

FILED FOR RECORD
R. B. SHORE

VARIANCE NO. VA-03-05
JOHANNA TRIMBOLI

2003 NOV 26 AM 9:13

CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

**FINAL ORDER OF MANATEE COUNTY, FLORIDA
HEARING OFFICER SUSAN HARTMANN SWARTZ
ON BEHALF OF MANATEE COUNTY, GRANTING
VARIANCE NO. VA-03-05, FOR A FLOODPLAIN
ELEVATION VARIANCE FROM THE MINIMUM
REQUIREMENTS SET FORTH IN THE LAND
DEVELOPMENT CODE, SUBSECTION 718.6.1.7(C),
TO ALLOW AN EXISTING HISTORIC STRUCTURE
AND A 150-SQUARE-FOOT SUNROOM/DECK
ADDITION AT A FINISHED FLOOR ELEVATION OF
7.56 FEET, WITHIN AN A-13 (ELEVATION 11 FEET)
FLOOD ZONE IN A RSF-6/CH/HA (RESIDENTIAL
SINGLE FAMILY -- 6 DWELLING UNITS PER
ACRE/COASTAL HIGH HAZARD AREA AND
HISTORICAL AND ARCHAEOLOGICAL OVERLAY)
ZONING DISTRICT; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE
DATE.**

WHEREAS, the Board of County Commissioners of Manatee County, Florida adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended (hereinafter "the Land Development Code"); and

WHEREAS, pursuant to the Land Development Code and in particular, subsection 509.5.3 thereof, a Hearing Officer has the authority to grant variances; and

WHEREAS, the Manatee County Historic Preservation Board (also referred to herein as "HPB") issued a Certificate of Appropriateness (also referred to herein as "COA") to Johanna Trimboli on February 3, 2003 (HPB/COA-02-04), modified on September 29, 2003 (HPB/COA-03-03); and

WHEREAS, Johanna Trimboli (also referred to herein as "the applicant") has requested a floodplain elevation variance to allow an existing historic structure and construction of a sunroom/deck addition at a finished floor elevation of 7.56' without meeting the minimum floodplain elevation requirements of Land Development Code, subsection 718.6.1.7(C), for a single-family residential lot in a RSF-6/CH/HA (Residential Single Family -- 6 dwelling units per acre/Coastal High Hazard Area and Historical and Archaeological Overlay) zoning district and the RES-6/CEA/CSVA/HR (Residential -- 6 dwelling units per acre/Coastal Evacuation and Coastal Storm Vulnerability Area Overlays, and Historical Overlay) Future Land Use Category; and

WHEREAS, on October 30, 2003, Hearing Officer Susan Hartmann Swartz held a public hearing to receive the staff, applicant, and public comment and argument, along with documentation and the staff report presented, as well as all other matters presented regarding the requested floodplain elevation variance for Johanna Trimboli.

NOW, THEREFORE, the Final Order regarding Variance No. VA-03-05 requested by Johanna Trimboli, states as follows:

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DKT # 1874280
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Section 1. Findings of Fact.

- A. This request is for a floodplain elevation variance for a floodplain elevation variance to allow an existing historic structure and construction of a sunroom/deck addition at a finished floor elevation of 7.56' without meeting the minimum floodplain elevation requirements of the Land Development Code, subsection 718.6.1.7(C), for a single-family residential lot in a RSF-6/CH/HA (Residential Single Family -- 6 dwelling units per acre/Coastal High Hazard Area and Historical and Archaeological Overlay) zoning district and the RES-6/CEA/CSVA/HR (Residential -- 6 dwelling units per acre/Coastal Evacuation and Coastal Storm Vulnerability Area Overlays, and Historical Overlay) Future Land Use Category.
- B. The property is located at 12016 45th Avenue West, Cortez, Florida.
- C. The property consists of 5,950 square feet, or ± 0.17 of an acre.
- D. The proposed addition constitutes new construction and substantial improvement on the lot.
- E. This floodplain elevation variance request is a permitted variance under the standards of the Land Development Code, subsection 718.10.
- F. The 876-square-foot single-family home was constructed in 1895, and served as a schoolhouse. It is the oldest one-room schoolhouse in Manatee County.
 - 1. The Florida Department of State, Division of Historical Resources reviewed the applicant's request (DHR Project File Number 2003-6750) in accordance with Section 106 of the *National Historic Preservation Act of 1966*, as amended, and *36 CFR Part 800: Protection of Historic Properties*.
 - a. The property (8MA655) contributes to the Cortez Historic District (8MA975), which is listed in the *National Register of Historic Places*.
 - b. The Florida Department of State, Division of Historical Resources stated that in its opinion, the issuance of the requested floodplain elevation variance will have no adverse effect on the historic character of the property and the district.
 - 2. Subject to certain stipulations, the Manatee County Historic Preservation Board issued a Certificate of Appropriateness to Johanna Trimboli on February 3, 2003 (HPB/COA-02-04), modified on September 29, 2003 (HPB/COA-03-03), to allow the elevation of the structure, and addition of a sunroom and outdoor deck, to a height not to exceed a finished floor elevation of 7.56'.
- G. Elevating the structure to the existing requirements would destroy the historic character of the building and negatively impact the historic designation of the district and thus, a unique and unnecessary hardship would result if these elevation requirements were strictly enforced.

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- H. This variance request is unique to the structure due to its historic significance as the oldest one-room schoolhouse in Manatee County. This kind of request would not be generally applicable to other property within the vicinity.
- I. In accordance with the Land Development Code, subsection 509.4.1, the Building Official issued a determination of consistency as to this variance request and the Land Development Code, Section 718.
- J. In accordance with the Land Development Code, subsection 718.10.1.1, this variance request is the minimum variance necessary, considering the flood hazard, to afford relief; and which would allow the applicant continued use of this property while maintaining and not destroying the historic character, design, and designation of the structure.
- K. The Manatee County Comprehensive Plan supports both flood protection and historic preservation.
 - 1. The proposed variance appears to be an appropriate balancing of these two worthy goals.
- L. In accordance with the Land Development Code, subsection 718.10.1.3, a Notice of Disclaimer will be issued upon approval of this variance request.

Section 2. Conclusions of Law.

- A. Pursuant to the Land Development Code, subsection 718.10.1, the Hearing Officer has jurisdiction over the parties and subject matter in this proceeding.
- B. The Land Development Code, Section 718, permits a variance from the floodplain elevation requirements.
- C. The applicant has the burden of proving entitlement to the variance sought. *See Gomez v. City of St. Petersburg*, 550 So.2d 7 (Fla. 2d DCA 1989); *see also Redner v. City of Tampa*, 827 So.2d 1056 (Fla. 2d DCA 2002).
- D. This variance request is not prohibited by the Land Development Code, subsection 509.3.
- E. Based on the findings of fact set forth in section 1 hereinabove, this variance request meets the standards set forth in the Land Development Code, subsection 509.5.3, as follows:
 - 1. The particular physical surroundings, shape, topographical condition, or other physical or environmental condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.

2. The conditions upon which the request for a variance is based are unique to the parcel and would not be applicable, generally, to other property within the vicinity.
 3. The variance is not based on any conditions, including financial, occupational, or ability, which are personal to the applicant as applied to the property involved in the application, except that physical handicaps or disability may be considered where relevant to the request.
 4. The alleged hardship has not been created by any person presently having an interest in the property or was created as a result of a bona fide error.
 5. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the vicinity.
 6. The proposed variance will not substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the vicinity.
 7. The variance granted is the minimum variance that will make possible the reasonable use of the property.
 8. The property cannot be put to a reasonable use which complies fully with the requirements of the Code unless the variance is granted.¹
- F. As conditioned herein, this variance request is consistent and complies with the applicable standards and criteria, including the technical evaluation requirements, for a floodplain elevation variance, as set forth in the Land Development Code, Section 718.10, including subsections 718.10 and 718.10.2.
- G. Approval of the requested floodplain elevation variance will cure the violation of non-compliance with the Land Development Code floodplain elevation requirements.

¹ The Land Development Code, subsection 509.5.3(9) ("If a bona fide staff error has been made that has led to construction that does not comply with the Code") [sic] does not apply to this variance request.

Section 3. Order. Based upon the foregoing, a variance is hereby approved, granted, and issued, to Johanna Trimboli for the property located at 12016 45th Avenue West, Cortez, Florida, more particularly described in Exhibit "A" attached hereto and incorporated herein, with the site plan submitted with this application attached as Exhibit "B" hereof, to allow an existing historic structure and construction of a sunroom/deck addition at a finished floor elevation of 7.56' without meeting the minimum floodplain elevation requirements of the Land Development Code, subsection 718.6.1.7(C), subject to the following conditions:

- A. This variance shall not be effective until it has been recorded in the Public Records of Manatee County, Florida by the applicant and a copy of the recorded Order is received by the Planning Department.
- B. This approval shall be contingent upon the applicant's compliance with all of the conditions set forth in Manatee County Historic Preservation Board, Certificate of Appropriateness HPB/COA-03-03.
- C. This variance shall not run with the land.
- D. This variance shall terminate should 50 percent or more of the historic structure be destroyed.
- E. All construction on this site shall use flood-resistant materials as approved by the Building Department.
- F. The existing structure and sunroom/deck shall be elevated to a height not to exceed 7.56' above mean sea level.
- G. The applicant shall obtain a Notice of Disclaimer signed by the Building Official, stating, "The variance does not run with the land and applies only to the current structure and use. Any change in the structure (substantial damage, etc.) or use may invalidate this variance. The issuance of a variance to construct a structure below the required elevation will result in increased insurance premium rates for flood insurance up to or exceeding twenty-five dollars (\$25.00) for every one hundred dollars (\$100.00) of coverage and such construction below the required elevation increases the risks to life and property."
- H. The applicant shall record this Notice of Disclaimer with the Office of the Clerk of the Circuit Court, so that the Notice of Disclaimer runs with the land.

Section 4. Appeals. In accordance with the Land Development Code, subsections 304.7 and 509.8,² any appeal of this Order shall be filed within thirty (30) days from the date hereof.

² The Land Development Code, subsection 509.8, appears to erroneously reference the Land Development Code, Section 303.

The Land Development Code, subsection 718.11, references appeals pursuant to Section 516, but those are different from an appeal of a variance issued by a hearing officer, such as this.

Section 5. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of the variance, which shall remain in full force and effect.

Section 6. Effective Date. The effective date of this Variance shall be upon execution of this Order and its recordation in the Official Records by the applicant with the Office of the Clerk of the Circuit Court and receipt of a copy of the recorded Order by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY, this 26~~th~~ day of November, 2003.

MANATEE COUNTY, FLORIDA


SUSAN HARTMANN SWARTZ, as
Manatee County Hearing Officer

ATTEST: R. B. SHORE
Clerk of the Circuit Court


Deputy Clerk

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EXHIBIT "A"

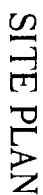
LEGAL DESCRIPTION:

BEG AT PT 8 n CHS S & 9 n CHS W OF NE COR OF LOT 3 U S IN SEC 3-35-16, TH S 100 FT, TH E 70 FT, TH N 100 FT, TH W 70 FT TO POB, LESS THE N 15 FT, TOGETHER WITH O.R. 1633 P 4949 DESC AS: COM AT A PT 8 n CHAINS (561.00 FT) S AND 9 n CHAINS (627.00 FT) W OF THE N COR OF LOT 3, U S SEC 3-35S-163; TH S 100.00 FT; TH W 3.81 FT; TH N 100.00 FT; TH E 3.81 FT TO THE POB, LESS THE N 15.00 FT FOR RD PURPOSES

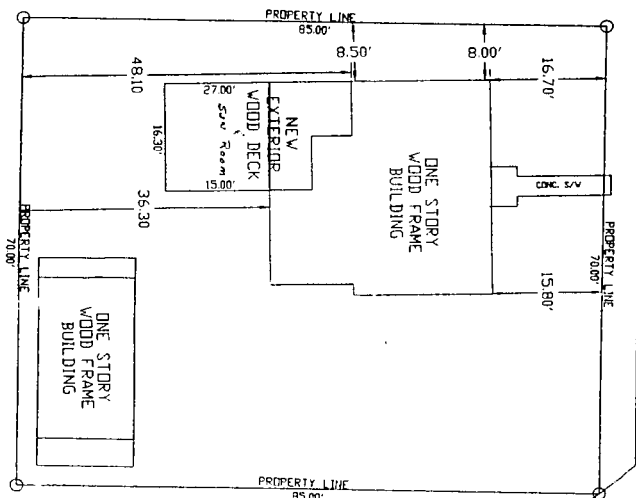
EXHIBIT "B"

SITE PLAN SUBMITTED WITH APPLICATION

FILED AND RECORDED 11/26/2003 2:24:07 PM 8 of 8
CIRCUIT COURT MANATEE COUNTY FL.

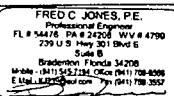
 $1' = 10'$ $1' = 10'$

LEGAL DESCRIPTION



121ST STREET WEST

Foundation Modifications For:
Johanna Trimboli
12016 45th Avenue W.
Manatee County, Florida



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WHILE EVERY ATTEMPT HAS BEEN MADE IN THE PREPARATION OF THIS PLAN TO AVOID MISTAKES, THE DESIGNER CANNOT GUARANTEE AGAINST HUMAN ERROR. THE CONTRACTOR ON THE JOB MUST VERIFY ALL DIMENSIONS AND OTHER DETAILS AND BE RESPONSIBLE FOR THE SAME.

OWN D.D.C.
DATE: 10/08/02
REV

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