**Town of Melbourne Beach**

**BOARD OF ADJUSTMENT MEETING**

**THURSDAY – FEBRUARY 18, 2021**

**COMMUNITY CENTER – 509 OCEAN AVENUE**

**MINUTES**

**Board Members:**

Chairman Robert Schaefer

Vice Chairman Xochitl Ross

Member Charles Cain

Member James D. Simmons

Member Peter Peterson

**Staff Members:**

Town Manager Elizabeth Mascaro

Town Clerk Jennifer Torres

Town Attorney Clifford Repperger

Town Planner Corey O’Gorman

1. **Call to Order**

 Chairman Schaefer called the meeting to order at 6:30 p.m.

1. **Roll Call**

 Town Clerk Torres led the roll call.

 Members Present: Staff Present:

 Chairman Robert Schaefer Town Manager Elizabeth Mascaro

 Member Charles Cain Town Clerk Jennifer Torres

 Member James D. Simmons

 Member Peter Peterson

 Members Absent

Vice Chairperson Xochitl Ross

Town Clerk Torres said she had an item to add to the agenda – the appointment of a BOA Vice Chairperson.

Chairman Schaefer said he would like to nominate long-time member Xochitl Ross. He stated that Ms. Ross sent an email to the Town Clerk indicating her desire to serve as Vice-Chairperson. He went on to say that despite the fact that Ms. Xochitl has been unable to attend the last few meetings, it’s only because of the pandemic and her mother (who resides with her) is elderly and still waiting on her vaccination. Ms. Ross said she will resume meeting attendance this year after her mother is safely vaccinated.

**Chairman Schaefer moved to nominate Xochitl Ross as Vice Chairperson for the Board of Adjustment; Member Cain seconded; Motion carried 4-0.**

1. **Approval of Minutes**

**Member Simmons moved to approve the draft minutes as revised; Member Cain seconded; Motion carried 4-0.**

1. **Public Hearing**

Variance Application #2021-02-V, 308 Oak Street

Town Attorney Repperger read the application request.

The applicant, Wyatt Hoover, was present. He was sworn in by Chairman Schaefer.

Mr. Hoover said he wanted to go over some of the areas of concern that were brought up at the last BOA meeting.

He explained that initially, he just needed an extra bedroom for his growing family but decided that if they were going to do construction in that area, they should try and bring their non-conforming garage more into code.

In regard to whether the east garage wall could be moved west where there is more space between the house and the setback line – Mr. Hoover said no. Doing this would weaken the wind strength of his home and add substantial costs. In addition, he said, this would require adding 500-square feet of impermeable surface to his driveway and while it would not be over the 30-percent rule, he still felt it would be in conflict with the Town guidelines for sustainability.

As far as sealing documents, Mr. Hoover said his architect only does that once they are wind rated. He added that the Board can be certain the numbers are what’s listed because they will be verified by an as-built survey that’s required as part of the Town’s standard permitting.

Mr. Hoover continued to read from his Variance Application Addendum and when he was done Chairman Schaefer read the staff analysis provided by the Town Planner.

Discussion ensued related to the use of existing slab. Town Attorney Repperger said that even if he’s adding an additional slab, it has no effect on actual encroachment.

Discussion ensued related to the fact that non-conformity is encroachment.

In a question directed at Mr. Hoover, Member Cain asked if he could substantiate his earlier comment that moving the garage back would weaken the wind strength of his home.

Mr. Hoover said he couldn’t quantify it but his architect agreed.

Member Peterson said that while the design would increase wind loading, his architect will design for that speed and that level because any new construction must meet the wind codes.

Member Simmons pointed out that the setback barely goes into the new bedroom and if you move the garage back so it becomes completely compliant you have now encroached on the rear setback

Member Peterson said there were two statements he wanted to be clear on:

First, under Special Notes and Circumstances, deprivation of rights, it reads, “The entry hallway is required as a garage entrance is not permitted directly off a bedroom,” Member Peterson wanted to know if this was factual.

Mr. Hoover said he believes the code prohibits a bedroom door from opening up to a garage. Chairman Schaefer concurred this was indeed in the code.

Second, Member Peterson asked if someone on the Board could elaborate on the Town’s guidelines for impervious areas.

Member Simmons clarified that the code states 30-percent of the yard must allow uninhibited permeation and that pavers do not qualify as permeable

Some discussion ensued related to whether the variance goes with the land or is null once the structure is destroyed – or partially destroyed.

Town Attorney Repperger said that his interpretation is that the variance goes away if garage goes away. He reminded the Board they can add a stipulation with a specific directive in the order to assure this is the case.

Member Peterson said that he was uncomfortable with the idea that their decisions are based on an unsealed survey with measurements that have no certification from anyone.

Town Attorney Repperger responded by saying the owner will have to get a survey and staff will get it certified.

Chairman Schaefer said he felt that certain questions and parts of the variance application needed to be added back in.

Member Cain said they can approve the application based on what they are currently looking at - but what if in reality the measurements are way off.

Town Attorney Repperger said that the form board survey will confirm everything.

Member Simmons added that if the survey is off, the application will be knocked back down.

Town Attorney Repperger said that to some extent the Board is at the mercy of what is put in front of them. But the applicant is on notice they must comply.

**Member Simmons moved to approve the variance at 308 Oak Street of 2-feet, 7 1/8-inches encroachment as measured from the front Southeast corner of the garage as depicted on the drawing dated 11-13-2020 with the stipulation that the variance goes away if the structure is 50-percent or more destroyed based on value of the structure; Member Cain Seconded; Motion carried 4-0.**

1. **Adjournment**

**Member Simmons moved to adjourn; Member Cain seconded; Motion carried 4-0.**

 The meeting adjourned at 7:52 p.m.

 ATTEST:

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Robert Schaefer, Chairman Jennifer Torres, Town Clerk