

A **Meeting** of the **St. Pete Beach Board of Adjustment** was held on **Wednesday, April 29, 2009 at 2:00 p.m.** in the City Commission Chambers at 155 Corey Avenue, St. Pete Beach, Pinellas County, Florida.

The Meeting was called to order by Chairman Paul Skipper.

Pledge of Allegiance

Roll Call

PRESENT: Chairman Paul Skipper; Park Lampson, Doug Lampe, Steve McFarlin, Richard German, Darrel Pray, Zoning Administrator Anne Marr and Deputy City Clerk Pamala Prell

SWEARING IN OF PARTICIPANTS

Chairman Skipper administered an Oath to the members of the audience who planned to speak.

1. Election of Chairman

Mr. McFarlin made a motion to reappoint Paul Skipper as the Chairman; the motion was seconded by Mr. Lampe. The motion was approved by a unanimous voice vote. Mr. Skipper accepted the appointment.

Mr. Lampe made a motion to appoint Steve McFarlin as the Vice Chairman. The motion was seconded by Mr. Skipper. The Motion was approved by a unanimous voice vote. Mr. McFarlin accepted the appointment.

2. Approval of the Minutes – June 28, 2008, August 27, 2008, September 24, 2008, November 19, 2008, January 28, 2009, February 25, 2009, and March 25, 2009

Ms. Pray made a motion to approve the minutes as presented. The motion was seconded by Mr. Lampe. The motion was approved by a unanimous voice vote approval.

3. CASE NO. 20090005

**Applicant/Agent: David Bacon – Owner: Navin Bajaj
Property located at 1101 Gulf Way**

Request: Variance to Section 11.7 (a)(2) requirement of 10.0' to permit the reduction of the secondary front yard to 7.5' for a new single family

residence.

Variance to Section 11.7(a)(4) requirement of 20.0' to permit the reduction of the rear yard setback to 15.0' for a new single family residence.

Variance to Section 10.20(a) requirement of 32.0' to permit the increase of the structure height from base flood elevation to 34' 7" for a new single family residence.

Ms. Marr gave the background of the case by use of a power point presentation, as outlined below.

The subject property is a corner lot and is currently vacant. The applicant is proposing to construct a new single family residence. The subject property had requested previous variances for a proposed single family residence in 2007 and all variances were denied. In May of 2008, construction drawings for a new single family residence were submitted to the Building Department and the proposal complied with zoning district requirements.

The residence, as proposed, is a non-conforming structure to the district setback regulations. The RLM2 zoning district requires a 20.0' front yard, a 10.0' secondary front yard and a 20.0 rear yard. The applicant is requesting to reduce two of the required setbacks to a 7.5' secondary front yard and a 15.0' rear yard.

The structure does not comply with the required 32.0' overall building height within the Pass-a-Grille Overlay District. The applicant is requesting a height variance of 2'7" to permit an overall structure height of 34'7" from base flood elevation.

Chairman Skipper stated that the variances will be considered one at a time.

Attorney David Bacon, 2995 1st Avenue North – St. Petersburg, confirmed that he was sworn in and would represent the applicant. Mr. Bacon asked that each variance be considered one at a time, because there are three requests. He testified that the lot is small. He stated that when the owner purchased the property it had an existing four-unit apartment building which was built in 1935; the owner obtained a variety of variances and allowances to redevelop the property which the City approved; after the owner hired the contractors and engineer they found such substantial infrastructure and support structure damage, that it was determined that the structure was not salvageable and the remodeling could not be accomplished within the 50% rule; the structure was demolished. Attorney

Bacon testified that the owner did present a plan to the City for redevelopment which required variances and the City denied the plan. He stated that the owner hired an architect firm to look at the lot and determine what could be done without asking for any variances. He stated that the architect's developed a new plan and that was submitted to City; the City informed the owner that the plan could get permits; after that the owner and the architect looked at the plan to determine if it was feasible and was keeping with the character of the neighborhood; the conclusion was that it was not, which resulted in some changes to the plan. He stated that a new plan was developed seeking the minimum variances. He testified that this is the plan that was being considered today, with the application for three variances.

Attorney Bacon stated that he felt the most challenging question regarding the hardship criteria was "is this the minimum variance necessary for the reasonable use of the property". He stated that he felt this was the minimum variances that would allow reasonable use of the property. He asked that the context and character of the property location be considered when reviewing the variances application. He stated that this property faces the Gulf of Mexico and these types of properties are very desirable. He testified that larger homes are being built with higher ceiling heights and elements of that nature. He stated that the lot is only 42' x 90' which would require a variance for any type of new construction. He felt to make the new home fit into the neighborhood that variances were necessary, due to the lot size.

Attorney Bacon testified that there was a letter sent by the owner's architectural firm explaining the lot size, the proposed plan and the variances that are needed. He testified that to get a 10' ceiling height there would need to be a variance granted. He stated that the design could be done with a flat roof, but the owners chose a slope roof.

Attorney Bacon testified that there is an alley in the rear of the property which adds additional buffering from the neighbors and that the variance will have no impact on the neighbors. The secondary front on 11th Avenue (42' wide) is the most important side setback, to the north, that is where the distance is needed as to not impact the neighbors and for fire safety and open views. That there could only be a 27' wide house if there are no variances granted. He stated that on 11th Avenue there is a natural buffering because of the width of right of way on 11th Avenue; between the curb line and the property line is substantial distance of green space and sidewalk. He testified that the height variance is needed so that the ceilings can be 10' in height and have a slope roof.

Attorney Bacon asked for a rebuttal, if desired.

Mr. Frank Frazee, 1750 Central Ave., St. Petersburg, testified that they are seeking the minimum variances to construct the home as planned.

Mr. Skipper asked if 9' ceilings were considered. Mr. Frazee stated that they could change the roof to a flat roof. Mr. Skipper stated that he would rather see a sloped roof.

Mr. Skipper asked if there was anyone who wished to speak in favor of this application. There was no response.

Mr. Skipper asked if there were anyone who wished to speak against the application.

Mr. Robert Urban, 6439 Second Palm Point, stated that before the granting of a variance the Board must find that the granting of the variance will not confer on the applicant any special privilege which is denied by zoning ordinances to other land building or structures in the same zoning district. He stated that there are special circumstances for this owner and that others in the area have complied with the rules. He felt that if the owner wanted a larger building he should have bought a larger lot.

Mr. Joe Caruso, 1301 Gulf Way, stated that he is the owner of the Coconut Inn which abuts the property. He stated that Pass-a-Grille is an historic district and needed to be respected when considering variances. He testified that he made a substantial investment in the Coconut Inn and if the variances are granted his view would be obstructed and decreases his Inn's exposure from Gulf Way. He felt that unless there is a true hardship that the variance should be denied. He testified that along Gulf Way there are many new homes built on similar size lots without variances. He stated that he wanted to preserve the nature of Pass-a-Grille.

Mr. John Thomas, Attorney for Mr. Caruso, 233 1st St. North, St. Petersburg, was concerned that one of the variances will place the structure closer to his structure than is allowed under the City's Code; the height will restrict Mr. Caruso's view from Gulf Way; it will interfere with his commercial activity; the height will allow the people on the upper floors of the home to look down into his property; decreasing his privacy; He suggested that the variances, as proposed, will affect Mr. Caruso's interests. He felt that Mr. Bacon "danced around the issue of hardship". He stated that the Code requires a hardship to be "unique or peculiar" to the subject land, not to the history of the land. The history of the property is not relevant; the applicant made no showing regarding hardships for this property; there are many new homes that have been built without seeking variances and complied with the code. He felt that the property could be developed for a reasonable use, as many other properties have. He

stated that the inability to maximize the development is not a recognized hardship under Florida Law or the City's Code. He requested denial of the variances.

Mr. Jay Anderson, 202 Pass-a-Grille Way, felt that the proposed house will not fit into the community; the house does not fit architecturally and size wise. He stated that his home will "stick out like a sore thumb" in a historical community that is trying to keep its value, style, architecture, and character intact. He reported that the Historic Preservation Board is working on Architectural Design Guidelines, for new construction to ensure that new homes in Pass-a-Grille are within keeping with those around them. He felt that there is no hardship and he did see any need to grant a variance for this home. He stated that Gulf Way is the City's beachfront community and the style and architecture that is there fits and this home will "over take it".

Mr. Rusty Ercius, 111 12th Avenue, expressed his opinion that there does not appear to be any hardship with this case. He stated that when people come to Pass-a-Grille to buy a house they desire it because of the character of the neighborhood and what is already there. He felt that to tear down a structure and build a "monument" it will forever change the character of the neighborhood by building large homes. He stated that this home is going to be at least 4,000 – 5,000 square foot or more if approved. He felt that the owner probably thinks this home is reasonable because he desires a home of this size and style; he asked the Board to consider the neighbors and disclosed that he has lived in that neighborhood for 58 years and he plans on spending "all of his days" there. He stated that he hopes a home is built that is suitable for the small lot; not make it so large that it offends the rest of the neighborhood.

Attorney Bacon addressed Mr. Ercius concerns regarding the size of the home. He testified that the new plans are not very different from the original plans in terms of overall size; he stated that he felt that someone walking down the street could not see and measure visually the difference between the two plans. He stated that the square footage of the home is about 3,000 sq. feet.

Attorney Bacon addressed Mr. Urban's concerns regarding special privileges and peculiar circumstances. He testified that that there is no special privilege being asked for. He stated that when Zoning is created for a district it's based upon averages; recognizing within that district you have different dimensions, sizes and configurations; that is why there are laws of variances; that's why the law gives this Board quasi-judicial powers and the ability to hear and decide based on evidence to decide if the requirements of law have been met. He felt that was clear in this case. As to peculiar circumstances, the most common peculiar

circumstance that is a hardship has to do with what is the property like; the size and configuration; this lot only has 42' in width; it was subdivided before 1935 when the home was built; and that in the past it was a very different Pass-a-Grille then as it is now. He stated that some of the people who are complaining about change are living in big new homes that are contrary to the Pass-a-Grille historic area. He felt that based on this neighborhood and its property value that this home will fit in.

Attorney Bacon addressed Mr. Caruso's concerns regarding his loss of visibility from Gulf Way. He testified that Mr. Caruso's property is across the alley and that it is an unimproved lot. He stated whether this home is built with or without variances it will have the same impact. He testified that there are no requirements for his client to have a particular architectural design, such as cedar siding. He testified that the lot is vacant and not historic because the structure was demolished, not by choice of his client.

Attorney Bacon addressed Attorney Thomas statement that he was trying to "dance around the issue of hardship"; that they are stating the circumstances and asking for consideration regarding the size of the lot. He stated that the Board must decide if there is determination of reasonableness or not. He stressed that it has already been established that the owner can make reasonable use of the property by use of the original plan. He referenced the letter submitted by the applicant's architect. Mr. Frazee has testified that this request is for the minimum variances needed for reasonable use of the property.

Chairman Skipper closed the public hearing.

Mr. Lampe stated that he felt that the garage could be reduced to 8' (from 8.8'); if the height between the floors could be reduced by 1 ft each with a different design there would be no need to request an elevation variance.

Mr. Skipper agreed that he thought the home could be built without the height variance.

Mr. Lampe made a motion to deny the request for a variance to the height of the structure with the suggestion that owner reconsider the design. Mr. Lampson seconded the motion. The motion was approved with by a unanimous roll call vote.

Mr. Skipper stated this is a small lot and the 42' width does present a problem. He felt that each case has to be considered individually to make a determination for granting variances.

Mr. Lampe inquired if there are any structures beyond the setback on either side of 11th Avenue. Ms. Marr stated that she did not research that, but front block averaging would not count here because the minimum you can get on a front block is 10 ft.

Mr. McFarlin stated that he felt that because there is a wide right-of-way he did not feel this would create any problems.

Ms. Pray stated that because it is the secondary front yard setback and there are sidewalks and in keeping with the old tradition where you enter your front porch from the sidewalk. She supported the variance.

Mr. Lampson stated that he did not feel this would create any problem except the view of the Coconut Inn is slightly obscured.

Mr. Lampson made a motion to approve the variance of 2.5' on the secondary front yard, as requested. Mr. McFarlin seconded the motion. The motion was approved by a unanimous roll call vote.

Mr. Lampe felt that a 5' variance was too much to ask for and that the owner could redesign the home. He stated that he was concerned that other home owners will be seeking the same variance and the alleys will be more "cramped".

Mr. Skipper stated that when you get to 15' there is no room to park a car at the rear of the building.

Mr. McFarlin stated that the neighbor's property is commercial and there will be tourists coming in and out of that area.

Mr. Lampe made a motion to deny the request for the 5' variance to the rear yard setback. The motion was seconded by Mr. Lampson. The motion was approved by a unanimous roll call vote.

4. CASE NO. 20090010

**Applicant/Owner: John & Christine Tortorella
Property located at 108 3rd Avenue**

Request: Variance to Section 6.15 requirement of maximum 4.0' fence height in the front yard to permit the increase of the fence height within the front yard to 4.5' and a gate height of 5.25'.

Ms. Marr gave the background of the case by use of a power point presentation regarding the variance requests as outlined below.

A new single family residence was constructed on this property in 2007/2008. A permit was obtained July 2008 to install a 3.0' high fence within the front yard. A complaint was received that the owner had installed a fence higher than was permitted. Upon inspection it was determined that the owner had increased the height of the fence to 4.5' and the gate was 5.25' in height. The applicant is requesting a variance to permit the fence height of 4.5' and gate height of 5.25'.

Mr. Skipper disclosed that he built the house and that it was built without any variances and met all of the setbacks. Mr. Skipper stated that he checked with the City Attorney regarding a conflict of interest and he was told that since there is no financial interest in the case he could vote on this case.

Ms. Tortorella, 108 3rd Avenue, pointed out that the decorative portion of the gate is slightly higher than the fence and the landscaping behind the gate measures higher than the ground. She stated that they are asking for the 4.5' fence to keep their two large dogs contained.

Chairman Skipper closed the public hearing.

Mr. McFarlin disclosed that he did go look at the property and noticed that the grade level was raised by using landscaping vs. gravel which is at least 5-6 inches. He stated that he did not have any concerns.

Mr. Skipper stated that he also looked at the property and he liked the gate and did not have any concerns.

Mr. Lampson stated that all he noticed was that some of the hedges are growing taller than the fence and he felt that it was "good looking".

It was pointed out that there were no ordinances requiring the hedges not to over grow the fence.

Mr. McFarlin made a motion to approve the variance to raise the fence height to 4.5'; and a gate of 5.25', as requested. Mr. Lampe seconded the motion. The motion was approved by unanimous roll call vote.

5. CASE NO. 20090011

**Applicant/Owner: St. Petersburg Yacht Club
Property located at 2301 Pass-a-Grille Way**

Request: Variance to Section 6.15 requirement of maximum 4.0' fence height in the waterfront yard to permit the increase of the fence height

within the waterfront yard to 6.0'

Ms. Marr gave the background of the case by use of a power point presentation regarding the variance requests as outlined below.

The Yacht Club is requesting to install a 6.0' high fence along the eastern boundary of the property, from the current club house to the southern boundary abutting the Women's Club. The fence is intended for safety and security purposes. The proposed fence is of an open picket design.

Ms. Marr advised that there was a letter received from the Women's Club stating that they are not opposed to the fence and they are the direct property to the south.

Ms. Marr pointed out that in a rear waterfront yard a 4' fence is allowed and the Yacht Club is requesting to a 6' fence.

Mr. Sandy Schoenberg, 143 Bay Point Drive, N.E., St. Petersburg, Yacht Club Officer, stated that they are requesting this variance because there is a need for a security fence along the seawall. He reported that there is currently no fence and they have trespassing, vandalizing and safety issues with people coming onto the property and docks. He stated that they brought a sample of the fence to show the Board. He said when they designed the fence it will keep the view open to the water.

Mr. Marcus J. Bryant, Smith Fence Company, displayed the style of fence. He stated that the fence posts will be 6 feet apart and will be anchored to the seawall cap. He disclosed that it will be a white aluminum fence that will have alternative pickets with a key-lock gate access to each dock. The northern gate will have a push button locking device. He stated based on his experience he did not think that 4' feet would deter people from coming into the property and the docks.

Mr. Bruno Falkenstein, 2401 Pass-a-Grille, way stated that he liked the ideas of the fence and that a 6' fence would be better and would prevent young children from getting injured trying to enter the dock area. He supported the request.

Chairman Skipper closed the public hearing.

Mr. Lampe disclosed that he visited the site and he felt that a 6 ft fence would be fine and would blend in with boats in the background and that a 4 ft fence would not keep our intruders. He stated that he wanted the Yacht Club and their members to feel safe. He is in favor of the request.

Mr. McFarlin stated that he has seen this type of fencing in other marinas and condos. He said that he thought after a few days of the fence being up that it will be noticeable and the view will not change. He stated that with the fence being white it will blend in well. He was in support of the request.

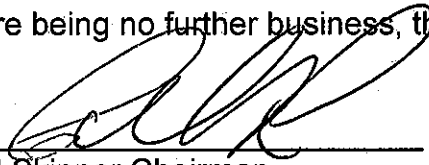
Mr. Skipper agreed with the other members that a 6' fence would be much safer and because it was an open fence he supported the request.

Ms. Pray stated that because of the safety issues she would support the request. She was concerned that the white fence would be more visible than a black fence.

Mr. Lampe made a motion to approve the variance for a 6' fence, as requested. Mr. McFarlin seconded the motion. The motion was approved by unanimous roll call vote.

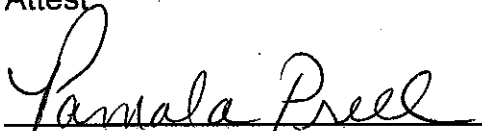
6. Adjournment.

There being no further business, the meeting was adjourned at 3:00 p.m.



Paul Skipper Chairman

Attest:



Pamala Prell, Deputy City Clerk