

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
APRIL 10, 2000  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

Mayor John Mulholland opened the meeting on Monday, April 10, 2000, at 9:00 a.m.

**Council members present at the meeting:** Anita Cereceda, Daniel Hughes, John Mulholland, Ray Murphy and Garr Reynolds.

**Town Staff present:** Town Manager Marsha Segal-George, Pam Houck, Attorney Richard Roosa.

**II. PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance.

**III. PUBLIC COMMENT ON AGENDA ITEMS**

None.

**IV. PUBLIC HEARING: CASE NUMBER VAR1999-00024. GORE RESIDENCE ADDITION.**

**A variance in the Residential Single Family (RS-1) district to permit a water body setback of 12 feet. This property is located at 221 Primo Drive.**

Those giving testimony in this case were sworn in by Town Manager Marsha Segal-George.

**Applicant's Representative Input:**

Joanne James is here today representing the Gore family. They would like to enlarge their home enough to add a third bedroom. Pictures of the inside and outside of the house were shown as well as of other cottages, houses and businesses in the neighborhood that are already closer to a canal than the water body setback. Land Development Code 34-695 requires a minimum water body setback of 25 feet in a residential single-family district and they would like a water body setback of 12 feet. The land use designation is mixed residential. The surrounding land uses are single family homes zoned RS-1, a vacant lot and the canal with a residential zone of RM-2.

The Gores also own 12-1/2 feet into their canal, which actually enlarges the square footage of their property and allows them a larger square footage home. The property next door already has a variance for 12 feet.

There are exceptional and extraordinary conditions or circumstances to the property. Some of the properties on the canal have zero setback on the water or are closer than 12 feet. Granting of the variance would not be injurious to the neighborhood or otherwise detrimental to the public welfare. A petition has been signed by all the property owners in the neighborhood and none of them has a problem with the Gores getting a setback to enlarge their house.

The Gores need an expansion on the second floor only.

**Applicant's Input:**

Tracy Gore advised that their request was denied by the LPA because they felt the Gores could rebuild their porch that is currently overlooking the back yard and the canal, at the side of their home. Their response was that they wanted to keep their water view. The Gores were also told that they should have thought about a third bedroom when they had the house built. Mrs. Gore advised that Henry Gore was a single man when he had the house built and felt it had

adequate room at the time. They were asked to get support from their neighbors, and they have done this. They have more information to share now than they did at the LPA meeting for which they were unprepared. They have two children and want the extra bedroom for the new baby. Mrs. Gore does not feel that their request is inconsistent with other properties on the canal.

**Questions and Comments from Council:**

Vice Mayor Dan Hughes said other properties not being in compliance with the ordinance is not a basis for granting the variance. He'd like to know the exceptional and extraordinary circumstances. Joanne James said that for one thing the lot is bigger if you count in that extra square footage that they own under the canal water, which would allow them a larger home. Mr. Hughes said that's an intensity of use of the lot requirement and has nothing to do with the setback. Needing another bedroom is not an exceptional and extraordinary circumstance or valid basis for granting a variation. Town Manager Segal-George further explained that when a council grants a variance, there are legal criteria to follow. She would like to say for the record, however, that she thinks that there is a unique circumstance in this property, and that is the 12.67 feet that is listed in the warranty deed but in essence would only mean less than a one-foot variance that we'd be granted here.

Councilman Reynolds advised he had visited the property yesterday. He feels that if the Gores build out, they'd be encroaching on the view of others in the neighborhood and also that it doesn't measure up to our ordinances. He feels the Gores have enough space to build an adequately sized room without going beyond the 25-foot setback. Tracy Gore felt they wouldn't be infringing on anyone's view and their neighbors have already told them they don't mind if they build out.

Vice Mayor Hughes felt that the 12.67 feet is not fronting on the canal but on the side yard. Joanne James said this was incorrect. The plat shows that it's in the canal. This was further discussed.

**County Input:**

**Dan Faulk**, with Lee County Department of Community Development, reviewed this case and prepared the staff report. He reported that staff has recommended denial of the request, as did the LPA.

The existing structure is approximately 41 feet from the seawall and a lanai on the back is about 32 feet from the seawall. He would remind us that the water body setback is from the seawall, which is not the same as a rear property line setback that may be into the canal. The more restrictive setback is the one that is used.

Applicant has proposed a 19 ft. addition from the edge of the lanai, which would result in a 13-foot setback from the seawall. Staff found that there were no extraordinary or exceptional conditions unique to the property that would warrant the variance and that other alternatives could be considered. There are approximately 7 feet between the existing lanai and the required 25-foot water body setback which could be utilized. Mr. Faulk said he made a mistake in his staff report by using the word "precedent" because the approval of a variance does not set a legal precedent. Staff takes a look at what's been approved in the neighborhood and there has been a variance approved on another lot, but the circumstances are different from the case before us today. This is discussed in the staff report. Staff understands that some of the existing structures may not conform with the current code, but they don't know when they were built.

**Public Comment:**

None.

Tracy Gore and Joanne James expressed their opinion that a variance was justified.

Councilman Murphy said he did not agree with some of the conclusions that were reached by the LPA. From the testimony that he's heard today, there are exceptional conditions. He does not believe that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare in light of the fact that the surrounding property owners have signed a petition in favor of this addition. He would prefer to err in favor of the applicant and would vote for this variance.

Vice Mayor Hughes said while he can appreciate the fact that the granting of the variance would not be injurious to the neighborhood, it has been clearly pointed out that the 12.67 feet being in the water has nothing to do with computing the setback. So whether we add that to it or not is not legally relevant. It seems to him that what we're trying to do is to allow the applicants to do something because other people may have done it. We should not start using variations to meet the lowest common denominator. He does not see how we can make the findings that by law we are required to make here. Mayor Mulholland and Councilman Reynolds said they concurred with him.

Councilwoman Cereceda said she had made a site visit. She feels that we should look at the bigger picture and that Primo Drive provides enough of a unique circumstance to approve this variance. It is mixed residential and commercial on the Crescent Street side. The Primo Street side is all residential. Like Ray Murphy, she would prefer to err on the side of the applicant. She will take the position that we are able to interpret those legal stances as we choose to interpret them. And in a situation where there is no harm done to adjacent property or the neighborhood or to our overall community, she cannot imagine what could deter us from approving this variance.

**MOTION:** Moved by Anita Cereceda and seconded by Ray Murphy to approve this request for a variance.

**Discussion:**

Vice Mayor Hughes felt that while Councilman Cereceda's statement was a wonderful and philosophical one, he did not feel that it had any basis in what we are legally required to do here. It is not that the neighborhood is unique. The particular property in question must be unique. Unless something in the neighborhood compels us to give relief here and is of a general or recurrent nature in that neighborhood, it is our duty then to recommend referring this to the LPA and saying that because of the fact of this neighborhood's unique circumstances, they should consider amending the Land Development Code to provide that the water body setback be reduced. But to take one individual property and do it that way, we are clearly violating our own ordinances and are violating the state law.

Councilwoman Cereceda asked Pam Houck if the 12.67 feet was for every canal. Ms. Houck said no, and that she thought this was probably unique to this specific neighborhood. Ms. Cereceda asked if she withdrew her motion and requested that this be sent to the LPA again for further review based on the unique circumstances of the Gores' property extending into the canal, what would be the end result. Dan Hughes told her that whatever is in the water is not relevant here. It's because there are a proliferation of properties that are within the 25 feet of the water body. And the 12.67 really has nothing to do with that. The seawall is what has something to do with this. He said he would support a motion to refer this back to the LPA to consider adoption of an amendment of the Land Development Code that would reduce the setback in that neighborhood from 25 feet to whatever.

**MOTION:** Moved by Dan Hughes and seconded by Ray Murphy to table the motion. Passed unanimously.

**MOTION:** Moved by Dan Hughes and seconded by Anita Cereceda that this subdivision be referred to the Local Planning Agency for review of an overlay ordinance regarding setbacks.

**Discussion:**

Councilman Reynolds would object to doing that just for this subdivision. He thinks it should be community-wide if we're going to do that type of thing.

Councilman Murphy said he'd just say that it has already been done.

Motion passes 4-1 with Councilman Reynolds dissenting.

Councilwoman Cereceda said she does not want the Gores to have to reapply with the expense of reapplication. If she were to make a motion to continue this hearing until the LPA has reviewed this request, would that let them keep this application open? She was told it would.

Attorney Roosa advised that what might happen is that the LPA might come in with a special setback requirement from the water for this particular subdivision, and that may not be enough to address the Gores' construction needs and they would still need a variance from that new setback.

**MOTION:** Moved by Ray Murphy and seconded by Anita Cereceda that this hearing would have to be continued indefinitely.

Attorney Roosa said it would be better to say this hearing would have to be rescheduled at the request of the applicant.

**MOTION:** Moved by Ray Murphy and seconded by Anita Cereceda that this hearing would have to be rescheduled at the request of the applicant.

Attorney Roosa said that after the LPA has made a recommendation and the Town Council has acted on that recommendation one way or another, the applicant will have the right to ask that this matter be reheard by us. There will be no further requirement to file any application fees or costs.

Motion passes unanimously.

**B R E A K -- 10 MINUTES**

**V. PUBLIC HEARING: CASE NUMBER VAR199-00028. WRIGHT VARIANCE. A variance in the Multiple Family district to permit a minimum rear yard setback of zero (0) feet. This property is located at 702 Estero Boulevard.**

Those giving testimony in this case were sworn in by Town Manager Marsha Segal-George.

**County Input:**

Dan Faulk, with Lee County Department of Community Development, explained the difference between the staff report that was included in our packets and the staff report that was given to us this morning. The one in our packets was placed there by mistake. It contained a

request for only one variance and the latest one is a request for three variances. This is the one that was presented to the LPA and is the one the LPA made their recommendation on.

Councilman Reynolds said he had visited the site yesterday.

Dan Faulk said that the request before is today is a variance from the Land Development Code from the required side yard setback of 7 feet to permit 0-foot setback; a variance from the required rear yard setback of 20 feet to permit a setback of 7 feet, and a variance from the street easement setback of 20 feet to permit a setback of 3-1/2 feet. The LPA recommended approval of the side yard setback to 0 feet and the rear yard setback to 7 feet, but recommended a street setback of 4-1/2 feet.

Staff's recommendation is really based on not only the subject property, but the existing development on the surrounding cottages as well.

Property is located in the mixed residential land use category. Staff finds that the requests and the use of the property is consistent with Policy 4-B-4. Staff also considered Policy 3-B-12, which suggests adopting ... guidelines to encroach front porches, decks and other elements from the cottage tradition in near town neighborhoods. Staff recognizes that this property is not in the near town neighborhoods area, however, staff feels that this request is consistent with this policy of the Fort Myers Beach Comprehensive Plan.

Existing uses: Zoned RM-2 with similar cottages on three sides of the property. On the west side is the Best Western Hotel. To the north and south are existing cottages and to the southeast begin a series of these small cottages.

Staff believes there are exceptional and unique conditions to the property in that the house itself was built in 1960 and all the homes in that area were built in the 1950's and 1960's. Subject property is located near the south side of the lot, and each of these properties are under separate ownership and all developed in an extremely similar manner with decks. Because of this, staff feels it would be unreasonable to deny the property owner the ability to construct a similar deck on their house. The question for staff was what size deck would be appropriate and what variances would be appropriate. Staff made a slightly different recommendation from what the LPA recommended: a variance to permit a 7-1/2-foot front setback on the street, the minimum setback required to allow the applicant relief from the portion of the Land Development Code in question. The 4-1/2 foot setback was recommended by the LPA because applicants wish to construct a stairway to the deck.

The existing house covers about 22% of the lot and the RM-2 district permits 45% lot coverage. So the proposed deck would not exceed the permitted lot coverage.

Asked about the easement by Councilman Reynolds, Mr. Faulk said he believes it is a 15-foot easement between two properties with 7-1/2 feet on the subject property.

Staff's recommendation of 7-1/2 feet for a front setback would not allow a deck or a staircase to be build. Staff feels that the 4-1/2 feet to allow a stairway is reasonable.

**Applicant's Representative:**

Beverly Grady advised she is representing John and Heidi Wright who have owned this property since 1981. They are asking for variances to replace the previous deck with a smaller deck and to construct a 36" staircase so that the home can be entered. Previously the deck extended over the property line on the gulf side by 3 feet. It used to be 12 feet in depth. When owner commenced replacing the deck, he didn't realize he needed a building permit to put back what he already had. He was also surprised to find that the old deck was 3 feet over the property line. He hired a contractor.

What staff proposes to do, as shown on Attachment B of the staff report, is put a deck with a depth of 9 feet.

**Public Comment:**

None.

Dan Faulk said a condition not previously mentioned is that the variances are limited to one open-air deck on the south side of the existing single-family residence.

**MOTION:** Moved by Ray Murphy and seconded by Dan Hughes to approve the resolution before us with the change just noted and the following changes: In #3 of the first Whereas clause, striking 3.5, adding 4.5 and the language to permit a 36" staircase. In paragraphs A and C strike the word "not"; strike the word "disapproved" on the second page and strike the word "not" in paragraphs A and C; in the Therefore clause strike the word "disapproved"; strike in the finding 3.5 and add 4.5, the language to permit a 36" staircase; in paragraphs A and C strike "not". In the final Therefore clause strike "disapproved." Passed unanimously.

**VI. PUBLIC COMMENT**

None.

**VII. ADJOURNMENT**

The meeting was adjourned at 11:05 a.m.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary