the generator to be placed in a reasonable location.

7. Financial hardship is not a basis for granting a variance unless the failure to grant the variance will render the property unusable as a permitted use in the zoning district in which the property lies.

Findings: The property would not be rendered unusable if the variance is not approved.

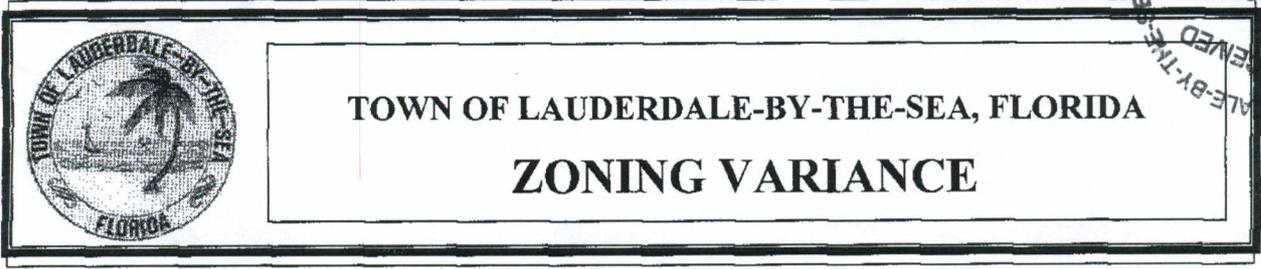
STAFF RECOMMENDATIONS: If the Board recommends approval of the variance request, staff recommends that the following conditions are included in the recommendation:

Board of Adjustment
December 7, 2011 Meeting

1. The applicant shall be required to secure a building permit that meets all zoning requirements except for the placement in the front setback as depicted on Exhibit 6 and any other approved Order, within 60 days of the approval of the Variance.
2. The Variance Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days of the close out of the building permit.

The variance requests and the Board's recommendations will be scheduled for Town Commission consideration at their January 10th meeting.

LAUDERDALE-BY-THE-SEA
RECEIVED
OCT 18 2011
DEVELOPMENT
SERVICES



2011-V-002

PROPERTY INFORMATION

Date: October 18, 2011

Property Address: 3280 Oleander Way, Lauderdale By The Sea, FL 33062

Legal Description: Lot 18 Block 7 Folio 4943 06 21 0270

Subdivision TERRA MAR ISLAND ESTATES 1ST ADDITION

Zoning District: RS-5

Property Owner's Name: STEVEN DOBROFSKY

Address: 3280 Oleander Way, Lauderdale By The Sea, FL 33062

Phone #: 954-822-8779 Fax 312-568-4602

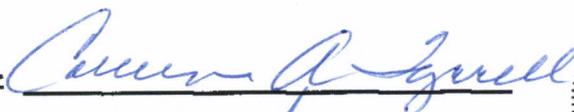
Owner/Applicant's Name: STEVEN DOBROFSKY

Phone #: 954-822-8779 Fax 312-568-4602

*Letter required from Owner if represented by Agent.

Signature of Applicant/Owner: 

Print Name of Applicant/Owner: STEVEN DOBROFSKY

Notary: 

My Commission expires: Sept 3, 2014



(1)

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VARIANCE REQUIREMENTS

Code Section from which Variance is sought: 30-313(29), 30-313-30, and 30-155

Description of your request: Applicant is requesting this variance to replace his existing wood pool deck with stone pavers and to install a natural gas generator and a natural gas outdoor grill within the existing permitted fenced in area in the 25' "front yard" set back of his corner lot located in Terra Mar Island.

Describe the existing special conditions and circumstances affecting the land, structure or building involved preventing the reasonable use of said land, structure, or building:

Applicant's pool and pool wood deck currently exists within the 25' foot "front yard" set back of a corner lot as provided in Sec. 30-313(29). The existing wood pool deck is within the "front yard's" fenced area which is located more than 7' from the front lot line. Although Applicant's pool and pool deck is in the rear of his house, the pool deck is considered by Sec 30-155 to be in his "front yard." By preventing the replacement of the deck with pavers and the installation of a generator and a grill within the existing fenced in area, Applicant's use and enjoyment of Applicant's actual back yard is severely restricted. The subject pool and pool deck area are not visible to the public and the change in deck surface and addition of a generator and grill to this area would be hidden from public view, because of the property's existing "front yard" fence.

Describe the circumstances, which cause the hardship to be peculiar to the property or to such a small number of properties that they clearly constitute marked exception to other properties in the district. The Property is within LBTS's only island which was recently annexed and was not a part of LBTS's ordinances when they were first written in the early 90's.

The existing pool deck and fence are located within the "front yard" corner setback exception and were constructed pursuant to permit. The pool is an in ground pool. The pool is 1 ft within the 25' corner setback exceptions if the measurement includes the pool's coping and exterior wall. The pool cannot be moved to satisfy Zoning's interpretation of 30-313(29) for the paver deck replacement without creating a great hardship. 30-313(29) provides for exceptions for corner lots with pools to have more liberal setbacks for the use and enjoyment of a property and this Property should fall within the intent of the setbacks allowed. The result of Zoning's interpretation of 30-313(29) is (CONTINUED AT BOTTOM OF

Describe why the literal interpretation of the provisions of the applicable would deprive PAGE) the applicant of a substantial property right that is enjoyed by other property owners in the same district. It is of no importance whatever that the denial of the variance might deny to the property use in a more profitable way or to sell it at a greater profit than is possible under the terms of the regulations: Applicant knows of no pools in Terra Mar Island or LBTS that do not have some sort of uniform pool decking surrounding the house's pool.

Applicant's request to have his pool surrounded by a uniform "deck" would be in conformance with all neighboring homeowner's enjoyment of their pool areas. Zoning's interpretation of 30-313(29) pertaining to pools and pool decks in corner lots to Applicant's situation defeats the purpose and intent of corner lot setback exceptions. Zoning has construed the pool's inside surface dimension for setback determination. If the location of the pool's concrete walls and coping were used when interpreting 30-313(29), the proposed paver deck replacement would be allowed. 30-313(30) has no exceptions for generator placement for corner lots and it is logical that it should. No ordinance governs grill placement. The word pool is not defined.

Explicitly why the hardship is not self-created or the result of mere disregard for, or ignorance of, the provisions of the regulations: Applicant made a Code Violation search prior to purchase and said search did not reveal any violation due to the existence of the

property's pool deck within the 25' setback of a corner lot. With respect to the gas appliances, LBTS granted TECO Gas a permit to provide gas service for Applicant's intended installation of a generator and outdoor grill and other natural gas appliances, all of which were required by TECO to be listed in its Gas Service Installation Agreement. Further, Applicant's due diligence prior to purchase revealed that the pool and fence were constructed pursuant to permits and that the improvements have existed since the early 90's. It was only after a Permit was applied requesting replacement of the wood deck with pavers did Zoning declare the pool deck to be legally non-conforming or not allowed.

Describe how the variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Sec 30-313(29) recognizes that corner lots have

different setbacks for houses with pools and allows pools, decks and fences within the 25' front yard setback up to 2.5' from the front lot line. It is reasonable for a homeowner of a corner lot with a pool to want a deck around his pool, a generator for emergencies, and a grill for enjoyment in his backyard. The placement of the generator on the north side of Applicant's property in conformance with the 2.5' setback allowed in 30-313(29), is the most logical place for the benefit of the property's neighbors, because said placement would be the furthest place from all the neighbor's bedrooms and living areas. Placement on the south side of the property is closest to the neighbor's bedrooms and living areas. Applicant's request for this variance does not adversely affect any neighbors or the community in general due to the placement of the generator, outdoor grill, or from replacement of the wood deck with pavers within the fenced in area of the "front yard".

to create a situation where Applicant's pool area would only have a paver deck on three sides of the pool. Applicant does not believe there is any pool deck in Terra Mar Island or LBTS that only surrounds three quarters of the homeowner's pool area. Neither 30-313(29) nor 30-155 defines a pool's location from the inside water surface as Zoning has done in rejecting 30-313(29)'s application. Unlike 30-313(29) there are no exceptions in 30-313(30) for placement of generators on corner lots and a generator can only be placed within a side or rear yard. The entire west side of Terra Mar Dr located on the east side of the Island going from south to north consists of ONLY corner lots, one corner lot adjacent to the next corner lot. LBTS granted TECO Gas's Permit to install gas service and meter to be in close proximity to a majority of Applicant's gas Appliances.

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Supply copies of the following:

Two (2) Sealed Surveys of the entire property, completed within sixty (60) days of the date this application is filed. The survey must clearly identify and indicate distances between all structures, property lines, setbacks, easements, and adjacent rights of way.

Seventeen (17) copies of a Site Plan under Seal of a Florida licensed Architect or Engineer, which clearly depicts the proposed improvements, which necessitates the variance in relation to the above-delineated elements for survey. For single-family and duplex properties the site plan drawn to scale, which depict the proposed improvements, which necessitates the variance, does not need to be sealed.

In addition, the Applicant must complete the application submission checklist form that is attached.

To be completed by Town

2011-4-002

Date Application submitted:

10/18/2011

Date Application found complete:

10/27/2011

Pre-Application meeting date:

Board of Adjustment meeting date:

DECEMBER 7, 2011

Town Commission meeting date:

Jan 10th 2012

Zoning Code Variance Fee Amount:

Single Family \$350.00 (Resolution 2008-03) _____

All other Variance submissions \$350.00 ✓

Minimum Deposit for Consultant(s) \$500.00 ✓

TOWN OFF-SITE CONSULTANT FEE (if applicable)

NOTE: The Town Code provides for cost recovery of outside consultants, legal advertising costs, direct mail notice costs, etc. and depending on the scale of the project, additional fees may be incurred. Therefore, the above fees reflect a \$500 deposit for third party fees. Any unused portion of the \$500 deposit will be refunded to the Applicant.

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OCT 18 2011
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RECEIVED
OCT 18 2011
DEVELOPMENT
SERVICES

3

This Instrument Prepared by and Return to:
Tod Andrew Weston, Esq.
Coastal Title, Inc.
51 E. Commercial Boulevard
Fort Lauderdale, Florida 33334
File No.:1103063

CFN # 110079336
OR BK 47959 Pages 1206 - 1207
RECORDED 06/07/11 11:42:15 AM
BROWARD COUNTY COMMISSION
DOC-D: \$2379.30
DEPUTY CLERK 3405
#1, 2 Pages

Property Appraisers Parcel Identification (Folio) Numbers:
4943-0621-0270

Space Above This Line For Recording Data

THIS SPECIAL WARRANTY DEED, made the 31st day of May, 2011, by Wells Fargo Bank, N.A., herein called the Grantor, to Steven Dobrofsky, a single man, and Benitta Berke, a single woman, as joint tenants with rights of survivorship, whose post office address is 3280 Oleander Way, Lauderdale by the Sea, FL 33062, hereinafter called the Grantees:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee(s) all that certain land situate in BROWARD County, State of Florida, viz.:

Lot 18, Block 7, of TERRA MAR ISLAND ESTATES FIRST ADDITION, according to the Plat thereof, as recorded in Plat Book 31, Page 10, of the Public Records of Broward County, Florida.

SUBJECT to easements, restrictions, reservations and limitations of record, if any; and zoning, ordinances, prohibitions and other requirements imposed by governmental authority; and taxes and assessments accruing subsequent to December 31, 2010.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the grantor hereby covenants with said grantees that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby covenants with said grantee that except as above noted, at the time of delivery of this Special Warranty Deed the premises were free of all encumbrances made by them; and they will warrant and defend the same against the lawful claims of all persons by, through and under grantor.

(4)

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IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

WELLS FARGO BANK, N.A.

[Signature]
Witness As to Both Signatories
Larrah
Printed Name

By: [Signature]
John Meredith - REO Sales Manager with full power
and authority to execute this document for and on
behalf of Wells Fargo Bank, N.A.
1 East Broward Blvd, 3rd Floor, Ft. Lauderdale, FL 33301

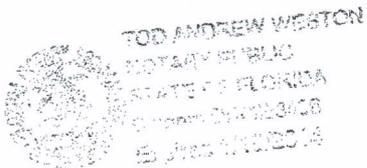
[Signature]
Witness As to Both Signatories
[Signature]
Printed Name

By: [Signature]
Christopher Madgett - REO Sales Representative with
full power and authority to execute this document for
and on behalf of Wells Fargo Bank, N.A.

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 3/15 day of May, 2011, by John Meredith, as REO Sales Manager and Christopher Madgett, as REO Sales Representative, as authorized officers of Wells Fargo Bank, N.A., who are personally known to me or who have produced Florida Drivers Licenses as identification.

SEAL



[Signature]
Notary Public
[Signature]
Printed Notary Name

Building Photographs

See Instructions for Item A6.

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. <u>3280 OLEANDER WAY</u>		For Insurance Company Use: Policy Number	
City <u>LAUDERDALE BY THE SEA, FL</u>	State <u>FL</u>	ZIP Code <u>33062</u>	Company NAIC Number

If using the Elevation Certificate to obtain the instructions for Item A6. Identify all photos as "Front View", "Rear View", "Right Side View" and "Left Side View." If submitting more than one view, identify the view as follows:

REAR
VIEW



FRONT
VIEW



10 MAY 2011

LAUDERDALE-BY-THE-SEA
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OCT 18 2011
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Fred E. Conrod, Jr.
FRED E. CONROD, JR.
REGISTERED LAND SURVEYOR
NO. 1730, STATE OF FLORIDA.

6

LAUDERDALE BY THE SEA DEVELOPMENT SERVICES

(CASH RECEIPTS FOR SITE PLANS)

REVENUE SOURCE:

STEVEN DOBROFSKY

DATE	CHECK #	CHECK AMOUNT	CASH	TOTAL AMOUNT RECEIVED	ASSIGNED PERMIT NUMBER	ACCT #	REVENUE	AMOUNT TO POST
							SITE PLAN PROJECT FEES	
						001-304-000-343-902	SITE PLAN APPLICATION FEE / ADS	
						001-000-000-115-200	A/R - PLANNING	
							VARIANCE PROJECT FEES	
8/18/2011	1051	\$ 350.00			2011-V-002	001-000-000-115-206	VARIANCE APPLICATION FEE / ADS	\$ 350.00
8/10/2011	1051	\$ 500.00			2011-V-002	001-000-000-115-200	A/R - PLANNING	\$ 500.00

<p>STEVEN R. DOBROFSKY 3208 NE 10TH ST. POMPANO BEACH, FL 33062</p>		1051
<p>DATE <u>Oct 18, 2011</u> 63-8376/2670 007</p>		
<p>PAY TO THE ORDER OF <u>Town of Lauderdale by the Sea</u> \$ <u>850.00</u></p> <p><u>Eight Hundred Fifty and ⁰⁰/₁₀₀</u> DOLLARS</p>		
<p>BankAtlantic Florida's Most Convenient Bank</p> <p>14th St. Causeway #007 3233 N.E. 14th St. Pompano Bch, FL 33062 1-888-7-DAY-BANK</p>		
<p>FOR <u>Variance 3280 Oleander Way</u></p> <p><u>[Redacted]</u> <u>[Redacted]</u></p>		
		AL 850.00

(Revised 7/6/2010)

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Exhibit 2

Administrative Code and in Technical Report 97-06 of the Broward County Beach Lighting Management Plan, as amended from time to time. All site plans for new development and redevelopment along the beach shall be required to demonstrate that the proposed development or redevelopment will comply with this section by identifying the specific measures that will be employed to control lighting.

For existing development along the beach, property owners shall be required to immediately implement measures not involving any capital expenditures, such as switching-off exterior lights that illuminate the beach and closing existing draperies to shield interior lights during the turtle nesting period. By March 1, 2003, property owners shall implement all appropriate measures necessary to fully comply with this section.

- (28) *Elevation of filled land.* There shall be no land filled or elevated resulting in the elevation of the area in question above the natural elevation of the adjacent ground surface without first obtaining the approval of the Town Commission. In order to obtain review by the Town Commission the applicant must first obtain the following:
- A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
 - A depiction of the elevation in relation to the adjacent property; and
 - Review and approval by the Town Planner.

- (29) *Swimming pools, decks, patios, hot tubs and spas; setbacks and enclosure required.* No swimming pool, hot tub or spa shall be constructed within a front yard setback, unless the lot is a corner lot. Swimming pools, hot tubs and spas shall have the following minimum setback regulations:
- All water bearing wall surfaces shall have a minimum five-foot setback from the property lines.
 - All water bearing wall surfaces shall have a minimum five-foot setback from any public right-of-way.
 - Notwithstanding any other regulation of this Code, fencing to enclose a swimming pool, hot tub or spa is permitted in the front setback, but shall not obstruct the view within any sight distance triangle.
 - All swimming pools shall be enclosed by an open mesh screen enclosure or a fence or wall a minimum of five feet in height of such design and material as will prevent unauthorized access to the pool area. All screen doors and fence gates shall be equipped with a self-locking mechanism.
 - Swimming pools or spas on lots that directly abut a waterway or other water area shall not require enclosure along such waterway or water area.

Screen enclosures, pool decks, patios, porches and terraces shall be permitted in the required side yard or rear yard only or in the front yard of a corner lot with a pool located in the front yard, and shall be located at least two and one-half feet from lot lines. In addition, the location of screen enclosures, pool decks, patios, porches and terraces will need to be located outside of any utility easement areas, unless the property owner obtains consent from the applicable utility(s) to allow any of these structures in the easement area, and shall not obstruct the view within any sight distance triangle.

Decks that abut a plot line that is a waterway may be allowed, but are not required, to extend to the waterway. There can be a gap between the deck and the dock provided the spacing between the deck and dock is properly secured. Decks need not be constructed to be flush with any dock or seawall area. However, decks cannot be constructed higher than the seawall.

- (30) *Other mechanical and plumbing equipment setback requirements.* Notwithstanding any provision of the Land Development Code which prohibits the use of setback areas, mechanical and plumbing equipment, including, but not limited to, air conditioner units, lawn irrigation pumps, water purification devices, and swimming pool or spa accessories, may be installed in a side or rear setback in all zoning districts, provided that no portion of the equipment may:
- Be within five feet of the adjacent property line;
 - Exceed five feet high;
 - Exceed eight feet in length; or
 - Occupy more than 40 square feet of the property.

For properties which contain legal nonconforming mechanical and/or plumbing equipment located within a setback area less than five feet from the adjacent property line and installed prior to March 25, 2003, such equipment may be replaced or relocated. However, in no case may the equipment be located within a setback area less than three feet eight inches from the adjacent property line.

- (31) *Accessory buildings and structures.* On a lot containing a single-family, duplex or townhouse dwelling, side and rear yard setbacks not abutting a street may be reduced to five feet for accessory uses and structures.
- Accessory buildings may not exceed one story on any lot containing a single-family detached dwelling unit.
 - Accessory buildings shall not exceed half the height of any principal building on lots containing two-family or multiple-family dwellings. On any plot containing grouped dwellings of varying heights, accessory buildings shall not exceed half the height of the lowest building on the plot.
 -

One-story accessory buildings shall be at least ten feet from any other accessory building and ten feet from any principal building on the same plot or parcel.

- d. The aggregate floor area of all accessory buildings shall not exceed five percent of the plot area.
 - e. No accessory building shall contain more than 50 percent of the floor area of the principal building.
 - f. Accessory buildings in commercial zoning districts may be allowed, subject to Town Commission approval. Staff shall apply the standards listed above as best as possible before the Town Commission reviews the accessory building in the commercial zoning district.
- (32) **Generator regulations.** Except for generators serving a public purpose and owned and operated by the Town, and which are therefore exempt from these regulations, portable or permanent generators temporarily or permanently placed on the ground, on a stand or on a trailer, shall not be placed in the required front setback or any street side setback. Generators shall be located in accordance with the following requirements:
- (a) One portable or permanent generator with an output of not more than 60 KW shall be allowed in a required side or rear yard setback provided said generator meets the following conditions:
 1. The generator is set back a minimum of five feet from the property line.
 2. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in [section 13-6](#) of the Code.
 3. The highest point on the generator shall not exceed a maximum of seven feet above the neighboring property owner's grade.
 4. The generator is completely screened from adjacent properties by a wall at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.
 5. The generator's exhaust is, as much as practically feasible, vented upwards or directed away from neighboring properties.
 6. The generator shall be used only during periods of power outages or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company or for use by power customers during periods of peak demand.
 7. The generator shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 p.m. and 3:00 p.m.
 8. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.
 9. Generators are not permitted on the roof of a building.
 - (b) Provided that a portable or permanent generator is permanently or temporarily placed on the ground, on a stand, or on a trailer and is not located within required side or rear yard setback areas, the following conditions shall apply:
 1. If the generator's output capability is greater than 60 KW, it shall be placed on the property only in conformance with the setback requirements applicable to a principal structure.
 2. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in subsection (a)(2) of this section.
 3. If the generator's output capacity is greater than 100 KW, it shall be subject to site plan review as defined in [section 30-121](#) of the Code of Ordinances and shall be housed in an enclosed building with landscaping as approved by the Planning and Zoning Board.
 4. If the generator is greater than 60 KW and is 100 KW or less, and is visible from a street or public way, it shall be completely screened from adjacent properties by a wall at least four feet high or the same height as the generator (including the height of the exhaust muffler), whichever is greater.
 5. If the generator is 60 KW or less and is visible from a street or public way, its location shall be subject to approval by the Planning and Zoning Board. Intervening landscape material shall not be considered when determining a generator's visibility.
 6. The generator's exhaust is, as much as practically feasible, vented upwards or directed away from neighboring properties.
 7. The generator shall be used only during periods of power outages, periods of power reductions resulting from the exercise of utility load control programs or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company.
 8. The generator shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 p.m. and 3:00 p.m.

9. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.
10. Generators are not permitted on the roof of a building.
- (c) Notwithstanding subsection (a), the Director of Development Services or designee may grant a setback waiver allowing a generator with an output capability in excess of 60 KW to be located within a required side or rear yard setback, provided the applicant submits to the Town a site plan and evidence or testimony substantiating each of the following conditions:
1. The output of a 60 KW or less generator is incapable of providing enough electricity for the basic necessity of occupying a building and/or protecting interiors or possessions in a building from the damaging effects of prolonged loss of power.
 2. The proposed location is not merely for the convenience or preference of the applicant, but that there is no other location outside of the required setbacks that will provide for safe placement of the generator.
 3. The proposed location represents the minimum intrusion into the required setback(s) necessary to safely accommodate the generator.
- (d) The following requirements shall apply to fuel storage tanks for generators for single-family and duplex structures:
1. One (1) above ground tank not to exceed six feet in height and 250 gallons shall be permitted. Up to two above-ground tanks, not to exceed a total collective capacity of 250 gallons, and subject to the requirements of this subsection, shall be allowed in lieu of one 250-gallon above-ground tank. Above ground fuel storage tanks shall be completely screened from adjacent properties by a at least four feet high or the same height as the tank itself. Fuel storage tanks shall be subject to the same setback and location regulations for generators provided in this subsection except that a fuel storage tank may also be placed in the street side yard, setback a minimum of five feet from the property line. Upon a showing that it is impossible to place the tank in the rear yard, or to comply with the setbacks on either side yard, the Town Manager may approve a waiver to the minimum tank setback requirement, provided the tank is set as close as possible to the building, fully screened as required in this section, and that both the tank and the screening are setback a minimum of three feet from the property line.
 2. In lieu of an above ground fuel storage tank, one underground fuel storage tank, not to exceed 500 gallons, shall be permitted subject to the same setback and location regulations for generators provided in this subsection. However, underground fuel storage tanks may be located within the required front yard setback or required side yard setback, provided it is not located within five feet of any public right-of-way or utility easement.
- (e) The following requirements shall apply to fuel storage tanks for generators for all other structures (excluding single-family and duplex):
1. All tanks shall be subject to the same setback and regulations for generators provided in this subsection. Fuel storage tanks shall comply with the Florida Building Code (FBC) and the Florida Fire Prevention Code (FFPC).
 2. Any tank over 1,000 gallons, not located within an enclosed building or underground, shall be subject to site plan review as defined in [section 30-121](#) of the Code of Ordinances.
 3. Underground fuel storage tanks may be located within the required front yard setback provided they are not located within five feet of any public right-of-way or utility easement.
 4. All tanks shall be completely screened from the right-of-way and neighboring properties by a wall. If the wall exceeds the maximum height of walls within the zoning district, but it is the minimum height necessary to adequately screen the tank, then this section shall prevail over any other wall height restrictions.
- (f) All fuel storage tanks shall be properly permitted in accordance with all applicable county, state, and federal regulations.
- (g) If an administrative waiver is not granted pursuant to subsection (c) the applicant may appeal the administrative decision to the Board of Adjustment pursuant to [section 30-7](#) of the Code.

(Ord. No. 316, § 1, 1-9-90; Ord. No. 326, § 1, 6-25-91, Ord. No. 374, § 1, 3-7-96; Ord. No. 402, § 2, 6-9-98; Ord. No. 431, § 2, 1-25-00; Ord. No. 485, § 2, 4-9-02; Ord. No. 495, § 1, 12-10-02; Ord. No. 500, § 2, 10-8-02; Ord. No. 501, §§ 2, 3, 10-8-02; Ord. No. 03-506, § 2, 2-11-03; Ord. No. 03-508, § 2, 3-25-03; Ord. No. 03-512, § 2, 4-22-03; Ord. No. 03-515, § 2, 7-22-03; Ord. No. 2005-06, § 2, 2-22-05; Ord. No. 2005-10, § 2, 6-14-05; Ord. No. 2007-14, § 2 (Exh. A), 9-25-07; Ord. No. 2008-03, § 1, 3-25-08; Ord. No. 2009-10, § 7, 7-28-09; Ord. No. 2009-35, § 2, 8-25-2010; Ord. No. 2011-02, § 2, 3-22-2011; Ord. No. 2010-16, § 2, 5-24-2011; Ord. No. 2011-03, § 2, 4-27-2011; Ord. No. 2011-06, § 2, 4-27-2011)

Exhibit 3

[Back to Directory](#) | [Close This Window](#)

11/15/2011

10:02:55 AM

**Town of Lauderdale by the Sea
Ft. Lauderdale Sun-Sentinel - - Ad-Star Ad Proof**

Pub#: **Lines:** **Est:** **Sent:**
Count: 1 **Cols:** 0 **In:** 0 **Bx:**
Status: Sent to Publisher: Interim

PUB: FSS **Zone:** Sun-Sentinel **Agency Ad Number:** TOL0072
Client Name: Town of Lauderdale By The Sea.. **Client ID:** 942

Start: 11/19/2011
Stop: 11/19/2011
Count: 1
Daily: 1
Sunday: 0

Classification: 720 Public Hearing Notices

Ad Type: 1 **T/S:**

Insert Dates: 11/19

Sort Key: **SPACE RESERVATION - No of Cols: Depth:**
Box: NR - No Response Note:

[5B]TOWN OF LAUDERDALE-BY-THE-SEA [BRK] [CN]
 NOTICE OF PUBLIC QUASI JUDICIAL
 HEARING[CN]

[FL]
 NOTICE IS HEREBY GIVEN that the Town
 of Lauderdale-By-The-Sea will hold public
 hearings on the request below at Jarvis
 Hall, 4501 Ocean Drive, Lauderdale-By-
 The-Sea, Florida, 33308, as follows:[FL]

[FL]
 Board of Adjustment, December 7, 2011
 6:30 PM[FL]
 Town Commission, January 10, 2012,
 7:00 PM[FL]

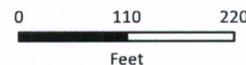
[FL]
 The following request shall be[FL]
 considered at each public hearing,[FL]
 which any person may attend and/or[FL]
 speak at, regarding:[FL]

[FL]
 Application Number: 2011-V-002[FL]
 Applicant: Steven Dobrofsky[FL]
 Location: 3280 Oleander Way[FL]
 Lauderdale-By-The-Sea, FL 33062[FL]
 Zoning District: RS-4 Zoning District[FL]

[FL]
 Request: The Applicant is requesting a
 variance from the Town's Zoning Code,
 Chapter 30-313(29) and 30-313(32), so
 they can maintain a pool deck and[FL]
 generator within the front setback.[FL]

[FL]
 The agenda packet and related materials
 concerning this request are available for
 review at the Town Clerk's office, 4501
 Ocean Drive, Lauderdale-By-The-Sea,[FL]
 Florida 33308[FL]

[FL]
 PURSUANT TO SECTION 30-313(29) and
 30-313(32), CODE OF THE TOWN OF



Source: Planning and Redevelopment Division

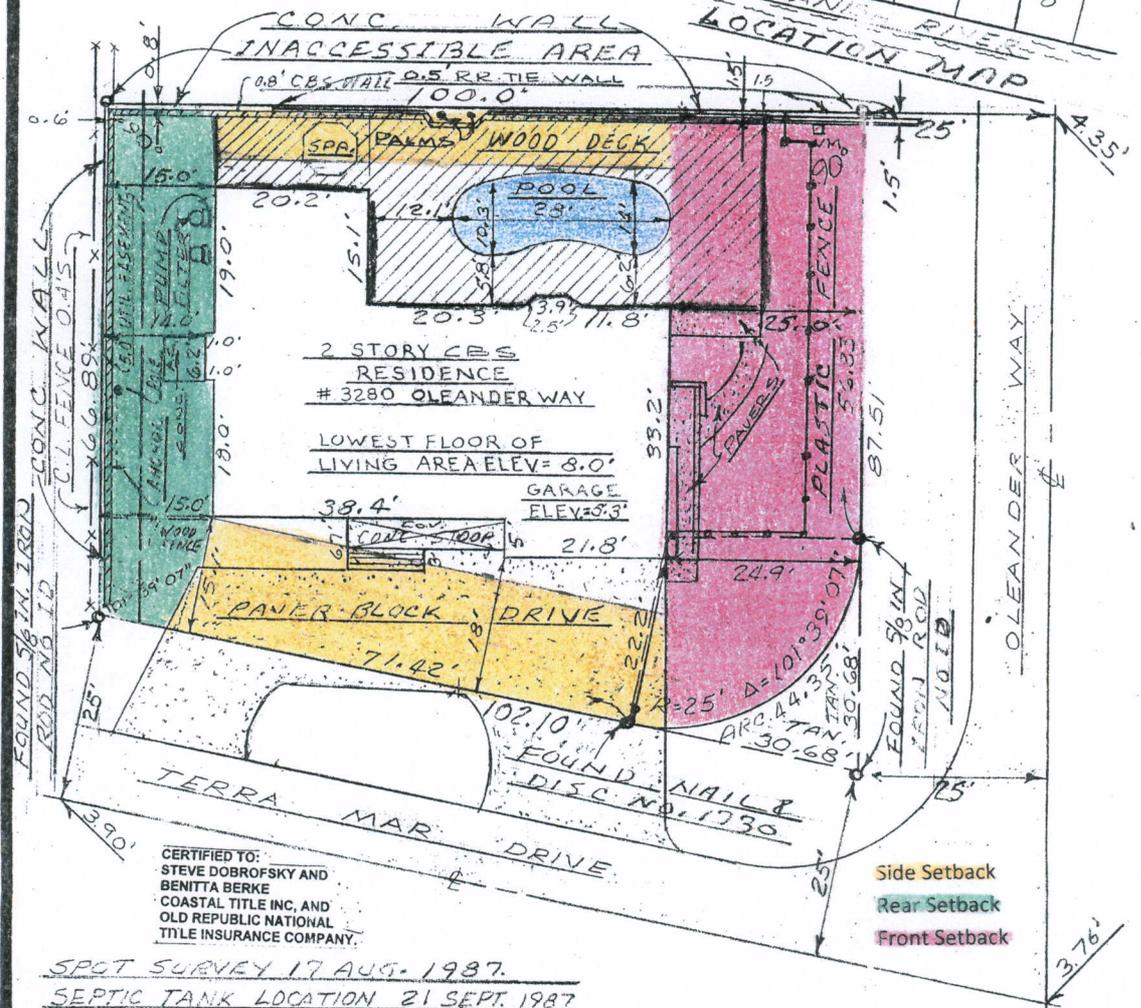
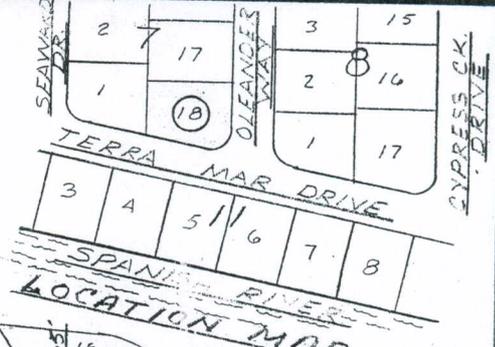
This map is for conceptual purposes only and should not be used for legal boundary determinations.

Prepared By: Broward County GIS, Planning and Redevelopment Division, Environmental Protection and Growth Management Dept

#12157 tdoobs 10/2011



0 INDICATES MARKER
 SCALE: 1" = 20'
 18 INDICATES ELEVATION
 AS PER M.S.L. (N.G.V.D.)



CERTIFIED TO:
 STEVE DOBROFSKY AND
 BENITTA BERKE
 COASTAL TITLE INC. AND
 OLD REPUBLIC NATIONAL
 TITLE INSURANCE COMPANY.

Side Setback
 Rear Setback
 Front Setback

SPOT SURVEY 17 AUG. 1987.
 SEPTIC TANK LOCATION 21 SEPT. 1987
 SEPTIC TANK LOCATION 17 DEC. 1987
 UP-DATE SURVEY 22 MAY 1992
 UPDATE SURVEY 15 AUGUST 1995.

BOUNDARY SURVEY
 LEGAL DESCRIPTION

Lot 18, Block 7, TERRA MAR ISLAND
 ESTATES 1ST ADDITION, according to
 the plat thereof, as recorded in
 Plat Book 31, Page 10, of the
 public records of Broward County,
 Florida.
 BROWARD COUNTY, FLORIDA

Fred E. Conrod, Jr.
 Fred E. Conrod, Jr.
 Registered Land Surveyor
 No. 1730, State of Florida
 UPDATE SURVEY 10 MAY 2011

I HEREBY CERTIFY THAT THIS SURVEY OF THE HEREON
 DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE
 BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED
 IN THE FIELD UNDER MY DIRECTION, I FURTHER
 CERTIFY THAT THIS SURVEY MEETS THE MINIMUM
 TECHNICAL STANDARDS FOR SURVEYING IN THE
 STATE OF FLORIDA AS ESTABLISHED BY THE FLORIDA
 BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS,
 IN CHAPTER 177 AND CHAPTER 473 FLORIDA STATUTES
 AND RULE CHAPTER 6101, FLORIDA ADMINISTRATIVE
 CODE. THERE ARE NO ABOVE GROUND ENCROACHMENTS
 OTHER THAN THOSE SHOWN HEREON, SUBJECT TO THE
 QUALIFICATIONS NOTED HEREON.

FLOOD ZONE DATA

COMMUNITY NO. 125123
 PANEL NO. 207 SUFFIX 6
 REVISED MAP DATE 2 OCT. 1997
 FLOOD ZONE R2
 BASE FLOOD ELEV. 6 FEET
 LOWEST FLOOR OF LIVING AREA 8.0'
 GARAGE FLOOR 5.3'
 LOWEST ADJACENT GRADE 5.0'
 DIAGRAM NO. 1A

251-16, 251-18, 263-75, 265-45, 266-13, 269-17, 295-36, 323-21.

TOWN OF LAUDERDALE-BY-THE-SEA
BOARD OF ADJUSTMENT MINUTES
Town Commission Meeting Room
Tuesday, December 7, 2011, at 6:30 P.M.

I. ELECTION OF OFFICERS

Not discussed.

II. CALL TO ORDER

Chairperson Swinghammer called the meeting to order at 6:30 p.m. Members present were Arthur Franczak, Henry Overton, Helen Swinghammer and Arthur Wolowicz. 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. Sandra Roberts 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 October 4, 2011

Chairperson Swinghammer wished to correct the language in the minutes under the item "Election of Officers" to reflect that she volunteered for the position of chairperson not vice chairperson of the Board.

Mr. Wolowicz made a motion to approve the above minutes as corrected. The motion was seconded by Chairperson Swinghammer. In a roll call vote, the motion passed 4 – 0.

V. NEW BUSINESS

- A.. Applicant: Steven Dobrofsky
 Location: 3280 Oleander Way
 Request: Description of Variance request:
The Applicant is requesting a variance from the Town's Zoning Code, Chapter 30-313 (29) and 30-313 (32), so they can maintain a pool deck and generator within the front setback.

Acting Town Planner Linda Connors reviewed the backup information on the proposed application. Town staff recommended approval with staff conditions.

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

Steven Dobrofsky, the applicant, added while there were differences between Town staff's and his interpretation of the Town ordinance pertaining to the location of the pool, he was satisfied with Town staff's findings. Staff agreed with the applicant's findings that the latter had a pool and a deck that was constructed pursuant to permit since the early 1990s and the deck had deteriorated. He said when he applied for a permit to make renovations, they included their intention to replace the wood deck with travertine pavers. At that time, Town staff informed him 12 and a half feet of the existing deck extending north of the pool violated the local ordinance. It was the applicant's position that the Town ordinance was unclear in its definition of a pool for purposes of measurement, but they did not prevail on this point with either the Town staff or the Broward County plan examiner. The applicant hoped the extra wall was within 25-foot area of the pool, as nothing other than the inside water surfaces was considered in the relevant ordinance. Thus, while the applicant respectfully disagreed with Town staff, they applied for the

variance to allow the 12 and a half feet that extended north of inside of the 25-foot setback, that it should be uniform with the remaining portion of the deck that would be changed to travertine pavers. Mr. Dobrofsky commented as to the generator; the generator would be closest to their neighbors' bedrooms. Though it was a generator for use only in the event power was lost, such as during a hurricane, he thought it best to place the generator as far away from any dwelling as possible, particularly bedrooms, so as not to present a noise nuisance. They wished to place the generator on the north side of the property inside the fenced in area within the 25-foot setback. Theirs was a corner lot, and the configuration of their lot was unusual, as part of their backyard was considered a part of their front yard; they did not create the situation, but they were trying to improve the property and bring its structures up to code. He reiterated they were satisfied with Town staff's findings and conditions.

Chairperson Swinghammer opened the discussion to the public and received no input.

A male Board member asked about code requirements.

Town Attorney Mehaffey replied the code requirement was for a fence around the pool, so the existing fence would have to remain; all the structures discussed earlier in the meeting were behind the fence and not visible from the public right-of-way.

(The audio quality was poor and the dialog was inaudible in portions of the recording at this point in the meeting.)

Town Attorney Mehaffey clarified there was a discussion but no condition had been added. The normal procedure was for a motion to be made, and whoever made the motion could include the desired condition as part of the approval of the application. If the motion was made without the condition, the condition could be added later as an amendment to the original motion.

Mr. Franczak made a motion to approve the proposed variance application with staff conditions as written. The motion was seconded by Mr. Wolowicz. In a roll call vote, the motion passed 4 – 0.

VI. UPDATES/BOARD MEMBER COMMENTS

Acting Town Planner Connors added she did not receive any variance applications, so there would be no January 2012 Board of Adjustments meeting.

VII. ADJOURNMENT

Having nothing further to discuss, Chairperson Swinghammer's motion to adjourn the meeting was seconded at 6:53 p.m.

Helen Swinghammer, Chairperson

ATTEST:

Date Accepted: _____

Colleen Tyrrell, Board Secretary

CT/cc



**VARIANCE DEVELOPMENT ORDER _____
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA**

PROJECT NAME: 3280 Oleander Way
ADDRESS OF PROPERTY: 3280 Oleander Way
PROPERTY OWNER: DOBROFSKY, STEVEN and BERKE, BENITTA
APPLICANT: Steven Dobrofsky
APPLICANT ADDRESS: 3280 Oleander Way

REQUEST: To allow a variance from Section 30-313(29) and Section 30-313(32) of the Town's Zoning Code to allow a pool deck and generator within the front setback, pursuant to Sections 30-8, "Variances", and Section 30-13, Quasi-Judicial Procedures of the Lauderdale-By-The-Sea Code of Ordinances.

SECTION 1. FINDINGS. THIS MATTER came before the TOWN Commission of the TOWN of LAUDERDALE- BY-THE-SEA, Florida, on January 10, 2012, following due public notice. The TOWN Commission having considered the public testimony, evidence in the record, the testimony of the applicant, and the recommendation of the TOWN Board of Adjustment and administrative staff, finds that the application, as conditioned herein, will promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood and further, that the application does meet all of the criteria in Section 30-8, which are as follows:

1. Special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of such land, structure or building.
2. The circumstances, which cause the hardship, are peculiar to the property or to such a small number of properties that they clearly constitute marked exception to other properties in the district.
3. The literal interpretation of the provisions of the applicable regulation would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.

4. The hardship is not self-created or the result of mere disregard for, or ignorance of the provisions of the regulations.
5. The variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
6. The grant of the variance does not permit a use not generally permitted in the district involved or a use expressly or by implication prohibited by the terms of the regulations of the district in which the affected property lies.
7. Financial hardship is not a basis for granting a variance unless the failure to grant the variance will render the property unusable as a permitted use in the zoning district in which the property lies.

SECTION 2. APPROVAL. The request to allow a pool deck and generator within the front setback is hereby approved as shown on the site plan dated 10/18/2011 and attached as Exhibit 1.

SECTION 3. CONDITIONS. The APPROVAL granted herein is subject to the following conditions:

1. The applicant shall be required to secure a building permit that meets all zoning requirements except for the pool deck's 12.5' encroachment into the front setback and the placement of the generator in the front setback as depicted on the site plan dated October 18, 2011 (**Exhibit 1**), within 60 days of the approval of the Variance.
2. The Variance Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days from the effective date of the development order. If the applicant fails to respond within the specified time frame, the variance will become null and void.

SECTION 4. VIOLATION OF CONDITIONS. Failure to adhere to the terms and conditions of this Development Order shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of any of the approval(s) granted in this Development Order. The Applicant understands and

acknowledges that it must comply with all other applicable requirements of the Town Code before it may commence construction or operation, and that the foregoing approval in this Development Order may be revoked by the Town at any time upon a determination that the Applicant is in non-compliance with the Town Code or the conditions of this Approval.

SECTION 5. APPEAL. In accordance with Section 30-13(d)(12) of the Town Code, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Commission in the Circuit Court of Broward County, Florida, in accordance with the Florida Rules of Appellate Procedure.

SECTION 6. EFFECTIVE DATE. This Development Order shall become effective upon Approval by the Commission.

APPROVED this ____ day of _____, 2012.

MAYOR ROSEANN MINNET

ATTEST:

June White, Town Clerk, CMC

Approved as to form:

Susan L. Trevarthen, Town Attorney

