TOWN OF LAUDERDALE-BY-THE-SEA

BOARD OF ADJUSTMENT AGENDA

Town Commission Meeting Room

Wednesday, May 2, 2012 at 6:30 P.M.

I. **ELECTION OF OFFICERS**

II. **CALL TO ORDER**

III. **PLEDGE OF ALLEGIANCE TO THE FLAG**

IV. **APPROVAL OF MINUTES**

Regular Meeting – July 15, 2009 and December 7, 2011

V. **WORKSHOP**

Review of Board of Adjustment Procedures

VI. **UPDATES/BOARD MEMBER CONCERNS**

VII. **ADJOURNMENT**

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AIDS AND SERVICES NECESSARY TO AFFORD AN INDIVIDUAL AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE BOARD OF ADJUSTMENTS. IN DETERMINING WHAT TYPE OF AUXILIARY AID AND SERVICE IS NECESSARY, THE TOWN OF LAUDERDALE-BY-THE-SEA, WILL GIVE PRIMARY CONSIDERATION TO THE REQUESTS OF THE INDIVIDUAL WITH DISABILITIES. PLEASE CONTACT THE TOWN CLERK AT LEAST 48 HOURS PRIOR TO THE MEETING TO MAKE ARRANGEMENTS FOR APPROPRIATE AUXILIARY AIDS. (AUXILIARY AIDS AND SERVICES, 56 FED. REG. 35721, SECTION 36.160(B).

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF ADJUSTMENTS WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO INSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

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

TOWN OF LAUDERDALE-BY-THE-SEA

BOARD OF ADJUSTMENT MINUTES

Town Commission Meeting Room

Wednesday, July 15, 2009 at 11:00 A.M.

I. CALL TO ORDER

Chairman Thomas Carr called the meeting to order at 11:00 a.m. Members present were Chairman Thomas Carr, Vice Chair Joseph Couriel, and George Crossman. Also present were Acting Town Attorney Nancy Stuparich, Code Compliance Officer Kam Parker and Board Secretary Colleen Tyrrell.

II. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

III. APPROVAL OF MINUTES

Regular Meeting – May 20, 2009

All voted in favor to approve the May 20, 2009 minutes as presented.

Acting Town Attorney Nancy Stuparich swore in all those that would be testifying at the hearing.

IV. OLD BUSINESS **(Tabled from May 20. 2009)**

A. Project: To allow the existing shed, installed without permit, to be located within the front yard setback;
To allow a proposed swimming pool to be constructed within the front yard setback and within 10' of a public right of way;
To allow the required swimming pool enclosure (fence) to be located within the front yard setback and within 10' of a public right of way

Applicant: Karen A. D'Uva

Location: 1658 West Terra Mar Drive

Request: Description of Variance request: **The property owner is seeking three (3) Variances:**

1. **From the provision of the Section 30-211(c) (1) and Section 30-313(31) to allow the existing shed, which was installed without permit, to be located within the required front yard setback and within ten (10) feet of a public right-of-way. The proposed location is five (5) feet two and three eight (2 3/8) inches from the front property line, rather than the twenty-five (25) feet as required by Code.**
2. **From the provision of Section 30-313(29) to allow a swimming pool to be constructed within the required front yard setback and within ten (10) feet of a public right-of-way. The proposed pool location to be constructed is three (3) feet one and a half (1 ½) inches from the front property line rather than the twenty-five (25) feet as required.**
3. **From the provision of Section 30-313 (4) (e), to allow the required swimming pool enclosure (fence) to be located within the required front yard setback and within ten (10) feet of a public right-of-way. The proposed location for the fence is directly on the front property line rather than the twenty-five (25) feet required.**

Karen D'Uva and her attorney, Paul G. Finizio, were present at the hearing to present the history of Mrs. D'Uva's variance request. This matter was brought before the Board of Adjustment on May 20, 2009 at which time the board recommended that this item be tabled to the July 15, 2009 hearing to allow the applicant time to appear before the Town Commission for approval to change the designated front yard from Seaward Drive to West Terra Mar Drive and to re-submit plans reducing the size of the pool and/or shed. Mrs. D'Uva said that she was advised that she would have to apply for another variance to have the address changed. Mrs. D'Uva stated that two years ago she and her husband and their had spoken to Tatiana Solovieva and was told that Tatiana would concur with the address change to West Terra Mar Drive. So they proceeded on those comments. Mrs. D'Uva said that you can only enter her house through the front door that is on Seagrape Drive and verified that her mail is delivered to West Terra Mar Drive which is her front yard. Mrs. D'Uva said that she was confused and was not sure if she should proceed with changing the address designation, however, if it would help this cause she would rather leave everything as is and try to get the variances with the front yard the way it is.

Chairman Carr referred to the diagram presented to the board in the packet and noted that the West Terra Mar side was the longer of the property lines which was 71.19' which he thought was part of the criteria in determining the front and side yards. Mr. Carr said that Mrs. D'Uva was also before the Board of Adjustment back in 2001 and they accepted the address change on West Terra Mar Drive. Mr. Carr said that in his opinion he would go along with that.

Mrs. D'Uva said that she did not want to go again go through who said what, but the two people that were working in the Planning and Zoning Department were no longer working for the Town. Mrs. D'Uva said that she researched for hours to find the variance that she obtained in 2001 to put in her rear patio. Mrs. D'Uva referred to Mr. Noah's letter that stated that the swimming pool would devalue the property and said that statement was an ignorant statement and that everyone knows that if you put in a pool, the real estate for the house would go up. Mrs. D'Uva felt that she was being discriminated against because she made a complaint to the building department about Mr. Noah and that is when all of these issues came up about her shed.

Mrs. D'Uva said that she has returned with new plans and said that she has spent almost $4,000 in trying to get this resolved. Mrs. D'Uva said that she could not afford to spend money on any more variances or surveys, architects or attorneys and all she wanted was to be allowed a few feet. Mrs. D'Uva said that this was a sentimental matter for her since you husband recently passed away and the shed contains all of his tools and personal things.

Attorney Finizio said that the conditions that exist there especially in this situation since shed is hidden behind the hedges and does not create any obstruction and there was no safety violation and that esthetically the shed does not detract from it and ask that the board approve the variance.

Chairman Carr commented that the swimming pool would be now 5 feet into the property line which was just to the edge of the patio and assumed Mrs. D'Uva would be staying with the 3 foot wide perimeter around the pool. Chairman Carr said that Mrs. D'Uva was also proposing to move the shed about 4 feet closer to the home.

Attorney Finizio said that they would do whatever the board wanted and it would be a difficult thing to move the shed, however, they do not feel this should be needed and would like to keep the shed in its place.

Chairman Carr said that he went by the property a few days ago and that he could not see the shed at all behind the hedges. Chairman Carr verified with Mrs. D'Uva that the shed was hurricane secured. Chairman Carr stated that the Town has certain standards and that is why Mrs. D'Uva was before the Board of Adjustment, however, the board would try and take everything into consideration. Chairman Carr closed his comments and asked those present to come forward for public comments.

Kay Bayman of 1603 W. Terra Mar Drive stated that he lived across from Karen D'Uva for a number of years. He knew intimately both Karen and her husband, Robert. Mr. Bayman said that this shed was a pet project of Robert's

and said that they were very respectful and considerate of others and that whatever they did, they took seriously. Mr. Bayman took special interest in the swimming pool because it was his opinion that it would enhance the value of the property and the neighborhood because there were very few pools on the island. Mr. Bayman said that he finds the project worthwhile and wanted to touch on the moral aspect of the family because it was the dream of Robert's to put in a swimming pool and asked that the project be revived in memory of Robert.

John Seville a resident of 232 Oleander Way stated that he has been a neighbor of the D'Uva's for six years and said that he was in full support of the variance request and considered it an asset to the area and to her property values.

Chuck Gress lives on Terra Mar Way and is also a neighbor of Karen's. Mr. Gress said that the shed was completely hidden by the hedges and did not impose any devaluation of the property. Mr. Grerss said that Karen was a great neighbor and asked the board for a positive decision on her request for a variance.

Mr. Couriel asked Officer Parker why Seaward Drive was considered Mrs. D'Uva's front yard when her address is located on West Terra Mar Drive.

Officer Parker indicated that per Town Code on a corner lot the shorter of the two fronts would be designated as the front yard.

Mr. Couriel verified with Officer Parker that if the designated front address was changed, a new variance would be required and for comments from Acting Town Attorney Stuparich.

Attorney Stuparich agrees with Officer Parker's statements regarding Town Code designation of front yards and confirmed that a variance would be required.

Mr. Couriel stated that Mrs. D'Uva must seek a new variance to change the front yard and commented that he would not have any problem with approving the change of address.

Attorney Finizio asked that the change of address be considered at this hearing.

Officer Parker advised that the board would be unable to consider the change of designated front because of the Public Notice Requirements.

Mr. Couriel referred to the table that was done by Officer Parker that was included in the backup material from the previous May 20, 2009 Board of Adjustment hearing and asked how the dimensions would vary if the designated front yard was changed to West Terra Mar Drive.

Officer Parker responded and reviewed each item separately. Regarding the shed, Officer Parker advised that the new encroachment would be 9' 9 5/8 " which would be the encroachment into the required 15 foot setback from the public right of way. Regarding the swimming pool, the new encroachment would be 6' 6" which would encroach into the required 10 foot setback from the public right of way. Regarding the fence, the new encroachment would be 10 feet which would encroach into the required 10 foot setback from the public right of way. Either way, the shed would encroach into the public right of way.

Mr. Couriel stated that if the designated front was changed there would be a reduction in the required variances. Mr. Couriel felt that, the impact of the shed and the swimming pool would be minimized with the change of address.

After further discussion, Attorney Finizio said that this matter was form over function and asked that the Board of Adjustment approve the requested variance as submitted now and said that a new variance was not needed.

Chairman Carr reviewed and discussed the submitted pervious/impervious calculations and advised that it appears that Mrs. D'Uva has at least 50% pervious property which would not be an issue. Chairman Carr said that in his view, moving the shed would encroach no matter where it was moved and it was completely hidden from view by the hedges and that was not an issue.

Mr. Crossman expressed his concerns with the location of the swimming pool but was not concerned with the location of the shed. Mr. Crossman said that no matter where the shed was moved it would still encroach into the public right of way.

Mr. Couriel felt that in his opinion the shed would be a problem if it was moved closer to the house and he was more inclined to leave the shed in line with the smaller pool. He agreed that if the address was changed to West Terra Mar Drive, and the shed remains in its current location, and the pool was changed slightly, no matter what, Mrs. D'Uva would have to spend money either to move the shed or apply for an additional variance.

Attorney Finizio again asked that the variance be approved as presented at the hearing.

Town Attorney Stuparich commented that this is the way the code is written and that staff has to apply the code in accordance with how it is written. Attorney Stuparich said that the change of address was not included in the original Public Notice and would therefore have to go before the Town Commission for approval.

Officer Parker commented that the residence is now a legal conforming building and if the address change was approved by the Town Commission, the residence would become non-conforming.

During the continued discussion regarding the setbacks of the pool, Officer Parker clarified for the board that there was no decking indicated on the revised plans.

Mr. Couriel made a motion, the motion was discussed in great detail and was later withdrawn. Mr. Couriel restated the motion to grant the variance with the condition that the Applicant go before the Town Commission to gain approval to change the designated front in order to allow the shed to remain in its current location and to allow the shed to encroach 9 feet 9 5/8 inches into the required 15 foot setback from the public right of way; and to allow the revised smaller swimming pool to encroach 4 feet 9 5/8 inches into the required 10 foot setback from the public right of way; and to allow the fence to encroach all 10 feet of the required 10 foot setback from the public right of way. The motion was seconded by Mr. Crossman. In a roll-call vote, all voted in favor. The motion carried 3-0.

V. NEW BUSINESS

A.. Applicant: Ezer Investments, LLC c/o Joe Brennan
Location: 101 E. Commercial Boulevard
Request: Description of Variance request: **The Applicant is requesting an exception to the Town's Zoning Code, Chapter 30-315 (4) (j), to maintain a chain link fence to enclose a dumpster in the B-1 Zoning District.**

Joe Brennan, Business Manager and Secretary/Treasurer of 101 Ocean A/KA Beach Restaurant Inc. was present at the hearing. Mr. Brennan explained that a permit was issued and a final inspection was approved by the Zoning Department. He was later advised that the permit was issued in error and that the Town Code prohibits chain link fences in the B1 District. Mr. Brennan presented photos of the purpose-built enclosure and photos of wooden dumpster enclosures for comparison. Mr. Brennan said that it would be a hardship to remove the chain link fence enclosure and requested that the Board grant an exception to the Town's Zoning Code and approve the variance request.

After further discussion Mr. Couriel said that the dumpster enclosure faced the Municipal Parking Lot and that he noticed that the dumpster enclosure was kept open and it looked unsightly.

Chairman Carr said that he thought the appearance of the chain link fence with the heavy grade green vinyl slats that were inserted to block the view was more attractive than the wooden fence enclosures and suggested that some kind of spring mechanism could be installed to keep the door closed on the dumpster enclosure.

Mr. Crossman made a motion to for the Board of Adjustment to approve the variance as requested and recommends that this be an exception to the Town's Code Chapter 30-315 (4) (i) that prohibits chain link fences in the B1 Zoning District.

Mr. Couriel seconded the motion with the stipulation that some kind of automatic mechanism be installed to keep the gate closed on the dumpster enclosure.

In a roll call vote, all voted in favor. The motion carried 3 – 0.

V. UPDATES/BOARD MEMBER CONCERNS

There were no updates or board member concerns.

VI. ADJOURNMENT

Having nothing further to discuss, Chairman Carr adjourned the meeting at 1:45 P.M. July 15, 2009

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Thomas Carr, Chairman

ATTEST:

Date Accepted: _____

Colleen Tyrrell, Board Secretary

_____