



**MINUTES  
CITY OF LAKE WORTH BEACH  
PLANNING & ZONING BOARD MEETING  
CITY HALL COMMISSION CHAMBER  
WEDNESDAY, OCTOBER 04, 2023 -- 6:00 PM**

**ROLL CALL and RECORDING OF ABSENCES:** Present were: Daniel Walesky, Vice-Chair; Mark Humm, Zade Shamsi-Basha; Evelyn Urcuyo; David Mathews; Henry Pawski. Absent: Juan Contin. Also present were: Abraham Fogel, Senior Community Planner; Scott Rodrigues, Principal Planner; Erin Sita, Assistant Director for Community Sustainability; Elizabeth Lenihan, Board Attorney; Sherie Coale, Board Secretary.

**PLEDGE OF ALLEGIANCE**

**ADDITIONS / DELETIONS / REORDERING AND APPROVAL OF THE AGENDA** None

**APPROVAL OF MINUTES:**

A. September 6, 2023 minutes

**Motion:** M. Humm moves to approve the minutes as presented; H. Pawski 2<sup>nd</sup>.

**Vote:** Ayes all, unanimous.

**CASES:**

**SWEARING IN OF STAFF AND APPLICANTS** Board Secretary administered oath to those wishing to give testimony.

**PROOF OF PUBLICATION** – provided in the meeting packet

1) 1701 12th Avenue N - Fence Variance

**WITHDRAWALS / POSTPONEMENTS** None

**CONSENT** None

**PUBLIC HEARINGS:**

**BOARD DISCLOSURE:** M. Humm states he knows the applicant but knows nothing about this request before the Board. He is able to objectively evaluate the presentation.

**UNFINISHED BUSINESS:** None

**NEW BUSINESS:**

**A. PZB Project Number 23-01500011:** Consideration of a variance to allow a 6-foot high fence in the required setback for the property located at 1701 12th Avenue North. The subject site is zoned Single Family Residential (SF-R) and has a future land use designation of Single Family Residential (SFR).

**Staff:** A. Fogel provides the Board with a brief history of the property leading to this request. The analysis indicates the request should not be granted as it does not meet the variance criteria. Alternatively, staff provided the applicant with an option to apply for an Administrative Adjustment. The adjustment request would allow the parcel be deemed dual frontage and in turn a four-foot fence on the side property line could be permitted. For added privacy, hedging could be installed in the side yard while respecting the existing tree locations. Staff recommends not approving the request as the variance criteria evidence does not indicate a hardship and the owner would not be deprived of the reasonable use of the land.

**Applicant:** Carolyn Deli- 126 North E Street – Is fond of the trees in the yard, does not want to remove them and cannot install privacy landscaping as the tree roots are in the way. States they previously replaced a panel at a time and cannot afford to do the entire fence at once. When Code Compliance cited the owner in December 2022 for a fence in disrepair, it was decided to replace the balance of the panels or approximately 2/3 of the fence or five (5) panels.

**Staff:** The City did not require the trees to be removed, only suggested that the fence could be installed behind the trees with the trees as part of continuous landscape hedging. This is a replacement fence not the original fence.

**Board:** As the fence was originally permitted in the 90's, was the property ever without a fence? Why was the code case closed?

**Staff:** The permit was in process when the case closed, as far as the procedure for closing a case, that would be a question for Code or perhaps the applicant who would be familiar with why the case was closed.

City Code contains a section regarding non-conformities, once 51% replacement occurs then it must meet new fence code. The reality is it's a new fence and as a new fence it must meet current code that has been in effect since 2013. There is a limit in the Building Code about how many panels can be replaced and how frequently they can be replaced until there is a new fence in place. This is replacement based on affordability with intent to obtain a new fence.

**Board:** Is there is a missing piece regarding what occurred with the code case? Does the owner recall being served with code papers?

**Applicant:** States that is when the family began to think about completing the fence.

**Board:** What percentage of the fence was replaced? **Applicant Response:** 100% Board member requests additional information on the Administrative Adjustment process. **Staff explains** it would involve having the parcel declared as a dual-frontage lot which would then allow the fence along that side to be installed on the property line. There are many ways to install the landscape behind the fence without tree removal or disturbing the root system. The process is typically for a very specific purpose and corner lots are common throughout the City. Occasionally the house on a corner lot may be not be parallel to the street but oriented differently i.e. NE or NW.

**Staff** suggests granting the variance at a reduced four (4) foot height; this would require the permit to be modified yet still applicable. Code is constructed to always bring a situation into conformance. The code is working because it tells you the fence is deteriorated and any vesting is gone; you replace it according to current fence code and now you meet the current requirement.

**Board:** Its easier to prevent a house from deteriorating than a fence. Will the code case re-open if the variance is denied? **Response:** yes, if there is no cure.

**Board Attorney:** The choices are to lower the fence height or re-locate the fence. The code case could be re-opened for work without permit. The Building permit is the cure.

A Board member believes the options offered by staff undermine the applicant's claim that it denies reasonable use of the land.

**Board Attorney:** The choice would be to approve the variance for a reduced height. It would be the same result as the administrative adjustment. Board could offer the approval of the variance reduced to four-foot and save the applicant the administrative adjustment fee of \$250.00 since she is on a budget.

**Board:** Non-conformities abound in Lake Worth Beach

**Staff:** If the repair involves complete destruction, then the non-conforming status is lost and something must be brought to code. Code only cares about unkempt property, Zoning and Building permits bring conformity. The remedy of granting a variance for a four (4) foot fence is equivalent to what would be obtained through the administrative adjustment process.

**Motion:** E. Urcuyo moves to approve PZB 23-01500011 with staff recommended Conditions for a variance to allow a four (4) foot high fence along North A Street as it meets the criteria in the following manner:

1. The lot is equivalent to a dual frontage lot and a relief is available through the administrative process. This could be considered a dual-frontage lot.
2. The administrative adjustment process allows this type of relief.
3. As a dual frontage lot the four-foot fence is typical with no landscape required. That would be the minimum variance which makes possible the reasonable use of the land.
4. The administrative adjustment is provided within code therefore not injurious or detrimental to public welfare.

The variance approval will expire within 1 year should the building permit not be approved for the four (4) foot fence; M. Humm 2<sup>nd</sup>.

**Vote:** Ayes all, unanimous.

**PLANNING ISSUES:** None

**PUBLIC COMMENTS** (3 minute limit) None

**DEPARTMENT REPORTS:** None

**BOARD MEMBER COMMENTS:** Madison Terrace was awarded the best lottery number in Palm Beach County.

**ADJOURNMENT:** 6:53 PM