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Advisory Board of Adjustment
Franklin County Florida

The Franklin County Advisory Board of Adjustment met in regular session on Wednesday, February 05, 2014 at 10:00 a.m. in the Hearing Room of the Franklin County Courthouse.

The attendance was as follows:

PRESENT:

ABSENT:

Vance Millender ----- Chairman
Joe Hambrose ----- Member
Mitch Griner ----- Member
Gil Autrey ----- Member
Michael Shuler ----- Attorney
Rachel Ward ----- Zoning Adm.

Larry Hale ----- Member

The first item on the agenda was approval of the December 4, 2013 minutes as mailed. There being no discussion and on Motion by Member Mitch Griner, seconded by Member Joe Hambrose and by unanimous vote, it was agreed to approve the December 4, 2013 minutes as mailed.

It was agreed to hear item three on the agenda next since it was non controversial in nature. Therefore, the next item for consideration was for a request for a variance to extend and repair a wooden seawall on property lying in Section 35, Township 7 South, Range 5 West, 2086 Highway 98 West, Carrabelle, Florida. Request submitted by David R. Zimmerman, owner.

Mr. David Zimmerman, owner spoke to the members and explained that he has experienced erosion on the property. He provided pictures of the erosion for the member's information. Mr. Zimmerman explained that he wished to repair and extend the existing wooden seawall and rip rap revetment which had failed. He said he will remove the steps on the east side which are over the property line and the seawall will angle in on

the ends. New steps will provide access to the water. He said he will be back filling behind the seawall where the erosion has occurred.

Attorney Michael Shuler inquired regarding how much fill will be placed on the property.

Mr. Zimmerman explained that he will use only enough fill to replace what has eroded. He will not be raising the elevation of the property.

Rachel Ward stated that she had only one neighbor who had commented. She said he was in favor of Mr. Zimmerman's request to repair the seawall and rip rap. She told Mr. Zimmerman that he would have to keep the improvements on his property and not encroach into the Department of Transportation right of way.

After discussion and on motion by Member Mitch Griner, seconded by Member Joe Hambrose and by unanimous vote of the members present, it was agreed to recommend that the Franklin County Board of County Commission approve Mr. Zimmerman's request as stated.

The third and final item on the agenda was for consideration to approve a request for an after-the-fact variance to install a swimming pool 6.5 feet into the rear setback line of property described as 1080, East Gulf Beach Drive, Lot 11, Block J, Unit 2, St. George Island, Franklin County, Florida. Request submitted by William & Donna Nichols, owners.

Rachel Ward explained the reason for the request was that the property owners, William and Donna Nichols had Wade Brown, surveyor, flag the corners of his lot before construction. Then he had Cox Pools install an in ground pool based on the information from Mr. Brown's survey company.

Mr. Eric Myers, the adjoining property owner, had questioned whether the flags were in the correct location and expressed concerns that the pool was being installed in the side setback.

Surveyor, Wade Brown addressed the members and explained that his employee had flagged the south east corner of Mr. Nichols property as a reference to the lot line. He did so based on a marker he had located there. He said Mr. Myers had called him regarding the placement of the marker and expressed concerns that the markers were not in the correct location.

Mr. Brown stated that he went back to the site and did locate a second marker and re-flagged the corner. He stated that at this time the pool was about 80% complete. He also noted that the pool was encroaching into Mr. Nichols setback, but was not over the lot or encroaching into Mr. Myers property.

Chairman Vance Millender inquired about the inspections by the building department. He asked why the building official did not see the problem when he was on site for the inspections.

Mrs. Ward explained that the pool was encroaching about 6.5 feet into the setback and it is not always easy, with open lot lines, to see where the lot line runs. She also noted that the site plan which was submitted at the time the permit was issued indicated the pool met the setback.

Mr. Brown told the members that it was a mistake on his part. He said the pool contractors had built the pool according to flags provided by his survey marker. This was what led to the homeowners placing the pool in the setback.

Attorney John Grant addressed the members on behalf of Mr. Eric Myers, the adjoining property owner. He said no special conditions exist to support the variance request. He stated that for a variance to be granted, the need must not be created by the applicant. He went on to explain that although Mr. Nichols had one corner flagged, the mistake would not have happened had he requested a full survey; thus creating the hardship.

He went on to say that for the board to grant a variance it must prove unnecessary and undue hardship. He stated that a precedent had been set by a similar court case,

where a pool was built in the setback. He noted both the circuit court and appellate court had upheld the ruling.

He said from a legal stand point, Mr. Myers objection is due to the pool being placed too close to his house. He said that the Myers had purchased the property based on the assumption that the setbacks, according to policy for the zoning regulations for his property, would be kept. On this basis, he asked the Board to deny this application for variance.

Mr. William Nichols, owner, told the members that he started the project a few months ago. He and his wife had dreamed of a pool and this was the only place he could locate the pool on the lot.. He stated that he thought the power pole was the property line. He said unfortunately it was a costly mistake. He told the members that he did plan to build a 5 foot shadow box fence on the property line. He said the bottom line is, the pool is not encroaching on the Myers property, only into his own setback. Therefore, he requests that the Board grant the variance.

Member Gil Autrey inquired about the cost to correct the problem and who would be responsible.

Ms. Ward stated that she felt it was a simple mistake. She said Mr. Brown's family has been in the surveying business for about 38 years and unfortunately, mistakes do happen. She said that although it is not a hardship created by the land. She said she did feel there is a hardship which was created by the incorrect survey marker thru no fault of the homeowner.

County Attorney Michael Shuler stated that negligence of the surveyor should not be attributed to the responsibility of the homeowner. He stated that the homeowner did not create the hardship. The hardship was created by an independent contractor, in this case the surveyor.

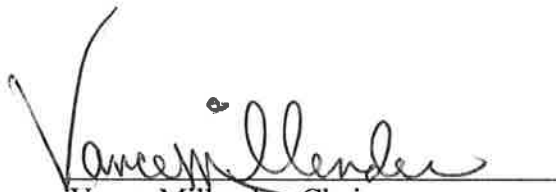
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Mr. Grant stated that it still remains that had Mr. Nichols ordered a full survey it would have been clear that the pool was too close to the lot line. He further stated that the pool does violate the setback.

Mr. Shuler said he did agree with Mr. Grant in that an economic hardship is not a basis for variance. If the hardship is created by the applicant then cost is not a consideration. However, since the hardship was caused by a third party, independent contractor, he agreed with the recommendation of the Zoning Administrator that the variance should be granted.

After much discussion and on motion by Member Gil Autrey, seconded by Member Mitch Griner and by unanimous vote of the members present, it was agreed to recommend that the Board of County Commission approve the variance as requested.

There being no further business the meeting adjourned at 10:30 a.m.


Vance Millender, Chairman

ATTEST:

Rachel L. Ward, Zoning Administrator