

MINUTES ARE NOT VERBATIM

**BOARD OF ADJUSTMENT
MEETING MINUTES
September 11, 2019**

The regular meeting of the Okaloosa County Board of Adjustment was held Wednesday, September 11, 2019 at 1:30 p.m., in the Okaloosa County Administration Building, 1st Floor Commissioners Chambers, 1250 Eglin Parkway N., Shalimar, Florida.

Board Members in attendance were Fred Schor, Pat Byrne, Chairman Payne Walker, Scott Kearney and Bob Ambrose.

Staff in attendance were Elliot Kampert, Growth Management Director; Randy Woodruff, Planning Manager; Marissa Martinez; Planner III; and Teresa Mullins, Administrative Assistant II, Recording Secretary. Assistant County Attorney Lynn Hoshihara was also present as counsel for the Board.

A. CALL TO ORDER

Chairman Payne Walker called the meeting to order and read the opening statement regarding this Quasi-Judicial Hearing into the record.

B. ROLL CALL

Ms. Teresa Mullins conducted roll call.

C. APPROVAL OF MINUTES FOR: April 10, 2019

Motion to approve the minutes as written made by Bob Ambrose; Second by Fred Schor; approved unanimously.

D. ANNOUNCEMENTS

Chairman Walker declared that Officer Elections scheduled to be held during the “Old Business” part of the agenda will be heard during “Other Business” so as to avoid delay of the public hearing scheduled for “New Business”.

E. ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA

None

F. ACCEPTANCE OF THE AGENDA

Motion to approve the minutes as written made by Fred Schor; Second by Bob Ambrose; approved unanimously.

G. OATH TAKING

Ms. Mullins swore in those present who wished to address the Board.

H. DISCLOSURES

Chairman Walker asked if any of the members had any ex parte communications, or if they had visited the property involved in this request.

There were no disclosures

I. OLD BUSINESS

None

J. NEW BUSINESS

1. **449306-BOA-2019**, a request for a variance, as submitted by Aaron Rogers of Southern Poolscales LLC on behalf of Greg and Penny Grisamore pursuant to Okaloosa County Code of Ordinances, Appendix E: Land Development Code, as amended, Section 2.21.05.2 from 5' minimum setback from the rear property line to 1' setback from the rear property line for a residential swimming pool under construction. The property is currently zoned **Mixed Use District (MU)** and the Future Land Use Map designation is **Mixed Use (MU)**. A general location of the property is 1008 Napa Way, Niceville, Florida. The subject property contains 0.17 acres more or less.
District 5

Mr. Elliot Kampert informed the Board that the property is lot 58 of Chardonnay Estates Subdivision found in Plat Book 20 on pages 18 & 19. Mr. Kampert stated that the applicants had submitted an application to construct an in-ground swimming pool on November 29, 2018, and that permit was issued on November 29, 2018 based on plans showing that the minimum 5' set back from water's edge was exceeded by 1' as noted on the approved site plan. Mr. Kampert informed the Board that the, per the contractor, the error in layout was discovered by the project manager upon his inspection of the work done by the project supervisor; however, the error was found after the concrete pool shell and decking were already in place. Mr. Kampert stated that the pool was inspected by the building inspector on December 18, 2018 and February 26, 2019, with both inspection being approved as noted on the inspection reports. Mr. Kampert further stated that the error was brought to the attention of the homeowners who immediately contacted the Building Official via email on June 18, 2019. Mr. Kampert stated that the applicant was advised by the Permitting Manager to contact the Planning Department regarding the encroachment, and Planning staff met with the applicant on June 24, 2019. Mr. Kampert further stated that, at the meeting with Planning staff, it was discovered that there was a 4' encroachment into the minimum 5' setback from water's edge as noted on the attached plot plan. Mr. Kampert reminded the Board that in order to authorize or approve any variance the Board of Adjustments must and shall make findings based on the criteria and standards and found in the Okaloosa County Code, Appendix E Land Development Code; Chapter 11 Boards and Agencies, Section 11.02.09 Powers and Duties. (3) (a-f) as follows, along with staff's recommended findings:

3. Variances: Conditions governing applications, procedures; to authorize upon appeal such variances from the terms of the ordinance as will not be contrary to the public interest where, owing to special

conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this ordinance, the board of adjustment must and shall find:

a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Mr. Kampert stated that staff found that no peculiar circumstances exist on the subject parcel. Mr. Kampert further stated that, per the applicant's letter of petition, the swimming pool was laid out incorrectly by the jobsite supervisor and the error was not caught until the Project Manager visited site and discovered the error in layout. Mr. Kampert noted that the pool shell and decking were already in place at that time.

b. That the special conditions and circumstances do not result from the actions of the applicant.

Mr. Kampert stated that pursuant to the applicant's letter of petition, the circumstances result from the actions of the applicant. Mr. Kampert further stated that, the swimming pool was laid out incorrectly by the jobsite supervisor; however, the error was not caught until the Project Manager visited site and discovered the error in layout when it was too late to be easily repaired or redone. Mr. Kampert stated that the Pool Company is responsible for both knowing and adhering to the Okaloosa County Land Development Code, and this pool was not built in accordance with either the approved plot plan or the Okaloosa County Code of Ordinances, Appendix E: Land Development Code, as amended, Section 2.21.05.

c. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Land Development Code to other lands, buildings or structures in the same zoning district.

Mr. Kampert stated that granting the after-the-fact Variance will confer a special privilege to the applicant that is denied by the Land Development Code to other lands, buildings or structures in the same zoning district. Mr. Kampert further stated that Okaloosa County Code of Ordinances, Appendix E: Land Development Code, as amended, Section 2.21.05.2, Limitation and Restrictions, permitted accessory uses and structures located in side and rear yards shall be no closer than five (5) feet to have property line; there, granting the variance would confer a special privilege as all new pools must complete with the aforementioned sections of County Code of Ordinances, Appendix E: Land Development Code, as amended.

d. That literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant.

Mr. Kampert stated that a literal interpretation of the provisions of the Land Development Code would not deprive the applicant of rights commonly enjoyed by other properties as the undue hardship presented in this request is self-imposed. Mr. Kampert further stated that the subject property has ample room for a pool, and the approved plot plan exceeded the minimum 5' required setback by 1'.

e. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Mr. Kampert stated that, pursuant to the applicant's "Letter of Petition" the swimming pool was laid out by one of the supervisors incorrectly and the error wasn't caught until the site manager's inspection, which took place after the pool shell and decking were already complete. Mr. Kampert further stated that, with all of this in mind, the requested variance is the minimum variance that will accommodate the swimming pool under construction.

f. That the grant of the variance will be in harmony with the general intent and purpose of the Land Development Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Mr. Kampert stated that the requested variance is not in harmony with the general intent and purpose of the Land Development Code. Mr. Kampert further stated that the existing Land Development Code permits pools to be no closer than five (5) feet from water's edge to the rear (or side) property line. Mr. Kampert noted that prior to the amendments made to the Land Development Code in 2011, the minimum setback requirement for swimming pools was 3.5' from water's edge to any side or rear property line, 10' front setback from water's edge to any front property line and 3.5' from water's edge to any existing or proposed building. Mr. Kampert further noted that the existing swimming pool under construction was permitted on November 29, 2018 and shall meet the minimum 5' setback from water's edge to the rear property line as specified in Okaloosa County Code of Ordinances, Appendix E: Land Development Code, as amended, Section 2.21.05.2. Mr. Kampert stated that, based on analysis and the recommended findings as presented, staff finds that this request has not met the Ordinance requirements; therefore, staff recommends that the Board deny this after-the fact variance request for the existing swimming pool under construction which is currently sitting at 1' from water's edge to the rear property line.

Mr. Bob Ambrose asked staff who made the discovery that the pool did not meet the required setbacks.

Mr. Kampert stated that it was the Pool Contractor who found the error.

Mr. Ambrose asked if work had been stopped once the error was discovered.

Ms. Marissa Martinez, Planner III, stated that work has been stopped pending this Board's decision.

Mr. Fred Schor asked what the Building Inspectors were looking for when they go out with inspection.

Mr. Kampert stated that the Building Inspectors are focused on whether the work being done meets the current Florida Building Code. Mr. Kampert further stated that if the Building Inspector had noticed the discrepancy, he would have notified Code Enforcement, but the Building Inspectors don't generally look beyond the requirements of the Florida Building Code.

Mr. Cameron Rose of Southern Poolscapes LLC addressed the Board stated that he was the one who discovered the mistake and reported it immediately to County staff.

Chairman Walker asked if the pool was larger than designed due to this error.

Mr. Rose stated that the pool was larger; however, the size difference wasn't noted until he arrived to inspect the progress.

Chairman Walker noted that, in looking at the plans, it is difficult to see how such an error happened without anyone being aware of the issue. Chairman Walker asked what could be done to rectify the issue.

Mr. Rose stated that, basically there are 2 choices, one of which would be to tear it all out and redo it, the other one would be to cut through the steel and gunnite and patch it, but that option is not a good one in terms of future issues with the pool.

Mr. Pat Byrne commended the contractor for exposing the error. Mr. Byrne further stated that he feels for the homeowners but is very surprised that the error wasn't discovered sooner.

Mr. Scott Kearney noted that this is a difficult situation as there is no hardship other than the one caused by the homeowner/workmen, and we as a Board can't let feelings get in the way of making this decision within the limits allowed.

A brief discussion ensued.

Motion to approve the request for Variance made by Fred Schor; Second by Pat Byrne; approved 4 ayes, 1 nay (Scott Kearney).

K. OTHER BUSINESS

1. Election of Officers:

Mr. Ambrose nominated Scott Kearney as Chair, Second by Payne Walker. Mr. Kearney declined the nomination.

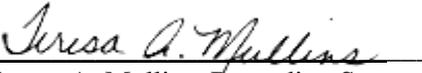
Mr. Kearney nominated Fred Schor as Chair; seconded by Bob Ambrose; Mr. Schor accepted the nomination; approved unanimously.

Mr. Walker nominated Scott Kearney as Vice-Chair; seconded by Bob Ambrose; Mr. Kearney accepted the nomination; approved unanimously.

2. **The next regular meeting** of the Board of Adjustment is scheduled to be held on October 9, 2019 at 1:30 p.m., **at the Okaloosa County Administrative Complex, 1250 Eglin Parkway N, first floor Commissioner's Chambers, Shalimar, Florida.**

L. ADJOURNMENT

Motion to adjourn made by Scott Kearney; second by Bob Ambrose; approved unanimously.

Prepared by 
Teresa A. Mullins, Recording Secretary
9.23.2019