

# CITY OF GREENACRES

## OFFICIAL MINUTES TRACKING

Council/Board: Zoning Board of Adjustments & Appeals  
Meeting Date: 2-26-18  
Transcribed by: mf No. of Pages: 6 Transcription Time: 3.0

### REVIEW OF MINUTES

Reviewed By:

| Name/Initials            | Date           | Revisions                               |                                        |
|--------------------------|----------------|-----------------------------------------|----------------------------------------|
| <u>[Signature]</u>       | <u>2/2/18</u>  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| <u>Karla Ferris PLUF</u> | <u>4/12/18</u> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
|                          |                | <input type="checkbox"/> Yes            | <input type="checkbox"/> No            |
|                          |                | <input type="checkbox"/> Yes            | <input type="checkbox"/> No            |
|                          |                | <input type="checkbox"/> Yes            | <input type="checkbox"/> No            |

### APPROVAL OF MINUTES

Meeting Date: 12-17-18

Motion By: Paglalungo Seconded By: Quist

Check One:  Approved  Tabled  Denied Vote: 6/0

Changes requested by Council or Board?  Yes  No

If yes, note changes: \_\_\_\_\_

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Date Scanned and Filed: 1-3-19 By: mf



**OFFICIAL MINUTES**  
**CITY OF GREENACRES, FLORIDA**  
**ZONING BOARD OF ADJUSTMENTS AND APPEALS MEETING**  
**MONDAY, February 26, 2018**

**1. Call to Order and Roll Call.**

The Zoning Board of Adjustments and Appeals Meeting was called to order at 7:00 p.m. on Monday, February 26, 2018 with Chairwoman Dannette Fitzgerald presiding. Melody Larson, Assistant to the City Clerk, called the roll.

**ROLL CALL:**

Present

Dannette Fitzgerald, Chairwoman  
Arthur Harrell, Vice Chairman  
Betty Anne Litowsky  
James Paglialungo  
Walter Buist  
Terry Snively

Staff Present

James D. Stokes, City Attorney  
Kara L. Irwin-Ferris, Director of Planning & Engineering  
Osniel Leon, Senior Planner  
Melody Larson, Assistant to the City Clerk

Public Attendance: 2

Press Attendance: 0

**2. Pledge of Allegiance to the Flag**

Chairwoman Fitzgerald led the Pledge of Allegiance to the Flag.

**3. Agenda Approval - Additions, Deletions, Substitutions to the Agenda.**

Chairwoman Fitzgerald called for additions, deletions, or substitutions to the agenda; hearing none, she called for a motion.

**MOTION:** Vice Chairman Harrell made a motion to approve the Agenda as presented, seconded by Ms. Litowsky.

**VOTE ON THE MOTION:** **In Favor:** Chairwoman Fitzgerald, Vice Chairman Harrell, Ms. Litowsky, Mr. Buist, and Mrs. Snively.

**Motion carried: 5 - 0.**

**4. Approval of Minutes**

Chairwoman Fitzgerald asked for any corrections or deletions to the minutes of October 30, 2017. Hearing none, she called for a motion.

**MOTION:** Vice Chairman Harrell moved to approve the minutes of October 30, 2017, seconded by Mr. Buist.

**VOTE ON THE MOTION:** **In Favor:** Chairwoman Fitzgerald, Vice Chairman Harrell, Ms. Litowsky, Mr. Buist and Mrs. Snively.

**Motion carried: 5 - 0.**

**5. Cases:**

Those present who would provide testimony were sworn in by the Board Attorney.

Planning and Engineering Director Kara L. Ferris provided information on quasi-judicial proceedings and how they relate to the review process for variance request BA-17-11.

Chairwoman Fitzgerald called for ex-parte communications; hearing none, she called for staff's presentation.

Mr. Paglialungo arrived at 7:05 pm.

**A. BA-17-11 6015 Snowy Egret Lane** - A request by the owner for a variance (BA-17-11) to decrease the minimum pool/decks setback of 5 feet to 1.4 from the rear property line.

Senior Planner Osniel Leon described the variance request to allow a finished pool with a deck to exceed the minimum 5-foot setback required by Code. He stated that the property is located at the Reserve at Summit PUD and provided a brief history of the subject property:

- August 23, 2016 - A Certificate of Occupancy for a single-family residence was issued.
- May 22, 2017 - The applicant was issued a building permit to construct a pool with a paver deck.
- August 22, 2017 - During an in-progress fence inspection, the City inspector determined the pool was too close to the rear property line. The City's Building Inspector issued a Correction Notice documenting the discrepancy; however, the pool was completed without any further modification to the pool's location.

City Code Article IV, Division 2, Section 16-630(c) requires a minimum 5-foot rear yard setback. The proposed variance request is to reduce the minimum rear yard setback to 1.4 feet along the rear property line for the pool edge and the deck pavers.

Senior Planner Leon explained that variances allow for some departure from the required zoning standards of the Land Development Code or Code of Ordinances and are intended to resolve practical difficulties created when literal enforcement of the Code would result in unnecessary physical hardship.

He noted that the subject property does not have any special conditions or circumstances peculiar to the land. The subject lot is similar to other existing lots within the development and the single-family home is a model home and therefore does not meet this criteria.

Senior Planner Leon reported that the pool and deck were constructed at the wrong location by the pool contractor. The proposed reduction of the rear yard setback for the pool and deck is a direct result of the contractor's actions of not building the pool and deck according to the approved permit plans. The contractor received the Correction Notice on August 22, 2017, while the pool and deck remained under construction and there was time to comply with the setback requirements. The granting of a variance as requested would confer special privileges on the applicant denied to other land, buildings or structures within the same zoning district. Senior Planner Leon emphasized that the subject site could accommodate a pool and deck with the required setbacks as shown on the approved permit plans. Therefore, staff recommends denial of BA-17-11. Photos were presented to boardmembers.

Chairwoman Fitzgerald call for comments from boardmembers.

Mr. Buist questioned the stamp date and the January 7, 2016 date when the plans were drawn.

Senior Planner Leon explained that the January 7<sup>th</sup> date was the date of the new survey that the City requested.

Director Ferris explained that the City had requested a current survey to verify the location of the pool as it relates to the variance request.

Vice Chairman Harrell asked if the City inspector informed the contractor of the discrepancy and was the contractor questioned as to why the setbacks were wrong.

Director Ferris explained that when the Correction Notice was issued, there may have been some discussion as to the pool and deck being in the wrong location. She clarified that the property owners are requesting the variance; however, the Correction Notice was issued to the contractor. She could not determine if the contractor had conducted an in-progress survey because a "Stop Work" order was not issued.

Vice Chairman Harrell believed that any contractor should check measurements and setbacks to ensure they are meeting Code.

Mr. Paglialungo pointed out that the new survey specifically shows the pool at 1.4 feet from the property line. He asked for documentation showing the required 5-foot setback.

Director Ferris explained the 5-foot setback requirement was provided on the permit application as part of the Building and Zoning review.

Ms. Litowsky asked if the homeowners will have any recourse?

Director Ferris noted that that, is a question that staff cannot answer.

Chairwoman Fitzgerald called on the applicant for comment.

Robert Bradley, property owner, reported that he and his wife had followed proper permit procedures, they agreed with the setbacks, hired a pool contractor who was recommended to them, the contractor obtained a permit for the pool and deck. He explained that while the pool was being built, there was no fencing. There is a 15-20 ft. rear landscaped buffer owned by the homeowner association. He explained that the permit plans stated 6 ft. from the home; however, the contractor thought it read 9 ft. From the survey, it appears they exceeded more than 3 feet into the setback. That was the explanation given to the Bradley's by the pool contractor.

He explained there was no indication to us that the contractor was working outside of the plans. Mr. Bradley explained that his family did not spend much time in the yard since they locked the back and would not allow the children to wander through there for safety concerns. It was later in the process when the fence was installed, when they noticed something was not right; the pool was too close to the fence. The Bradley's contacted the pool contractor who told them that once the fence was installed, the only thing left was to fill the pool. The pool contractor also informed the Bradley's they could file for a variance, which they did. The final pool inspection failed, hence, the reason for the variance.

Mr. Bradley noted that landscaping is behind them and behind the landscaping is a church. He stated that he and his wife are hoping the pool contractor will do the right thing. The pool contractor however, was unsure of maneuvering larger machinery in a zero-lot line property to correct the problem. The pool contractor damaged the neighbor's property and the Bradley's were concerned that their home's foundation could be affected.

Mr. Paglialungo pointed out that the equipment to build the pool was not a problem the first time.

Ms. Litowsky asked if the property behind the Bradley's was owned by the homeowner association (HOA) and had Mr. Bradley considered purchasing it.

Mr. Bradley explained it is currently owned by the builder, Lennar Homes and will eventually be turned over to the HOA.

Director Ferris explained that it is a 16-foot landscape tract, a buffer between the home and the edge of the development.

Chairwoman Fitzgerald asked that when the pool was built the fence did not exist, correct? What about the neighbors on the sides?

Mr. Bradley said "no", it was open. There is the 16-ft landscape buffer and a chain-link fence. The side properties have some fencing but it does not extend to the end of the entire property line.

Director Ferris explained that it is customary for the sides to have a 6 ft. high, 10 ft. long white vinyl privacy fence on the zero-lot line side.

Mr. Paglialungo asked if the neighbors' had rear fencing.

Mr. Bradley said "no", they still do not.

Mr. Paglialungo believed that the contractor had no reference points to use.

Vice Chairman Harrell asked if the builder (Lennar) had turned the development over to the HOA.

Mr. Bradley said, "no, not yet".

Vice Chairman Harrell realized the Bradleys' were caught in the middle and asked Mr. Bradley if the Board does not grant the variance, what will his next step be to resolve the issue.

Mr. Bradley responded, "getting a lawyer".

Vice Chairman Harrell asked Mr. Bradley if he had spoken to the contractor about changing the setback or is it part of the approved plans for the community?

Director Ferris explained that it is standard Code. She reported that the developer received reduced setbacks for the Planned Unit Development (PUD), but with zero lot line requirements, there is no other recourse to reduce setbacks than through a variance.

Vice Chairman Harrell commented that the common area belongs to the developer until it is turned over to the HOA.

Director Ferris clarified that the development is platted and officially belongs to the HOA of which the developer is still in charge. Upon reaching a certain percentage of ownership, the HOA then turns over responsibilities to the property owners.

Ms. Litowsky questioned why the City inspector did not issue a Stop Order and wondered if the project was by then too far gone. She asked to what stage the pool was constructed at the time of inspection.

Director Ferris was unsure, but pointed out that the inspector noted on the Correction Notice that the pool appeared to be in the wrong location.

Chairwoman Fitzgerald asked when was the fence installed.

Mr. Bradley explained that by the time the Correction Notice was issued the fence was already installed. He called the pool contractor and that is when filing for a variance was discussed.

Director Ferris pointed out that the inspection was for the fence as noted in the Correction Notice about self-closing gates.

Chairwoman Fitzgerald noted that the Correction Notice is dated August 22, 2017 and asked if the pool was completed by then.

Mrs. Meredith Bradley explained that when the fence was completed, there was no water in the pool but it was finished. The pool was filled one or two days prior to the inspection.

Boardmembers discussed this being a terrible situation, as a quasi-judicial board having to adhere to the variance criteria, and repercussions.

Chairwoman Fitzgerald called for a motion.

**MOTION:** Vice Chairman Harrell moved to deny variance BA-17-11, seconded by Mr. Buist.

**VOTE ON THE MOTION:** **In Favor:** Chairwoman Fitzgerald, Vice Chairman Harrell, Ms. Litowsky, Mr. Paglialungo, Mr. Buist and Mrs. Snively.

**Motion carried: 6 - 0.**

**6. Election of Officers.**

Chairwoman Fitzgerald called for nominations for Chair. Vice Chairman Harrell nominated Dannette Fitzgerald as Chair, seconded by Ms. Litowsky. Hearing no other nominations, Dannette Fitzgerald accepted the appointment of Chair.

Chairwoman Fitzgerald called for nominations for Vice Chair. She nominated Walter Buist as Vice Chair, seconded by Ms. Litowsky. Hearing no other nominations, Walter Buist accepted the appointment of Vice Chair.

**7. Department Report. None.**

**8. ZBAA Members' Comments. None.**

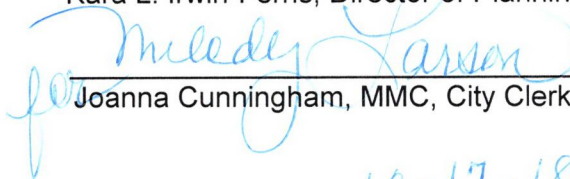
**9. Adjournment.**

Mr. Harrel moved to adjourn the meeting, seconded by Mr. Paglialungo. Chairwoman Fitzgerald adjourned the meeting at 7:34 p.m.

**ZONING BOARD OF ADJUSTMENTS AND APPEALS**

  
Dannette Fitzgerald, Chairwoman

Respectfully submitted,  
  
Kara L. Irwin-Ferris, Director of Planning & Engineering

  
Joanna Cunningham, MMC, City Clerk

Date of Approval: 12-17-18

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