

TOWN OF PALM BEACH SHORES
PLANNING AND ZONING BOARD
REGULAR MEETING

March 25, 2008

Alan D. Fiers, Chairman
Kevin Banks, Vice Chairman

Carol Hurst, member
Jack McDevitt, member
Scott McCranels, member

Richard Laabs, Alternate member
Roby DeReuil, Alternate member
Keith W. Davis, Attorney

1. **ROLL CALL**
2. **APPROVAL OF MINUTES:**
Minutes of February 26, 2008 LPA hearing and regular meeting.
3. **AGENDA APPROVAL:**
Additions, substitutions, deletions.
4. **STAFF REPORTS:**
5. **MISCELLANEOUS BUSINESS:**
 - a. **V08-3 Joel & Linda Silberstein, 131 Cascade Lane Lot 163. PUBLIC HEARING**
Request for variance from Pf. 5.7 "Side yards" in order to construct an entirely new two story single family residence that encroaches 1.8 feet into the side yard building setback.
 - b. **SPR07-19 & A/AR07-19 Peter J. Clarke, 318 Tacoma Lane Lot 153. PUBLIC HEARING**
Applicant proposes to demolish existing one story single family residence and construct an entirely new two story single family residence.
 - c. **SPR08-2 & A/AR08-2 Bret Worcester, 131 Tacoma Lane, Lot 175. PUBLIC HEARING**
Applicant proposes to demolish existing one story single family residence and construct an entirely new two story single family residence.
 - d. **SPM08-3 & A/AR08-3 Hugh Joyce, 200 Tacoma Lane Lot 163. PUBLIC HEARING**
Applicant proposes to construct a partial second story addition to an existing single family residence.
 - e. **Discussion: District B privacy issues.**
6. **ORDINANCES:**
 - a. **Ordinance O-6-08**
Amends Appendix A Zoning Ordinance in order to revise the placement and height regulations for fences, hedges and walls located along the west side of Lake Drive and the south side of Inlet Way.
7. **BOARD COMMENTS:**
8. **PUBLIC COMMENTS:**
8. **ADJOURNMENT.**

MINUTES

The regular monthly meeting of the Palm Beach Shores Planning and Zoning Board was called to order at 7:00 pm by Chairman Alan Fiers. Roll call revealed that all regular members and alternate members were present. Also present were Town Attorney Keith W. Davis, Town Zoning Official Manual Palacios and Town Clerk Carolyn Gangwer.

The Chairman led the assembled in the pledge to the flag.

APPROVAL OF MINUTES: The **February 26, 2008 LPA hearing minutes were approved** on a motion by Carol Hurst, with second by Jack McDevitt. The **February 26, 2008 regular meeting minutes were approved** on a motion by Jack McDevitt, with second by Vice Chairman Kevin Banks.

AGENDA APPROVAL: Vice Chairman Banks moved for **approval of the meeting agenda as published**. The motion carried unanimously after a second by Carol Hurst.

STAFF REPORTS:

Zoning Officer Manual Palacios offered the following update:

- Community Center: open issues include leaky doors, stained carpet. Conditional Certificate of Occupancy has been issued.
- 101 Cascade Lane: this project is nearing completion, with drywall underway.
- 155 Ocean Avenue (DolceVita): Items required on conditional C/O are underway, including drawings for handicapped accessible parking area canopy cover. With DEP approval, exterior lighting will be in place by mid-June. Conditional work must be complete and approved before any condominium permits can be issued. An extension of time for completion of Phase II work (swimming pool area and south side landscaping) will be requested before May 31st. The Phase II work will be completed by a different general contractor. Mr. Palacios reviewed the conditions in the current conditional C/O for the Chairman.
- Cannonsport: Only unmet condition is execution of a public easement agreement. North dock construction is underway. Chairman Fiers asked if the ice machine has been moved/removed? Mr. Palacios explained that the current ice machine will be removed, to be replaced with a larger, quieter, more efficient model, which will be placed inside. There was some discussion regarding whether there is sufficient parking for the new north dock slips under construction. It was Attorney Davis' opinion that the issue of parking was broken out in the development orders. Staff was directed to look into this and report back at next month's meeting. Ms. Hurst asked if any fumes had been detected near Molly Fleming's property? Mr. Palacios reported that he has not witnessed any fume odors to date. Lighting at this site was briefly discussed. Several residents have complained about the amount of light emanating from the site eastward. Mr. Palacios will speak to the developer about toning down the amount of light visible along Lake Drive from Cannonsport.
- 212 Blossom Lane: Although this property is way behind planned schedule, it is nearing completion. Mr. Palacios noted that this project was approved before the construction timetable was required.
- 200 Inlet Way: this project is finished, with the installation of the landscaping per plans.
- 126 Blossom Lane: the contractor is looking for a C/O in the next 2 weeks.
- 321 Cascade Lane, 170 Lake Drive and 315 Inlet Way are all new projects which have not started construction to date.

Code Enforcement issues:

- Empty lots: 3 of the 7 current empty lots in town have received notices for the April 15th Code Enforcement Special Magistrate hearing. Mr. Palacios explained the issues surrounding the lots in violation of Town Code: 330 Tacoma Lane, 224 Inlet Way and 106 Inlet Way.
- Vacant houses: there are currently a total of 14 vacant houses in town. Three of these properties have been issued Notices of Violation and Hearing for April CESM: 241 Bravado Lane, 307 Bravado Lane and 343 Blossom Lane. All are in violation of the property maintenance code.

Construction schedule for 315 Inlet Way addition: Discussion ensued regarding the proposed schedule. It was the general consensus that 18 months was too long for this project, and that 12 months would be

more reasonable. Town Clerk Gangwer will contact the Desrochers, and ask them to attend next month's meeting to discuss their proposed construction schedule.

MISCELLANEOUS BUSINESS:

Attorney Davis announced that the next four items on the agenda are quasi-judicial hearings, and all wishing to speak should be sworn in. After the swearing in, he advised that they should state their name and whether they had been sworn before making their comments. Mr. Davis asked if any Board member had ex parte' discussions? Chairman Fiers reported that he has had extensive discussions with Hugh Joyce, who is his nephew. Mr. Fiers will recuse himself during the review of Mr. Joyce's project.

a. V08-3 Joel & Linda Silberstein, 131 Cascade Lane, Lot 163.

Chairman Fiers clarified that the side yard under discussion is adjacent to Atlantic Avenue. The Silberstein's came forward, stating that they had been sworn in.

Ms. Silberstein pointed out that only 2/3 of the proposed house located along Atlantic Avenue required a variance. She submitted a handwritten note (on the form letter sent by the Town to all neighbors) from a neighbor supporting the variance request. This was received into evidence at Exhibit 1.

Exhibit 2, consisting of a black and white rendering of the front of the proposed house was submitted by project architect Christine Walter. Ms. Walter confirmed that she had been sworn in.

Ms. Silberstein thanked the Planning and Zoning Board for considering their request. She opined that this has been a long and stressful process, with much time and effort on their part to revise their plans 3 times. Ms. Silberstein proceeded to read aloud a letter from her son Mark, in favor of the variance request, and a letter from Joel and Linda Silberstein received March 7, 2008, outlining some of the reasons that they feel that their request for a variance should be approved. Both letters are attached to these minutes, and are part of the record of this meeting.

Architect Walter gave a brief presentation, outlining the unfortunate timing of the Silberstein's plan submittal, closely followed by the District A Building Moratorium. It was Ms. Walter's opinion that she has reduced the size of the proposed house as much as aesthetically possible, in order to comply with new Town Code.

Chairman Fiers asked Mr. Davis to review his written opinion regarding what code the Silberstein's project should be reviewed under. Attorney Davis briefly explained how he arrived at his opinion that the Silberstein's project should be reviewed under the new District A Code, rather than the code in place in March 2007.

The Chairman proceeded to review the applicants' responses to the Variance Standards found in the Palm Beach Shores Zoning Code. Mr. Fiers particularly questioned the applicants' response to criteria #5

"Explain how the granting of the requested variance will not confer on the Applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures, or buildings in the same zoning district:"

Ms. Walter explained that the Silberstein's project was the only project in the "pipeline" at the time that the moratorium was enacted. Attorney Davis confirmed that this was true, explaining that the DesRochers second floor addition was approved before the moratorium, and the other District A projects were one story.

Referring to Mr. Davis' written opinion dated January 8, 2008, Vice Chairman Banks noted that the Silberstein's were instructed at the March 7, 2007 DRC meeting to get their revised plans back to the town by March 26th in order to be placed on the April DRC meeting agenda. Yet, the revised plans were not received at Town Hall until April 23rd, one week after the District A Building Moratorium was in place.

Ms. Silberstein inferred that she was unaware of an impending moratorium on two story house development in District A. Mr. Banks countered that the moratorium was officially discussed at the March Town Commission meeting, with first reading of the enacting ordinance, and this meeting and ordinance were duly advertised as required.

Vice Chairman Banks opined that anyone who was contemplating building in Zoning District A had to go through the same process as the Silberstein's. It was his opinion that the fault probably lies with the applicants' architect.

Ms. Hurst clarified the amount of time that the applicants had for their architect to make revisions to their plans. She opined that it was well known by town residents in early 2007 that the Commission was considering a moratorium on construction of new two story homes in District A to allow completion of the code revision process.

Dr. McCranels noted that it is often difficult to get plans "turned around" with changes in a timely manner. He opined that the timing of this proposed development was unfortunate. He noted that the house currently proposed is architecturally pleasing, and if a portion of the house is pushed back, you'll have a sheer wall, which is not what the town wants. It was Dr. McCranel's opinion that granting of this variance will not affect the adjacent neighbors, because the setback encroachment is adjacent to Atlantic Avenue, and a privacy fence is planned.

Mr. McDevitt opined that the applicants' may have an issue with their architect. The many changes needed after the initial DRC meeting may point out that the architect was not up to speed on the old code. There was some discussion regarding whether the plans submitted on April 23rd were entirely compliant with "old" code.

Mr. McDevitt asked the applicants exactly what their hardship was with this request, noting that financial issues could not be considered. Mr. Silberstein listed the attendance at many meetings, enactment of the Building Moratorium, and the many changes in the new District A code, adopted in September. The suggestion was made by Mr. McDevitt that the Board might consider bringing in one of the consulting architects to assist with this project.

Chairman Fiers confirmed with the project architect that construction drawings including calculations and trusses have already been completed for this project.

Attorney Davis asked if a letter had been sent by the applicant's attorney, Philip Ward, as stated on page 3 of the application? The applicants stated that such a letter had not been sent.

PUBLIC COMMENT:

Viola Bonds of 124 Cascade Lane stated that she had been sworn in. Ms. Bonds is the neighbor across the street from this proposed house, and she feels that it will be an asset to the neighborhood.

Fred Hampf stated that he was sworn in and voiced his opposition to two story houses in town.

Ms. Silberstein noted that their proposed house was not built "to the max" of what code allows.

Alternate member Roby DeReuil opined that this house as proposed will not affect the open street corridor, and he recommended approval of the variance.

Hugh Joyce stated that he has been sworn in, and he supports approval of this variance.

Jim Vizzi was sworn in by Mr. Davis. He stated his opposition to the variance request.

Public comment period ended.

Chairman Fiers opined that the Silberstein's plan appears to be reasonable and the house an asset to the town. However, after the long and arduous process of updating the codes for zoning District A, it was generally agreed that the need for variances in that District would be virtually nil. Therefore, reasoned Mr. Fiers, it would be difficult for him to recommend approval of the Silberstein's variance request.

There was discussion regarding whether there have been any other variances granted since the moratorium. The answer was there have been no variances granted in zoning District A under the newly amended code. The Chairman noted that there were variances granted to Molly Fleming at 170 Lake Drive for height of fence along Lake Drive and for north side setback, directly next to the new 3 story buildings at Cannonsport. This occurred in Zoning District C. In addition, a variance to allow encroachment into the side setback for construction of a swimming pool was granted to Tom and Joan Mills at 344 Sandal Lane in zoning District A. Attorney Davis elaborated that Florida Statutes are very clear that each variance must stand on its own merit.

Ms. Silberstein suggested that Town Code discriminates between one and two story homes.

Dr. McCranel's concurred with Mr. DeReuil's earlier statements about open corridors, and opined that common sense should be used in this instance. He moved to recommend approval of V08-3 to the Town Commission. The motion died for lack of a second.

Vice Chairman Banks moved to **recommend denial of V08-3 based on the fact that the applicant has not met the special circumstance criteria regarding their property, noting that everyone was affected by the District A Building Moratorium. In addition, the applicants appeared to have had ample time to provide revised plans to the town before the moratorium was enacted.** Mr. McDevitt seconded the motion on the floor.

Further discussion included reiteration of the timing of the moratorium, the fact that there was no opposition from any neighbor to this variance, and what is involved if the applicants choose to appeal a denial. **The motion passed on a 4 YEA to 1 NAY vote with Dr. McCranel's dissenting.**

b. SPR07-19 & A/AR07-19 Peter J. Clarke, 318 Tacoma Lane, Lot 153.

Project architect Blue Mingas stated that he had been sworn in. He is present representing the owner, Peter Clark, who is currently in Virginia.

Mr. Mingas provided several revised pages to the Board members. After some discussion, Mr. McDevitt moved to **accept the signed, sealed revised drawings for review.** After a second by Ms. Hurst, the motion carried unanimously.

Mr. Mingas presented highlights of the proposed new two story residence:

- Site calculations are now included on the plan. First floor is 30.5% of the lot at 2628 sq. ft.
- The total square footage is more than 400 square feet under what code allows.
- Highest point of the roof is 2' under the maximum height allowed.
- Second floor is pulled back 40', when it could be 30' from the front property line.
- Side setbacks are both 9'.
- Town Engineer has looked at proposed drainage.
- Street scape provided to show how neighboring properties will be buffered by landscaping.

- Landscape plan has been modified per comments at last month's meeting.
- Swimming pool is shown on plan, but it may not be put in.

Chairman Fiers congratulated Mr. Mingas on a much better presentation than he gave last month. Board members comments followed, and the following issues were raised:

- The height of trees which will buffer neighbors is very important.
- Concern was expressed about the two air conditioning units shown on the side of the house. In addition, the pool equipment is shown on the side of the house, next to the A/C units. Will there be adequate buffering, particularly for sound? Mr. Mingas noted that the master bedroom has a bank of windows at the rear, and if the A/C units were placed there, that would be what Mr. Clarke would be looking out at.
- The pad shown on the east side of the house is for an outdoor shower.

PUBLIC COMMENTS:

Richard and Carol McKenna stated that they had been sworn in. The McKenna's live behind the proposed project. They expressed concerns about adequate landscaping for buffering, the location of the A/C equipment, if the landscaping must be replaced if it is knocked down by a storm (yes), and what happens to the existing green chain link fence (to be replaced by a ficus hedge). Mr. Mingas explained that the ficus hedge and a low wall will be placed in the utility easement. He stated that Mr. Clarke is aware that if a utility needs to access the easement, the wall and hedge could be removed, and would have to be replaced at the owner's expense.

Ray Woloszak of 325 Claremont Lane stated that he had been sworn in. His property is to the rear of this project, also. Mr. Woloszak noted that he met with Mr. Mingas at Town Hall to review the plans for this house. At that time, he was told that more travelers palms would be put in, as they grow more densely. Mr. Woloszak recalled a discussion at an earlier Planning and Zoning Board meeting regarding placing landscaping requirements as deed restrictions. Chairman Fiers explained that this was discussed previously, and the Town Attorney advised that recording of development orders with landscaping requirements listed as conditions was probably a better route to take.

Anthony Lyes stated that he had been sworn in. He lives directly to the east of this project at 312 Tacoma Lane. Mr. Lyes stated that he has some problems with drainage on his property, and opined that the proposed wall and hedge at the rear of the proposed house appear to add to drainage problems. He opined that the lot appears to be "table topped". Mr. Lyes also raised the issue of how wide the driveway will be, how far the house is from the property line, and raised questions of what the grade elevation is at the rear lot line. Mr. Mingas responded that this information is included on the site plans under review.

There was some discussion about an area on the site that may be used for parking of a boat and trailer. It was the Chairman's opinion that it would be very difficult to back in a boat on a trailer at such an angle. Mr. Fiers concurred that the boat parking area was not part of the site plan review, but wanted this noted on the record for future information, if needed.

After further discussion, Mr. McDevitt moved to **approve SPR07-19 subject to certification of drainage plan for this property as compliant with Town Code and with sound engineering practices** – such information to be provided to the Planning and Zoning Board at the April meeting. Vice Chairman Banks requested that the motion include a **condition that the air conditioning and pool equipment are moved to the rear, and placed in a depressed vault**. Mr. McDevitt amended his motion accordingly. After a second by Ms. Hurst, the **motion carried unanimously**.

Mr. Lyes requested to be included when the Town Engineer reviews the drainage plan for the Clarke project. The Chairman stated that all neighbors will be included.

Mr. McDevitt moved to **approve A/AR07-19 subject to buffering vegetation that is tiered, and sufficient in height and density to ensure the privacy of the neighbors, such vegetation to be approved before a Certificate of Occupancy is issued.** After a second by Ms. Hurst, the motion carried unanimously.

At this time, the Chairman called for a brief adjournment.
After a 15 minute break, the meeting resumed.

c. SPR08-2 & A/AR08-2 Bret Worcester, 131 Tacoma Lane, lot 175.

Chairman Fiers explained that the plans as submitted have some inconsistencies, and are not being moved forward for final approval at this meeting. Mr. Fiers asked that this item remain on the agenda so that he could raise the issue of architectural content.

The Chairman stated that, if this plan had gone forward tonight, he would have voted against approval based on the fact that the new architectural guidelines state that new houses must be consistent with the town. He opined that the Worcester project represents what the town does not want – a ‘box on a box’ with no architectural style. This type of house, which Mr. Fiers described as colonial, belongs further north, on a hill somewhere. In addition, the architectural guidelines recommend at least 10% window surface on the front façade of a house, and it does not appear that is the case with this house. Finally, the Chairman noted the very large amount of driveway shown on the plan.

Ms. Hurst agreed with the Chairman’s sentiments. She also mentioned an apartment with a second kitchen which is included in the plan.

Vice Chairman Banks agreed that the elevation of the house on the Atlantic Avenue side is ‘pretty bleak’. He didn’t feel that the other sides of the house were as bad.

Dr. McCranels concurred that the front of the house was too plain, and needed some architectural interest to soften the sheer wall.

Mr. McDevitt noted that the architectural/aesthetic portion of the development application was a little thin, and suggesting adding more landscaping to the project.

Alternate member Roby DeReuil noted that there was some undulation along the front façade, but it was difficult to see on the elevation provided.

Tisha Worcester, applicant for this project countered that they’re not building a northern colonial house, rather more of a Key West style project. She intends to make some changes to the plan, making the undulations, etc. more clear, and return to Planning and Zoning Board next month. She questioned whether the 10% window surface was required? Chairman Fiers answered that this is not required, but is recommended.

Ms. Worcester explained why they are proposing a mother-in-law apartment. She also explained the amount of driveway space was dictated by the need for additional parking.

Discussion continued. The members suggested that the applicant provide a color rendering, check the code on driveways, consider using banding to soften the façade, and that the application be checked to ensure that the numbers matched those on the plans.

It was determined that this project will go back to the Development Review Committee in April, before appearing again before the Planning and Zoning Board.

d. SPM08-3 & A/AR08-3 Hugh Joyce, 200 Tacoma Lane, lot 163.

Chairman Fiers stated that he will recuse himself from this site plan review. He handed the gavel to the Vice Chairman and stepped away from the dais. Roby DeReuil took the vacant seat.

Hugh Joyce stated that he had been sworn in. He gave a brief presentation of the project:

- This remodel of an existing one story home includes addition of a new garage, a bump out at the back of the house.
- Small second floor addition to the den will project away from the neighbors.
- An entirely new roof will be put on the house – roof pitch blends in well with neighboring houses.
- The design is Key West style – yellow stucco and white metal roof.
- The proposed balcony is toward the front, and meets the setback code.
- The project is working around an existing pool.
- Existing landscaping will be used.

Ms. Hurst asked if the flat roof area above the den will be used, noting that there are steps leading to the second floor area. Mr. Joyce explained that the steps lead to the balcony, and that the flat roof area will not be accessed except for repair.

Ms. Hurst suggested placing some mature trees to the site, particularly the west portion, to soften the second story. Mr. Joyce stated that he is limited in what he can plant because of the location of the pool. It was his opinion the existing landscaping is more than adequate for privacy buffering and for softening of the house. He provided pictures of the existing landscaping for the members' review.

Mr. DeReuil asked why the openings to the balcony are only 2 feet. Mr. Joyce answered that this is based on new code. Mr. DeReuil confirmed that the driveway will remain as existing.

Mr. McDevitt asked for clarification on some of the calculations provided in the application. He asked the applicant if all neighbors had been notified of his proposed project. Mr. Joyce explained that all neighbors have been notified, particularly the neighbors across Tacoma Lane. Mr. McDevitt stated that he wanted to see a landscape plan for this project before a C/O is issued.

There ensued extensive discussion regarding landscaping for Mr. Joyce's project. Mr. Joyce suggested that he could add 4 or 5 mature (12'-15' high) trees to the west side of the property, adjacent to the second story portion of the house.

PUBLIC COMMENT:

Andy Lyes asked if a two car garage would be feasible, to get more cars out of sight? Mr. Joyce pointed out the constraints of the site, opining that there simply was not room for more garage area.

Chuck Platner of 201 Tacoma Lane stated that he had been sworn in. He opined that Mr. Joyce's lot is unique, comprised of a lot and a half. Mr. Platner stated that the proposed second story section of the house should not be an issue for any of the neighbors, and opined that the existing landscaping appears to be more than adequate.

Ms. Hurst moved to **approve SPM08-3 as presented**. Mr. McDevitt seconded the motion. Mr. DeReuil stated his concern that the landscaping 'matches' the building in the future. It was explained to the applicant that trees are expected to be at least 75% of the beam height, and he agreed this would be done. The motion passed unanimously.

A/AR08-3 was approved on a motion by Ms. Hurst and second by Mr. McDevitt.

The gavel was returned to Chairman Fiers. He suggested that the rest of the agenda be postponed to next month's meeting due to the lateness of the hour. There was universal agreement by the members that the remaining items could be moved to next month's agenda.

Ms. Hurst suggested that the Board might consider offering incentives to people who redevelop and build a one story home rather than a two story home. Chairman Fiers agreed that this is something that could be looked into. He cautioned jumping into this, due to the complexity of the issue.

Chairman Fiers noted that this is his last Planning and Zoning Board meeting after 4 years. He characterized this last meeting as possibly the 'toughest ever'. Mr. Fiers opined that there has been a nice balance of views from folks who do not always agree on things. There was applause from the assembled for Mr. Fiers' service.

Chairman Fiers thanked retiring member Kevin Banks for his 4 years of service. Again, there was applause for the Vice Chairman's hard work on the board.

The meeting adjourned at 11:35 pm.

Carolyn J. Gangwer, Town Clerk

Alan D. Fiers, Chairman