



BOARD OF ADJUSTMENTS
3048 S. Atlantic Avenue
Daytona Beach Shores, Florida
Wednesday August 2, 2017
10:00 a.m.
AGENDA

CALL TO ORDER

Election of Chair and Vice-Chair

Approval of Minutes from October 14, 2015

VARIANCE REQUESTS - PUBLIC HEARING/BOARD DETERMINATION

1. Zoning Variance ZV12017031: 1901-19030 S. Atlantic Avenue, Daytona Beach Shores, 1901 1903 S. Atlantic, LP Owner

DISCUSSION

REMARKS OF BOARD MEMBERS

ADJOURNMENT

NOTICES: Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the Board Of Adjustments, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.



**MINUTES
BOARD OF ADJUSTMENTS
3048 S. Atlantic Avenue Daytona Beach Shores, Florida
October 21, 2015**

Present: Anthony Rembiszewski, Bill Dryer, and Norman Wnuk.

Excused: Melvin Lindauer and Stan Alexander.

Staff: Board Attorney Lonnie Groot, City Planner Stewart Cruz and Community Services Director Fred Hiatt.

CALL TO ORDER: Mr. Rembiszewski called the meeting to order at 9:00 am.

It was noted that this meeting was a continuance from October 14, 2015.

Approval of Minutes from April 24, 2015

Mr. Dryer moved, seconded by Mr. Wnuk to approve the minutes of April 24, 2015.

The motion passed unanimously by a voice vote.

VARIANCE REQUESTS - PUBLIC HEARING/BOARD DETERMINATION

Mr. Rembiszewski opened the Public Hearing continued from October 14, 2015, at 9:05 am.

City Planner Stewart Cruz gave the board background information regarding the property. The hotel was first built in the early 1970's and in the mid 1990's the hotel ownership changed to a condominium form. The building's side yard setbacks are currently considered non-conforming with today's building codes. On July 8, 2015, a site plan was received and reviewed by staff. The applicant would like to construct a decorative pergola on the north side of the building to assist in protecting existing electrical equipment. It was determined that a variance would be needed due to the front yard setback. The requirement is 30 feet and this would only be 11 feet. Mr. Cruz showed existing pictures of the area involved and a proposed sketch of the pergola. If the pergola was constructed, it would increase the building's non-conformity and that is not allowed by code. However, the pergola structure and its proposed use are consistent with the City's Adopted Comprehensive Plan and Future Land Use Map.

Mr. Cruz reviewed a few of the criteria that must be met for the board. After reviewing the material submitted, it was staff's opinion that only two criteria points were met. Mr. Rembiszewski declared that he had visited the site and felt the exposed equipment could be an eyesore from residents at nearby Towers Ten. Mr. Cruz reported that he had received a few phone calls from the neighboring residents, but no one showed up today to

voice their opinion. He added that the building had lattice work previously around the equipment, but at some point it was removed.

Richard Merlino, board member of the Pirate's Cove Condo. Assoc., spoke as the applicant. He explained that there used to be lattice work around the air conditioners but with the hurricanes of 2004, it was blown off and not immediately replaced. The insurance company wouldn't cover the cost and it is now up to the owners to finance the repair. He noted that there is a lot of wind that funnels through the corridor and the machinery needs protection. Director Hiatt verified that a structure used to be around the air conditioners years ago. If they had rebuilt the structure within 6 months of the event, they could have done it with no issues. Now many years later, a variance is required.

There was no one in the audience who wished to speak for or against the variance.

Mr. Cruz indicated that all due public notice was turned in to the City Clerk.

Mr. Dryer moved to deny the variance.

The chair noticed that there was no second and the motion died.

Mr. Wnuk moved, seconded by Mr. Dryer to approve the variance.

Mr. Wnuk felt the equipment needed to be covered and protected. If the structure had been built within 6 months of the removal, it would have been approved.

Mr. Dryer indicated he was using the evidence presented by staff and the application. In his opinion, the criterion was not met to grant the variance.

Director Hiatt stated that staff drafted the report with the information they had at that time. We have now heard from the applicant with additional background information and it is evidence to rely on.

Attorney Groot asked if any of the evidence presented today would have changed Mr. Cruz's staff report. Mr. Cruz admitted he hadn't taken into account the wind velocity and wind tunnel effect and where the air conditioners are placed in relation. Mr. Merlino reiterated that the wind tunnel effect is very hard on electrical equipment and he replaced two units recently.

Board Attorney Groot explained that the variance could be approved by the Board due to special circumstances. He listed the following reasons: per the City Planner, (1).The application is consistent with the City's Comprehensive Plan and Future Land Use Map in that it provides for, and requires, appropriate buffering between uses.

(2). Construction of the structure (the decorative pergola) would eliminate a code enforcement violation that exists under current controlling law although the original construction occurred prior to the existence of that law.

(3). In the spirit of Section 70.51, Florida Statutes, the denial of the variance could be deemed an enforcement action which would be unfair or unreasonably burden the Property given the unique set of facts in this case.

(4). The granting of the variance is very much in the public interest in order to buffer the unsightly equipment and create an aesthetic benefit to the public in that the variance impacts the beach approach abutting the Property and the construction resulting from the variance will reflect highly upon the City and improve the enjoyment of the public and abutting Property Owner of the views related to the equipment located Premises all of

which equipment is necessary for the normative operating of the building and facilities located on the Premises.

Mr. Wnuk amended his motion to accept the four findings of the Board Attorney and Mr. Dryer seconded the amendment.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).

Yes: Anthony Rembiszewski, Bill Dryer, Norman Wnuk,

REMARKS OF BOARD MEMBERS - Board Attorney Groot reminded the board that the burden is on the applicant to help staff decide whether the criteria had been met to recommend approval of a variance. He also stated that it is ok to visit the proposed site as long as the visit is disclosed during the hearing.

ADJOURNMENT: The meeting ended at 10:05 am.

ATTEST:

Cheri Schwab, City Clerk

Mel Lindauer, Chair