

JUPITER INLET COLONY

VARIANCE HEARING

5:00 p.m.

6/12/2017

Town Administration Building

MINUTES

1. The Variance Hearing was called to order at 5:00 p.m. by Mayor Comerford.

Roll call for the record:

Mayor Daniel Comerford
Vice-Mayor Thomas DiSarno - absent
Commissioner Jerry Legerton
Commissioner Milton Block
Commissioner Richard Busto

Town Attorney William P. Doney
Town Administrator John Pruitt

2. Consider application for variance from Section 10(C) (regarding 50% maximum lot coverage) of Town Zoning Code. Applicants seek a variance in order to permit construction of a driveway and motor court at 86 Lighthouse Drive.

Bill Doney explained the process for the appeal of Commissioner Legerton's decision regarding the plan not meeting town Code. If Commissioner Legerton's decision should be reversed, no variance hearing would be needed. If upheld, variance hearing must be held. Bill Doney asked if any Commissioners have visited or inspected the property or if any written or oral communications have been conducted regarding the property. Commissioner Block – He visited the house and has exchanged pleasantries with Mr. Cassell. Mr. Cassell explained his situation. Mayor Comerford – He visited the property and spoke with Jack and Denise Cassell. He is aware of the situation that the coverage occupies more than 50% of the lot. The Cassells advised him that they had hired an attorney. He has had subsequent conversations with Phillippe Jeck, attorney for the Cassells. Commissioner Busto – never visited property and has had no conversations with the Cassells. Legerton had a phone conversation followed by an email to Denise. He had private meetings with the Attorney for the Cassells, and the surveyor. Mr. Cassell and Commissioner Legerton talked about options.

Mr. Doney explained the difference between appeal and the variance hearing.

The court reporter swore in all people, as a group, who will testify. Public comments will be reserved until after the presentations by the attorney for the

Cassells and Commissioner Legerton. Phillippe Jeck introduced the Cassells. Mr. Cassell introduced himself. Mr. Jeck gave a Power Point presentation and provided a copy to the Town.

Commissioner Legerton gave a Power Point presentation. The Mayor stated that, in the past, walls have not been counted as lot coverage. The Mayor was sworn in as a witness. Commissioner Legerton stated that he does not know that to be true because he has found plans where it has been counted. Phillippe Jeck said that he agrees those provisions are in the code but he thinks it leaves room for other interpretations. Commissioner Block asked who approved the revised plan. Commissioner Legerton stated that NV5, contracted building official, approved the plan and it is his belief that it was Mike Ricard. The Commission discussed the grass in the driveway. Commissioner Legerton explained that grass is allowed, however, the code states that it is included in lot coverage. Commissioner Busto asked Mr. Jeck what else they would do to comply if the variance is not granted. Mr. Jeck said they have proposed nothing other than what has been proposed already.

Public comments: Mavis Sheridan talked about having to remove coverage twenty years ago in order to comply with Town Code. She said that the owners can remove coverage to comply. Pat Schinto stated that the town is losing its charm and every time a variance is approved, the town is in trouble. She said that the town should watch homes being built in order to catch mistakes. Marie Etherington said that it is difficult to sit here and think a multi-million dollar project with licensed degreed professionals have overlooked issues to bring it into this situation. Paul Hanna would like to see the driveway put in and would not like to see part of the home removed. He thinks they have a beautiful home and thinks it is unreasonable to make them tear something out. Jack Clark said that once you grant variances they become a new norm. He believes that it is a starting point for people to ask for more variances. He gave his opinion of variances and that he does not approve of them. Commissioner Block said that only one variance has been issued in 7 years since he has been a Commissioner. Mitchell Untract spoke on behalf of the Cassells in the past and he does not believe they intentionally misrepresented the project. Commissioner Legerton explained the code's requirements for a variance. Cindy Keim stated that the construction company and architect should be looked at due to the fact that the plans were not correct. She thinks that a solution is that they should have to take out some hardscape down by the water to reduce square footage.

Motion: Commissioner Block motioned to grant the appeal.
Second: None

Since there was no Second on the Motion, Bill Doney advised that the Commission should motion to deny the appeal.

Motion: Commissioner Block motioned to deny the appeal.

Second: Commissioner Legerton

Vote: 4 Aye / 0 Naye Motioned passed to deny appeal.

Commissioner Legerton gave a second Power Point presentation regarding the variance application. Commissioner Legerton's position is that none of the variance approval criteria are met.

Phillipe Jeck said that variance provisions are included in all Codes. The Building and Zoning Committee's recommendation is to approve the variance. Mr. Jeck presented another Power Point presentation.

Public comments: Paul Hanna said that when he built his home, he was told that you could either use Property Appraiser lot size data or survey data. In 86 Lighthouse Drive's case, their survey has a smaller square footage than that reported on the PAPA website. Mavis Sheridan said that the owners should comply with lot coverage restrictions. Dr. Saeed Khan was sworn in. Dr. Khan stated that he cut back on his square footage to comply. 70 Colony had to take out a wall because they were over. 240 Colony was granted a variance because it made sense and the lot was extremely irregular. To say that the rules are not applied, is not true. Cindy Keim stated that they should have a driveway but that the architect and contractor should be held accountable. She believes we will be in trouble if we allow more square footage. Earl Fischer was sworn in. He voted for the variance. He cannot believe that the architect and contractor have no responsibility in this situation. We have to put this to rest. Commissioner Legerton said that the recommendation was made for the applicant to remove 365 s.f. of coverage and that they not violate ordinances regarding grass in driveway. The Commission discussed the recommendation made by the Building and Zoning Committee.

Mr. Jeck explained the Committee's recommendation of granting the variance if the owners remove 365 s.f. of hardscape and denying their request to not count the grass in the driveway toward lot coverage. Commissioner Busto said that he is not interested in changing the Code because of this situation. He gave his opinion regarding variances. He believes it has to be a straight variance. Mayor Comerford stated that the town had not granted a variance ever until the one for 240 Colony was granted. He believes that a stop work order should have been issued at the Cassell property the moment we were advised that they were over on lot coverage. He said we received several surveys with different lot coverage

calculations on them. He gave his opinion regarding the issue. The Town has hired a surveyor to check figures on properties in the future. Commissioner Block said that the existing driveway there now is unsustainable. Commissioner Legerton said he would be in favor of granting a variance that was recommended by the Building and Zoning Committee. Commissioner Legerton said he cannot vote for a variance because the request does not meet any of the criteria for a variance. He said that the ordinances must be changed in order to grant any part of the variance. Commissioner Busto said he is not going to agree on anything that increases the 50% lot coverage maximum. The Mayor said he would agree to pass an ordinance that did not count seawalls and boundary walls toward coverage. He said he would not agree to increase the 50% lot coverage maximum. He would be in favor of allowing grass in driveways to not be counted toward coverage. Commissioner Busto said he is ok with allowing walls to not be counted in lot coverage. He does not agree for grass in driveways to not be counted toward coverage. The Commission discussed the issue in detail.

MOTION: Commissioner Block motioned to accept recommendation of Building and Zoning Committee with conditions as written.

SECOND: Commissioner Busto

VOTE: 2 Aye (Commissioners Block & Busto)

2 Naye (Mayor Comerford & Commissioner Legerton)

Motion failed.

Phillipe Jeck requested that the vote be postponed until all Commissioners can be present. Commissioner Busto did not agree. Commissioner Legerton said that a combination of variance and ordinance changes should be undertaken.

MOTION: Commissioner Block motioned to vote again on the same motion for reconsideration.

SECOND: Commissioner Busto

VOTE: 3 Aye (Comerford, Block, Busto) / Naye 1 (Legerton)

Motion passed.

3. Commissioner Block motioned to adjourn the Variance Hearing.

SECOND: Commissioner Busto

The Variance Hearing was adjourned at 8:12 p.m.

Approved by:

_____	_____
Mayor Daniel J. Comerford III	Date

_____	_____
Town Clerk Jude Goudreau	Date