

MINUTES  
MANATEE COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 4, 1985

A regular meeting of the Manatee County Board of Zoning Appeals was held on November 4, 1985, at 1:30 p.m. in the County Commission Chambers of the Manatee County Courthouse, Chairman Richard Breeze presiding.

Members present were Richard Breeze, Chairman, David Montgomery, Frank Eldridge, John Sands and Albert Conyers. Also present were Barbara Levin (Asst. County Attorney), and Meredith Wheeler and Kay Swanner of the Planning Department.

The meeting opened with a Pledge of Allegiance to the Flag.

I. REQUEST FOR RECONSIDERATION

1. VA-85-31 - DONALD ROBERTS

There was no one present for the applicant and this item was deferred to the end of the agenda.

II. REQUESTS FOR VARIANCE

1. VA-85-32 - DAVID BENHAM

Meredith Wheeler made the presentation of the staff report.

Alan Prather, attorney representing the Benhams. As I understand this item was previously heard and the public hearing was closed. It is now being returned to you as there were only 4 members present and it is now being heard by the full board.

Barbara Levin: It is staff's opinion that the public hearing was not closed, only the public comment was closed, and the item was deferred over to today.

After a discussion David Montgomery made a motion to reopen the public hearing and John Sands seconded the motion. After a discussion with legal counsel it was determined that this motion was not necessary.

Richard Keston, Realtor representing Mr. Benham, made a presentation. He advised that prior to his involvement with Mr. Benham, a building was built without any inspections. It was a permit for a garage. The required flood level at that point was 13.5 feet and this building was 15.5 feet. He changed his mind and decided to build it into a house instead of a garage. He had two building permits, both of which expired and ran out of money and put the thing on the market. I sold it to another realtor. At the point we wrote the contract we put two clauses in the contract. 1) That the seller would obtain all necessary inspections for work done prior to the date of closing and 2)

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that we would not close until we could be assured by the Building Department of Manatee County that we could, in fact, develop the property into a single family residence. None of this was done secretly. The County Building Department was aware right from the beginning and were very helpful. We went to them and asked what do we have to do to comply with all the necessary regulations to satisfy the Building Department and make sure that we can build this into a single family residence. They wanted an architect's certification which we acquired. They then required us to go before the Building Variance Board which we did. At that time they wanted us to open the slab and the lintels and the footers up so that they could inspect them. They checked them out and then said O.K. you have done all you need to do, now you can build a single family residence. We were unable to get a building permit prior to closing because you cannot get a building permit unless the property is in your name. We attempted to get a building permit in the previous property owners name but they said it is not transferable, to get it in this owner's name and then get the building permit. We did close and got a construction loan and he invested three months' work and his life savings in the property and when it came time for the framing inspection was the first time Mr. Benham was aware of the problem. He did get two surveys prior to this to check the setbacks and if we would have had any inkling it would have been easy to have this taken care of while the surveyor was out there. We never would have closed had we known this problem existed. We delayed the closing 90 days and each made at least 4 trips to the Building Department and there were at least a dozen phone calls to the Building Department and we have made every effort to see that we were complying with everything necessary.

Mr. Prather questioned Mr. Keston as to whether, prior to the closing on the property, he had spoken on several occasions to Charlie Parks and whether they had indicated to him that this was to be converted to a residence.

Mr. Keston: We did talk to Mr. Parks and showed him the lay-out plans of the interior.

Mr. Bosak, Building Official: Mr. Keston, was the drawing submitted with the application for determination before the Building Code Board of Appeals?

Mr. Keston: I am not sure but we did talk to Mr. Parks.

Mr. Bosak: When was the application submitted?

Mr. Keston: I am not sure but it was before the 7th of May and the hearing was on the 14th of May.

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Mr. Bosak: Was the applicant Mr. Lindsey or Mr. Benham?

Mr. Keston: I believe it was Mr. Lindsey who applied.

Mr. Bosak: When was the application for permit made?

Mr. Keston: Subsequent to the closing. I believe it was June 3rd.

Mr. Bosak: It was issued June 10th and at that time it was stamped that this is in a flood zone with a minimum flood elevation of 21 feet and a certificate of elevation was given to the applicant at that time.

Mr. Keston: This was just handed to him and no one said anything about it. It was irrelevant at that time as he already owned the property and 80% of the value was in the building.

Mr. Breeze: Mr. Benham, did you receive a Certificate of Elevation from the Planning Department when you applied for the building permit?

Mr. Benham: It was together with the permit card, electrical, plumbing permit, receipt and all and I didn't give it much notice.

Barbara Levin reminded the Board Members of the criteria they must follow in approving a variance.

David Montgomery: I would like to know from Mr. Prather which of those criteria for a standard variance and the considerations for a flood zone variance does this application come under.

Mr. Bosak to Mr. Benham: At what point did you furnish a Certificate of Elevation?

Mr. Benham: At the end of August, I didn't know I needed it prior to that.

Mr. Bosak: It wasn't until the Certificate of Elevation that we know of the exact elevation.

Mr. Prather: The question is whether the standards for flood plain have been met. The standards for variance have been met as indicated by the staff report and the information submitted at the meeting.

Barbara Levin read standards for a variance.

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Mr. Prather: When looking at the Standards 1 through 6 you do have discretion to interpret and grant or deny the variances sought. Planning staff understood the effort to act. "What do we need to do to make a single family residence? They knew the location of the property, they knew the past history of the property and the previous owner. They were part of a system whereby an architects certificate was submitted on that property. They were part of the system where they knew where the property was located in relationship to existing flood zone at the time Mr. Benham began to contact them. This was in 1985. They went to them on several occasions, even going to the Construction Code Board of Appeals. They were instructed on what to do and carried that out. That Board granted the approval of the work that had previously been done. Another time - what do we still have to do? They got surveys showing the location of the structure existing on the property. They made an application for a building permit and were told you can't do it until you own the property. Staff was aware at that time that a decision must be made. The applicant purchased the property and then applied for and received a building permit. It does have that red lettering stamped on there but that was the first time that the Planning Department failed to act. He then does all the electrical and plumbing up until the time he must submit the elevation. He then submitted the elevation and was told to either raise it up or get a variance. When he applied for the building permit they should have told him it was 21 feet. Under the flood elevation requirements, we fall into the category or area No. 1. He felt the use of the word property could apply to the cement slab as it existed.

Public Hearing Closed.

David Montgomery made a motion to deny VA-85-32 finding that it does not meet any of the criteria of the flood elevation variance requirements and finding that there is not a condition of the property that is peculiar to the property as opposed to conditions personal to the applicant which deprive the owner of all opportunity to make reasonable use of the property.

Mr. Conyers seconded the motion and motion carried 3 - 2 with Mr. Breeze and Mr. Eldridge voting against the motion.

2. VA-85-31 - DONALD ROBERTS

Meredith Wheeler reviewed the Staff Report advised that she is requesting whether the Board would reconsider this request.

Mr. Eldridge made a motion to reconsider VA-85-31 at the November 25, 1985 meeting. Mr. Sands seconded the motion. Motion carried 4 - 1 with David Montgomery voting against the motion.

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REQUEST FOR INTERPRETATION

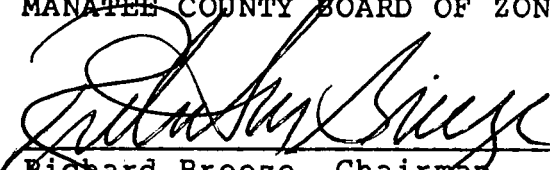
Meredith Wheeler reviewed the request for an interpretation of Manatee County Ordinance 81-4 with regard to whether the addition of new floor area to an existing structure should be classified as new construction or should it be classified as non-substantial improvements. The Land Development Code clearly states that all new construction and all substantial improvements must comply with the Flood Plain Regulations and a non-substantial improvement does not have to comply with these regulations.

There was a general discussion on these regulations and Barbara Levin advised that the Board could defer this item to the next agenda if they so desired.

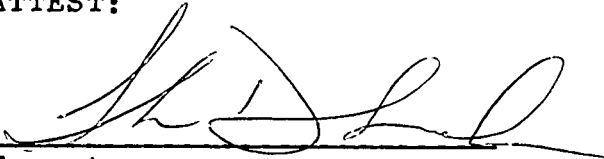
David Montgomery made a motion to defer this item to the next meeting and requested to have someone in authority from FEMA present to answer questions. John Sands seconded the motion. Motion carried unanimously.

Meeting Adjourned at 3:45 p.m.

MANATEE COUNTY BOARD OF ZONING APPEALS

  
Richard Breeze, Chairman

ATTEST:

  
Secretary

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