JANUARY 24, 2007

The Hearing Officer, Manatee County, Florida, convened a REGULAR HEARING in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, Wednesday, January 24, 2007, at 3:00 p.m.

Presiding was: John Roe

Also present were:
Jason Henbest, Associate County Attorney
Nancy Harris, Deputy Clerk,
representing R. B. Shore, Clerk of Circuit Court

All witnesses and staff giving testimony were duly sworn.

AGENDA

The agenda of January 24, 2007. HO20070124DOC001

(Court Reporter, Penny Zunker, present)

VARIANCE

Public hearing (Notices published) was held to consider

VA-06-09 HORVAT

Request: A Variance to the minimum front yard setback requirements of the A-1 zoning district (Section 602.3) to permit an existing single-family detached residence to be 38.4 feet from the front lot line instead of the required 50 feet on 1.10 acres at 13511 65th Street East, Parrish.
Staff recommended denial.
If variance is granted, staff recommends 3 stipulations.

John Roe, Hearing Officer, advised that he viewed the site.

Scott Pickett, Planning Department, reviewed the request noting a Certificate of Occupancy has not been issued because the residence does not comply with the minimum front yard setback of 50 feet. The variance is to correct an error by the home builder who measured the front yard setback from the old rather than the new right-of-way; thus, a front yard setback of 38.4 feet. Analysis of the ten required standards (identified in Manatee County Land Development Code (LDC) Sections 509.3 and 509.5.3) indicate several standards were not satisfied, and staff recommended denial.

Karl Senkow, attorney representing the applicant, submitted an exhibit book, referred to the Sunburst Acres Subdivision plat to identify Lot 1, and discussed the history of the lot. Construction commenced in November 2005. When the location of the home was being determined the plans were to meet the LDC required setback; however, the builder used the only monuments to be found which were based on the right-of-way prior to platting. There is no evidence or proof that the new monuments were or were not in place prior to building. Referring to the plat, he pointed out the dedicated right-of-way varies between 20 to 22 feet and the roadway is 18 feet wide. Due to the rural area the LDC required an 84-foot right-of-way. The home on Lot 1 is 70 feet from the pavement. He referred to a photograph and noted two homes to the east closer to the pavement than the subject house, which received Certificates of Occupancy (CO) in 2005. Home placement fits with the character of the existing neighborhood providing a good transition from the shallow depth of the eastward properties and the greater depth of the house to the west. He referred to photographs of the property and discussed the difficulties the homeowner would suffer if the variance is not granted. This area is zoned A-1 with a Future Land Use Category of UF-3 and an area of transition and the required right-of-way will be questioned in the future.

Discussion: Who measured the setback; the plat was done by Leo Mills & Associates, Inc.; plat surveyor is responsible for measuring the right-of-way; exterior markers are supposed to be in the ground prior to plat approval; Leo Mills was not contacted; building permit was done as permit by affidavit; discussion of Standards for Review; presence of contiguous landowners; etc.

Regarding Section 509.5.3 Standards for Review (3 and 4), Mr. Senkow indicated he believes the presence of the monuments or the error in flagging/capping the monuments or the failure to remove/mark is no longer present in existing monuments. The homeowner was not involved in the construction process and hired professionals who relied on professional surveyors to make determinations with regard to markers. The homeowner did not make the measurement; it was the responsibility of the agent and his employees; and, therefore, a result of a bona fide error which provides a basis for relief. Mr. Senkow indicated his finding of a prior variance approval of a similar incident, and submitted letters of support from contiguous and surrounding landowners.

In response to query from Mr. Senkow, **Don Stewart**, homebuilder, testified that when the property was purchased there were two markers and three survey stakes flagged for the right-of-way. The original markers were the only ones present after dedication of the 22.4 feet. Referring to a boundary survey, Mr. Stewart pointed out the location of the markers, and stated he measured an additional ten feet from the required 50 foot setback to provide leeway. Referring to Photograph G, Mr. Stewart identified the Horvat house and recalled a conversation regarding orientation of the home with Mr. Horvat. The house is 70 feet from the road and the setbacks do not impede the water or septic system. He indicated removal of 11 feet from the front of the home would be cost prohibitive due to the loss of bearing walls, plumbing, wiring, and roofing issues, and the structure would no longer be sound.

Paul Horvat, applicant, stated the house will be his personal residence. He was not involved in any decision regarding the setback from the roadway. The property was purchased from Mr. Stewart in 2005. His home is ten feet greater in distance from the roadway than the two eastern neighboring homes, blends well, and adds to the property values. Installation of the fence was dictated by border markers (capped/flagged) which Mr. Stewart identified on the boundary survey. He was unaware of a problem until the Certificate of Occupancy issue. The last twelve months have caused payment of $12,000 in additional interest, as well as the loss of the sale of his current residence.

Mr. Senkow noted the presence of several neighbors and area residents willing to support this request. He argued that the owner was not involved in the construction of this home as he hired and relied on a builder; the builder, in turn, relied on the survey professionals to place the permanent reference points to separate property lines and rights-of-way. He stated testimony indicates this was a bona fide error. He discussed the reasonable use of the property, the prohibitive cost, and the property use.

Jason Henbest, Associate County Attorney, questioned if the newer markers were buried or visible at the present time and if efforts were made to determine the date of placement.

Mr. Senkow indicated he was on site and could not locate the markers. Mr. Stewart noted his experience regarding the surveyors and the markers during construction.

Robert Pederson, Planning Department, advised that the hearing could be deferred in order to obtain testimony from Leo Mills & Associates, Inc., at the request of the Hearing Officer.

Discussion: No communication to date with Mr. Mills; testimony shows markers were not found; clarification of the period of time to respond; etc.

Mr. Pederson submitted a Draft Notice of Intent and Final Order for review by the Hearing Officer.

HEARING ADJOURNED

There being no further business, the hearing was adjourned.

Adj: 3:52 p.m.
/njh

Minutes Approved: March 8, 2007