



REGULAR MEETING OF THE BOARD OF ADJUSTMENT MINUTES

Tuesday, December 5, 2017

6:30 PM

City of Margate
Municipal Building

City Commission

Mayor Arlene R. Schwartz
Vice Mayor Anthony N. Caggiano
Lesa Peerman
Tommy Ruzzano
Joanne Simone

City Manager

Samuel A. May

Interim City Attorney

Goren, Cherof,
Doody & Ezrol, P.A.

City Clerk

Joseph J. Kavanagh

PRESENT:

Chad Dangervil, Chair
Karl Artner, Vice Chair
Julianne Lore, Secretary
Fred Schweitzer

ALSO PRESENT:

Julie F. Klahr, law offices of Goren, Cherof, Doody & Erzol, P.A.
Reddy Chitepu, Acting Director of Economic Development and Director of D.E.E.S
Andrew Pinney, Senior Planner
Andy Dietz, Associate Planner
Carlos Gerhardt, petitioner

ABSENT:

Patrick Laffey

The regular meeting of the Board of Adjustment of the City of Margate, having been properly noticed, was called to order by Chair Chad Dangervil at 6:31 p.m. on Tuesday, December 5, 2017. The Pledge of Allegiance was recited followed by a roll call of the Board members.

ID 2017-772

- 1A) **APPROVAL OF THE MINUTES FROM THE BOARD OF ADJUSTMENT MEETING ON NOVEMBER 7, 2017**

Mr. Schweitzer made the following motion, seconded by Mr. Artner:

MOTION: SO MOVE TO APPROVE AS WRITTEN

ROLL CALL: Mr. Laffey, absent; Mr. Schweitzer, Yes; Ms. Lore, Yes; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 4-0 vote.

- 2) **NEW BUSINESS**

ID 2017-762

- 2A) **BA-16-17** VARIANCE REQUEST FOR PERMISSION TO BUILD AN UNDERGROUND SWIMMING POOL AND DECK ENTIRELY WITHIN AN FPL UTILITY EASEMENT.

Economic Development Department

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All those speaking on the item were duly sworn.

Andy Dietz led with a PowerPoint presentation. He showed an aerial view of the immediate area and explained that the request involved a residential property that fronted the C-14 canal to the north. He said the applicant proposed building a pool located within the Florida Power and Light (FPL) easement. He said this easement was different from other easements because it accommodated the giant, above-ground power lines. He said the request was in conflict with section 3.14(3) of the Code because pools were non-temporary structures by nature. He said normally easement agreements were meant for such things as fences which could easily be moved should FPL need to do work in the easement. He said one of the unique conditions of the property was that there were fiber optic cables on the south side of the easement which prevented a partial encroachment for any pool structure in the event of a variance. He showed another aerial view of the property and neighboring properties noting that almost 68 percent of the properties were absorbed by the easement.

He said that staff had looked at the history of pools and easement agreements and found that there had been only a few instances where an easement variance had been granted; and, in most of those cases, it had been for small scale encroachments.

Mr. Dietz stated that the petitioner provided an easement agreement that had been signed by FPL in support of the project. Based on that, he said staff recommended approval under the condition that the property owner would execute an indemnification agreement that would be tied to the property for future homeowners, and that the agreement be recorded in the public records of Broward County before the issuance of a building permit by the City.

Carlos Gerhardt, 7441 Southwest 1st Street, said that he had spoken about this request at prior City Commission meetings and he said he understood the consequences of building inside an easement. He said he understood that FPL would be able to destroy his pool if they decided to install power lines and his pool was in the way. He explained that one of the reasons that he wanted to build on the easement was because his property was further north than the neighboring properties. He said his neighbors to the east and west side both had pools and this was the only option available for him. He said there was only 10-12 feet that existed between his home and the utility easement line to the north.

Mr. Artner asked the height of the electrical lines. Andrew Pinney said he did not know the exact height but he said they were the large, transmission type poles that carried very high voltage. Mr. Artner asked whether the pool could be located on the other side of the fiber optic lines. Mr. Gerhardt referenced the aerial view of his property and he pointed out that the location of the easement line was inside the pavers. Mr. Artner expressed a concern about the pool being located under the power lines. Mr. Pinney referenced the property survey and pointed out the location of the proposed pool and the overhead power lines.

Chair Dangervil asked Mr. Gerhardt if he had any concerns about the possibility of lines coming down due to weather. Mr. Gerhardt said the power lines had been there a long time and it was his opinion that they were there to stay. He said there have been many hurricanes since the lines were replaced and there had not been any damage.

Mr. Schweitzer agreed that the poles were massive structures. He commented that Mr. Gerhardt's pool had to go out a little further because of the underground wires that were put in close to his property. He said the proposed location was the only place Mr. Gerhardt could put the pool and since FPL approved it, he did not have an issue with it.

Mr. Artner expressed his concern about the pool's close proximity to the power lines. He said incidents like a line dropping could happen.

Reddy Chitepu explained that staff had concerns when it first reviewed the application. He said staff made sure FPL reviewed the application thoroughly. He said there were back and forth discussions with FPL and at the City Commission meetings. He said two different people at FPL signed off on it including a supervisor. He said that since FPL did not have any safety issues with it and they signed off on the request, staff was comfortable with revising its recommendation to approve with conditions.

Mr. Artner asked whether there were any regulations that would prohibit someone from selling their home right after doing such a project. Mr. Chitepu said the only restriction would be that the property could not be sold for one year if it were done with an owner-builder permit. He said since it was a pool, it was likely being done by a contractor and there would not be any restrictions to sell the property.

Mr. Artner asked Mr. Gerhardt whether he planned to file an owner-builder permit or to have a contractor do the work. Mr. Gerhardt responded that he would have a contractor do the work.

Ms. Lore commented that pools were likely \$30,000-\$40,000 to build nowadays, and she asked Mr. Gerhardt if he were willing to take the chance. Mr. Gerhardt responded, "Yes, I am."

Mr. Artner asked the City Attorney whether the applicant could be required to make a notation in the public record that the pool was located 100 percent within an easement so that a prospective new buyer would be aware of that fact. Mr. Chitepu responded that one of the conditions of the approval was that Mr. Gerhardt had to sign a hold harmless agreement with the City of Margate and have it recorded in the public records of Broward County. He said when a prospective buyer did a title search, the hold harmless agreement would come up, and they would be aware that the buyer would be taking the responsibility for having the pool in the easement.

Julie Klahr, law offices of Goren, Cherof, Doody & Erzol, P.A., responded that title work and a survey were required whenever someone purchased a home. She said the survey would show the exact type of things that had been displayed and shown to them that evening. She said the terms of the hold harmless agreement usually included that it was to be applied and held against all successors and interests and assigns, which was part of the reason that it was being recorded. When the title work was pulled, she said that document would be pulled and it would make any successor/owners of interest of that real property aware that it existed, and anybody who was doing title would write it subject to the conditions that existed on the property, including the easements and the indemnification agreement that had been recorded .

Mr. Pinney asked Mr. Gerhardt to provide his permitting schedule for the record. Mr. Gerhardt responded that he had one concern. He said it was his understanding that pool permits required a survey that was no more than six months old and since he had been going through the

process for quite a while, he was concerned that it might delay the permitting. He said he planned to submit a full permit request no later than February. Mr. Pinney said he mentioned it because, if the Board approved his request, Code gave a time limit of 180 days to have a permit issued. Mr. Gerhardt said that would be more than enough time.

Mr. Artner made the following motion, seconded by Ms. Lore:

MOTION: TO APPROVE WITH STAFF CONDITIONS

ROLL CALL: Mr. Laffey, absent; Mr. Schweitzer, Yes; Ms. Lore, Yes; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 4-0 vote.

ID 2017-773

2B) APPROVAL OF THE 2018 MEETING CALENDAR

Andrew Pinney pointed out two meeting date conflicts that existed in July and August. He explained that the first Tuesday of the month was July 3rd and the City Commission had moved their meeting from July 4th to July 3rd. In August, he said the first Tuesday of the month was National Night Out, and in past years the meeting date has been changed to accommodate Board members who wished to attend the event. He asked the Board for direction on alternate dates.

Chair Dangervil asked whether the dates for those months could be determined based on the amount of agenda items. Mr. Pinney responded that the advertising requirements for the applicant and the City made that difficult. Chair Dangervil asked if it could be looked at within a 90-day window. Mr. Pinney said it could be brought back to them in April or May. He pointed out the importance of the calendar in determining the deadlines for submission of incoming applications.

There was a short back and forth discussion among the Board members about alternative dates for July. Chair Dangervil recommended that the Board revisit the schedule in March before confirming any dates. He asked the other Board members for their consensus.

Mr. Artner asked Mr. Pinney how much advance time was needed. Mr. Pinney said that in addition to the advertising requirements, the City also wanted to be fair to project managers of large developments who might be looking 12-18 months ahead to track out their schedule. He said the earlier it was figured out, the better.

Chair Dangervil said the schedule could be reviewed in February instead of March.

Mr. Lore asked if the meeting could be held on a Thursday instead of a Tuesday since some of the Board members had conflicts with Tuesdays. Mr. Pinney said the most recent ordinance gave the Board flexibility to change the date.

Ms. Lore made the following motion, seconded by Mr. Schweitzer:

MOTION: TO APPROVE THE 2018 MEETING SCHEDULE AND ADDRESS THE JULY AND AUGUST DATES IN FEBRUARY

ROLL CALL: Mr. Laffey, absent; Mr. Schweitzer, Yes; Ms. Lore, Yes; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 4-0 vote.

ID 2017-770

2C) DISCUSSION ON RULES OF ORDER AND PROCEDURE FOR THE BOARD OF ADJUSTMENT

Chair Dangervil asked the Board if they had an opportunity to review the Rules of Order and Procedure that staff had put together. He commented that he liked the simple and clean way they looked.

Mr. Artner said that he had submitted some suggested changes which included holding the Board member nominations in April versus February or March, and specifying that staff would make a presentation to the Board as part of the meeting process. Mr. Pinney said that Mr. Artner's comments were incorporated into the draft version that was in the meeting back-up. He said he also received some additional feedback which included changing references to Chairman to Chairperson and some minor text changes under item four (4) which he read aloud. He asked if the Board members were in agreement with the changes. None of the Board members indicated any objections.

Mr. Artner made the following motion, second by Ms. Lore:

MOTION: TO APPROVE AS AMENDED

ROLL CALL: Mr. Laffey, absent; Mr. Schweitzer, Yes; Ms. Lore, Yes; Mr. Artner, Yes; Mr. Dangervil, Yes. The motion passed with a 4-0 vote.

3) **GENERAL DISCUSSION**

All the Board members wished everyone a Merry Christmas, Happy Holidays, and Happy New Year.

Andrew Pinney announced that it was Andy Dietz's last meeting as he had accepted a position at Broward County.

There being no further business, the meeting was adjourned at 7:03 p.m.

Respectfully submitted,

Prepared by Rita Rodi

Chad Dangervil, Chair