

TOWN OF EMERALD ISLE
BOARD OF ADJUSTMENT
REGULAR MEETING
WEDNESDAY, AUGUST 12, 2008

The meeting was called to order at 9:00 AM by Chairman Mark Brennesholtz. Members present were: Mark Brennesholtz, Russell Adams, Sally Waters, Jerry Stockdale, Frank Powell and James Normile (alternate). Also attending was Planning Director, Kevin Reed. There were also a number of other persons in attendance in the audience.

The first order of business was to consider approval of the minutes for the Board's June 11, 2008 meeting. A motion was made by Mr. Adams to approve the minutes as presented. The motion was seconded by Mr. Powell and passed unanimously (5 to 0).

The first case on the agenda was #08-V-04 which is a request by William M. and Lynne S. Hunt for an appeal to a determination made by Town staff that they are subject to a 30-foot front yard setback requirement. The property is located at 10538 Old Coast Guard Road. Those persons wishing to present evidence at the hearing were sworn in by Mr. Reed. Mr. Pat Mason, an attorney, indicated that he would present the case on behalf of the Hunts. Mr. Mason indicated that the Hunts were in the process of installing a pool on their property and that Town staff had determined that the pool did not meet the required 30-foot setback requirement from Old Coast Guard Road. First, Mr. Mason presented a copy of a Certificate of Occupancy (CO) for building permit #2006-635 which indicated that the home and premises were compliant with all of the Town's requirements. Mr. Reed indicated that this CO was issued for the dwelling only and that the pool was being constructed under a separate permit that has still not received final approval by the Town's inspection staff. Second, Mr. Mason presented evidence that he felt the Hunts property should be considered a corner lot and therefore their pool should be subject to a 20-foot side street setback instead of the 30-foot front yard setback. Mr. John Odom, a local land surveyor, presented examples of other properties in the Town that were similar to the Hunts and which had been subject to a 20-foot setback rather than the 30-foot setback. After a question by Mr. Reed, whose determination is being appealed by the Hunts, Mr. Odom acknowledged that these examples were done prior to Mr. Reed assuming the duties of zoning administrator for the Town. After further discussion, the Chairman asked for a vote to determine if the Board agreed with staff's determination that the Hunts would be subject to a 30-foot setback requirement for their swimming pool. The Board voted unanimously that the Hunt's property is not a corner lot and therefore staff had made the correct determination.

The next request by the Hunts was for a variance to Section 19-101, Paragraph (1) of the Town Code in order to allow for a swimming pool to encroach within the 30-foot front yard setback. Mr. Pat Mason also presented this request on behalf of the Hunts. Mr. Mason indicated that the pool contractor had measured from the center of the cul de sac in determining the location in which to place the pool. Town staff questioned the location of the pool after construction had begun and at that time it was determined that the pool violated the 30-foot setback requirement. It was noted that the pool equipment and pool house also violated the required setback. Mr. Mason indicated that the error by the contractor was an honest mistake but one that could cost in excess of \$100,000 to fix. Mr. Reed indicated that while the mistake could certainly be an

honest one, that setbacks are measured from property boundaries and not from pavement edges or street centerlines. Mr. Reed also indicated that the building permit application for the pool showed the pool be placed on the property in a manner that met the required 30-foot setback. Mr. Reed indicated that the pool, pool decking, pool equipment and pool equipment enclosure were all found to be in violation of the Town's setback requirements. Ms. Joanna Scales who indicated that she owns property near the Hunts spoke in favor of the variance request. Ms. Mary Felton, Channel Drive, spoke in favor of the request. Mr. Jim Osika, Channel Drive, spoke in favor of the request. Mr. Jim Slack, Channel Drive, spoke in favor of the request. Frank Powell and Jerry Stockdale asked several questions of the applicants. Russell Adams indicated that it appears that mistakes were made by the contractor in determining the location of the pool. After considerable discussion by the Board, a motion was made by Mr. Brennesholtz to grant a variance to the 30-foot setback requirement that would allow for the pool to remain in its current location. The motion included the conditions that: (1) a maximum of 4-feet of the pool decking may encroach into the setback; and, (2) that the pool equipment and enclosure be relocated in order to meet the setback requirement. The motion was seconded by Mr. Powell and passed unanimously (5 to 0).

There being no further business to come before the Board, a motion to adjourn was made by Jerry Stockdale. The motion was seconded by Russell Adams and passed unanimously (5 to 0). The meeting was adjourned at 10:23 AM.

Respectfully submitted by

Kevin B. Reed, Secretary
Town of Emerald Isle Board of Adjustment