

1 **MINUTES OF THE CITY OF LAKE MARY, FLORIDA, BOARD OF ADJUSTMENT**
2 **MEETING HELD NOVEMBER 5, 2008, 7:00 P.M., CITY HALL, 100 N. COUNTRY**
3 **CLUB ROAD**

4
5 **TAPE 1, SIDE A**

6 I. Call to Order

7 The meeting was called to order at 7:01 p.m.

8 II. Moment of Silence

9 III. Pledge of Allegiance

10 IV. Roll Call - Determination of a Quorum

11 The following members were present:

12 Member George Ludwig (Acting Chairman)

13 Member Meryem Stanek

14 Sean Fitzgerald (Alternate)

15
16 Chairman Jim Lormann, Vice Chairman Frank Martin and Member Shawn
17 O'Brien were absent.

18
19 City staff present were Juan (John) A. Omana, Jr., Community Development
20 Director; Gary Schindler, City Planner; and Diana T. Adams, Administrative
21 Secretary.

22
23 Also present were Ralph Burt, Becky Osborne and Paul Fischell.

24 V. Election of Acting Chairman for Purposes of This Meeting Only

25 **MOTION:**

26 **Member Stanek moved to elect Member Ludwig as the Acting Chairman for**
27 **this meeting only. Alternate Fitzgerald seconded the motion. Chairman**
28 **Lormann, Vice Chairman Martin and Member O'Brien were absent. The**
29 **motion carried unanimously 3-0.**

30 VI. Approval of Minutes - November 7, 2007

31 **MOTION:**

NOVEMBER 5, 2008-1
BOARD OF ADJUSTMENT

1 **Member Stanek moved to approve the Minutes of the November 7, 2007,**
2 **Board of Adjustment meeting, as presented. Alternate Fitzgerald seconded**
3 **the motion. Chairman Lormann, Vice Chairman Martin and Member O'Brien**
4 **were absent. The motion carried unanimously 3-0.**

5 VII. Old Business

6 None

7 VIII. New Business

8 A. 2008-VA-09: Request for a variance from § 154.23 (A) (1), City of Lake Mary
9 Code of Ordinances, to allow a 6' high wood stockade fence within the front
10 yard setback on property located at 470 W. Lakeview Avenue, Lake Mary,
11 Florida; Applicant: Ralph Burt

12
13 Gary Schindler, City Planner, presented the request and the related Staff Report.
14 The Location Map attached to the Staff Report was on the overhead projector.
15 He said that Mr. Burt is requesting an after-the-fact variance to allow a six-foot-
16 high wooden stockade fence within the front yard setback of property located
17 near the intersection of Crystal Drive and West Lakeview Avenue at 470 W.
18 Lakeview Avenue, Lots 9 and 10 of the Crystal Heights Subdivision.

19
20 Mr. Schindler stated that the current zoning of the property is R-1A and the
21 Future Land Use designation is LDR. He said, the subject property is developed
22 as a single-family residence that was constructed in 1985. The Applicant
23 constructed the fence prior to obtaining a building permit and was subjected to
24 Code Enforcement action. During staff's review of the permit, it was realized that
25 the Applicant would have to apply for a variance due to the fence being a board-
26 on-board style, and § 154.23 (A) (1) states, "no fence or wall shall be erected
27 within 20 feet of a corner intersection of street setbacks nor shall any fence or
28 wall be erected within the front or street side setbacks except for decorative
29 fences".

30
31 Mr. Schindler stated that the City has a very specific definition for decorative
32 fences. He said that they may be six foot high but they may only be 50 percent
33 opaque. They could be pickets or split-rail. He stated that there are a lot of
34 fences that could qualify as decorative. You could have an opaque base that
35 would be three feet high and on top of that you could have pickets, but the board-
36 on-board stockade style of fence does not qualify as decorative.

37
38 Mr. Schindler reiterated that § 154.23(A) (1) states that fences in residential
39 zoning districts shall not be erected within the front and street side setbacks,

1 except for decorative fences, which shall not exceed 50 percent opacity and that
2 Mr. Burt is requesting a variance from § 154.23 (A) (1) to allow a 100 percent
3 opaque fence within the front yard setback.
4

5 Mr. Schindler said that staff has somewhat of a conundrum here; that even
6 though staff can't answer yes to any of the six variance criteria listed in the Staff
7 Report, it would like to bring the Board's attention to page 4 of the Staff Report
8 under Similar Variance Requests, Tom Dolinski (99-VA-01), wherein Mr.
9 Dolinski's previously approved variance is very similar to Mr. Burt's (puts
10 document entitled W. Lakeview Ave. on the overhead that is attached to the Staff
11 Report). He concluded by saying that staff believes that the same case can be
12 made for the subject property and would urge the Board, in its deliberations,
13 consider that as mitigating circumstance.
14

15 Juan (John) A. Omana, Jr., Community Development Director, stated, in
16 reviewing the similar variance requests, in my tenure here with the City -- this is
17 going back to 1998 -- it has been commonplace to look at the similar variance
18 requests and where there are circumstances such as Mr. Schindler has pointed
19 out, notwithstanding the six criteria litmus test. The similar variance request test,
20 if you will, in my opinion, would be an appropriate one and a valid one in the
21 review and deliberation of this matter before you.
22

23 Acting Chairman Ludwig requested the Applicant to come forward and address
24 the Board.
25

26 Ralph Burt, Applicant and part "minor" owner and manager of the property
27 located at 470 W. Lakeview Avenue came forward in favor of the proposed
28 variance.
29

30 Acting Chairman Ludwig asked why a permit was not taken out before the fence
31 was constructed.
32

33 Mr. Burt answered, as far as the lack of expediency on the permit, we manage --
34 we are about 100 pieces of rental property in Central Florida, and the people I
35 work with owns those, and our maintenance guys got a little ahead of
36 themselves. I was out of town at the time because I had spoke to Steve Noto.
37 He called me on my cell phone and I told him where I was at the time and said I
38 will get with you as soon as I get back, and they just, like I said, got a little
39 premature in our request to get that -- we had it on the list -- the residents -- and
40 the current ones, one of which is here, and the previous residents had been
41 asking for years for some privacy protection along Crystal because of the
42 planned future development on the other side of the street -- for us to afford them
43 some privacy in their backyard and we had had that on the list of things to do,

1 and while I was gone, they sort of jumped the gun a little as far as going ahead
2 and doing it, and while they were in the process of installing the fence is when
3 they were challenged as far as, wait a minute, you don't have a permit. So, we
4 made arrangements to make the application as soon as I got back and that is
5 when we discovered the problem, the obstacle as far as the setbacks. I do have
6 some pictures, if you don't mind. Would you be -- have you all seen the site?
7 Has anybody looked at the site on the Board?

8
9 Acting Chairman Ludwig responded, I went by.

10
11 Mr. Burt proceeded to put up and explain several colored photographs on the
12 overhead projector (see attached). He emphasized that his position is that the
13 house does not face Crystal. It faces sort of an abandoned section of West
14 Lakeview. He stated that their fence is continuous with the fence on the property
15 immediately behind them, and there was a permit granted for that even though it
16 was not in compliance with City Code, which City staff has indicated that was just
17 issued in error. He said, from an aesthetic standpoint, we feel moving the fence
18 back to meet City requirements would, first of all, look bazaar along the side view
19 and would also chop the residents' back yard, and our goal is just to provide
20 them some privacy in their back yard.

21
22 Acting Chairman Ludwig questioned, does staff know when that other fence
23 permit was issued?

24
25 Mr. Omana replied, yes, sir. We did some research on that and it was issued
26 approximately in the Spring of 2006, and we did issue that in error. Our staff
27 technician at that time did not fully enforce the opacity provisions under the
28 Fences and Walls section of our Land Development Code. So, Mr. Burt is
29 correct in that respect.

30
31 Mr. Burt expressed that he felt that the request is in keeping with the character of
32 the neighborhood; to keep that continuity or that fence line going to the corner
33 and then over to Ms. Osborne's property.

34
35 Alternate Fitzgerald asked what is on the other side of the road that we need all
36 the privacy from.

37
38 Mr. Burt answered, it is currently vacant, but it has been rezoned.

39
40 Mr. Omana added, on the other side of the street is a PUD property. It is a part
41 of the original D.R. Horton Planned Unit Development and a 16-lot subdivision is
42 proposed for that site. So, it will be quite active, actually, across the street due to
43 that subdivision going in.

1 Acting Chairman Ludwig opened the hearing to public comment.

2
3 Becky Osborne, 470 W. Lakeview Avenue, Lake Mary, Florida 32746, addressed
4 the Board in favor of the proposed variance. She said that their primary needs to
5 maintain the privacy fence are due to the new construction going in across the
6 street, their dog's safety, vehicles driving over their septic tank and for security
7 reasons. She stated that teenage kids mud in the field behind their property.
8 The kids use a dirt road next to their house to get back there. The dirt road is
9 congested with a lot of pickup trucks turning around in their backyard and driving
10 over their septic tank. She said that the police keep on top of this as much as
11 they can. She stated that when the fence was installed, this stopped the kids
12 from turning around in their backyard.

13
14 Paul Fishell, 462 W. Lakeview Avenue (directly next to the subject property),
15 Lake Mary, Florida 32746, addressed the Board in favor of the proposed
16 variance. He said that he has resided at his residence almost 14 years now and
17 would like the existing fence at the subject property maintained due to
18 thefts/security. He stated that if the existing fence was taken down, they could
19 just walk straight through to his yard.

20
21 Alternate Fitzgerald questioned why the subject fence, when it was installed, did
22 not match up with the other existing white vinyl fence in the area.

23
24 Mr. Burt responded, the biggest reason was cost.

25
26 Acting Chairman Ludwig asked Mr. Burt if he also owned the property where the
27 white vinyl fence is located.

28
29 Mr. Burt answered negatively.

30
31 Discussion ensued regarding addressing the erroneous survey that was
32 submitted by the Applicant at the time of applying for the variance.

33
34 Alternate Fitzgerald suggested the Applicant paint the existing fence on the
35 subject property white for continuity/aesthetic purposes to the other white vinyl
36 adjoining fence.

37
38 Acting Chairman Ludwig questioned Mr. Burt if he would agree to paint the fence
39 white.

40
41 Mr. Burt agreed.

1 Acting Chairman Ludwig asked Mr. Burt if he would consider, when the subject
2 fence is replaced ten years down the road, whatever, if it could be replaced as a
3 decorative fence according to code.
4

5 Mr. Omana interjected saying, I can answer that question, Mr. Chairman. As a
6 matter of procedure, anytime anybody comes in for a replacement, then at that
7 point in time, they would be subjected to the standard code in place. So, they
8 would have to come in for a decorative at that point.
9

10 There being no further public comment, Acting Chairman Ludwig closed that
11 portion and entertained board discussion and/or a motion.
12

13 **MOTION:**
14

15 **Member Stanek moved to grant the request by Ralph Burt for a variance**
16 **from § 154.23 (A) (1), City of Lake Mary Code of Ordinances, to allow a 6'**
17 **high wood stockade fence within the front yard setback on property**
18 **located at 470 W. Lakeview Avenue, Lake Mary, Florida, subject to the**
19 **Applicant painting the existing fence white. Alternate Fitzgerald seconded**
20 **the motion.**
21

22 **Acting Chairman Ludwig requested a roll-call vote on the motion, and was**
23 **taken as follows:**
24

25 **Alternate Fitzgerald - Yes**
26 **Member Stanek - Yes**
27 **Acting Chairman Ludwig - Yes**
28

29 **Chairman Jim Lormann, Vice Chairman Frank Martin and Member Shawn**
30 **O'Brien were absent.**
31

32 **The motion carried unanimously 3-0.**
33

34 IX. Other Business

35 Election of Chairman and Vice Chairman to the Board of Adjustment for Year 2008

36 Juan (John) A. Omana, Jr., Community Development Director, suggested to hold
37 off on any elections until the next meeting when there are more board members
38 present.

39 It was a consensus of the Board to consider elections at the next Board of
40 Adjustment meeting.

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BOARD OF ADJUSTMENT

1 X. Reports of Other Members

2 None

3 XI. Adjournment

4 The meeting was adjourned at 7:45 p.m.

5

6

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11

George Ludwig, Acting Chairman

Diana T. Adams, Administrative
Secretary