

TOWN OF PALM BEACH

Building and Zoning Department

MINUTES

BUILDING BOARD OF ADJUSTMENTS AND APPEALS
2:00 p.m., THURSDAY, NOVEMBER 1, 1990
AT THE TOWN HALL, PLANNING, ZONING & BUILDING DEPARTMENT
CONFERENCE ROOM, 360 SOUTH COUNTY ROAD, PALM BEACH

I. Call to Order: The meeting was called to order
at 2:05 p.m. by Chairman E. Ben Walton, Jr.

II. Roll Call:

PRESENT: E. Ben Walton, Jr., Chairman
Ames Bennett, Member
Jeffrey W. Smith, Member
John Nora, Member
John C. Cassidy, Member

Let the record show that Mr. Smith arrived at 2:21 p.m.

STAFF PRESENT:

John C. Randolph, Town Attorney
Robert L. Moore, Director of Planning, Zoning &
Building
Harry P. Ackerman, Chief Building Inspector
John C. Wandell, Fire Marshal
R. Tim Wright, Chief Electrical Inspector
Cynthia M. Delp, Recording Secretary

OTHERS PRESENT:

James Martindale, Worth Builders, General Contractor

III. Approval of the Minutes of the October 23, 1990 Meeting:

MOTION BY MR. NORA TO APPROVE THE MINUTES AS MAILED.

MOTION SECONDED BY MR. CASSIDY.

MOTION CARRIED UNANIMOUSLY.

IV. Items for Discussion

Item 1: Requested by: Ames Bennett & Associates, P.A.
Regarding: 210 Tangier Avenue
Subject: Appeal of Town of Palm Beach
Amendment to the National Electrical
Code Art. 680-8 (Minimum 10'
clearance to any overhead power
line.)

As Mr. Bennett is the architect for this project, and is likewise a member of this Board, he declared his conflict with respect to this issue. A Voting Conflict Form is on file declaring same.

Mr. Wright, Chief Electrical Inspector, proceeded stating that at the aforementioned job site, there is a probable code violation resulting from the location of the pool with respect to the 7.6 KV overhead power lines. The violation exists as a portion of the power line encroaches the 10' setback by a distance of 2'4". He read the applicable portions of the National Electrical Code (N.E.C.), Article 680-8, which prohibit power lines and certain other electrical situations less than 10' horizontally from the vertical projection of the pool, and the two exceptions to this rule, which were made part of the N.E.C. in 1987. The Town, however, in its 1988 Addendum to the National Electrical Code, deleted these two exceptions, due to the fact that Palm Beach is a barrier island. As such, the Town is subject to hurricane velocity winds, potentially creating hazardous falling power lines and the threat of fire. Also, the lush foliage of Palm Beach, though beautiful, can contribute to falling lines, as well.

Since most pools in the Town are not screened by any structure, the Town's position is that the location of this pool violates the code. Mr. Wright noted that the City of West Palm Beach and Palm Beach County have also deleted the two exceptions listed in the N.E.C.

Mr. Ackerman read a letter from Charles H. Warwick, III, of 218 Tangier Avenue, a neighboring property, wherein he states his request that the Board not offer any waiver to the provisions of the Code.

Mr. Bennett, addressing the Board, maintained that in his opinion, the positioning of this pool does not present a hazardous condition, and further contended that many pools within the Town have been similarly positioned, for example, those on Via Los Incas. Mr. Moore quickly replied that the pools on Via Los Incas were installed prior to his employment

with the Town, but he will certainly investigate the matter.

Mr. Bennett stated that the pool was built on pilings, so moving the pool would not be an easy matter. Further, with the Town's Noise Ordinance coming into effect as of December 1, 1990, pile driving, in an attempt to move the pool, would not be permitted. Also, in consideration of the stage of construction at the site, it would be difficult to access the pool area with a pile driver.

Mr. Ackerman noted that the pool pilings, as they are situated, were installed without approved plans. A piling plan had been submitted for the house and had been approved, but the pool pilings had not been approved. All parties admitted that the resulting problem with the distance from the pool to the power lines was not evident on either the site plan for the house or the piling plan. The problem was discovered by the pool contractor, who notified Mr. Wright of the Town.

Mr. Bennett noted that they have been in contact with Mr. George Gutierrez of Florida Power & Light, who informed them that the encroaching line could be moved back further at a minimal cost of approximately \$ 200.00, but the distance it could be moved is only about eight (8") inches.

Moving the pool without changing the pilings would put an eccentric load on the pilings, and Mr. Bennett was not sure this could be accomplished.

In summary, Mr. Bennett apologized for this error, yet still maintained that danger to the property owner and/or public should not be an issue.

Mr. Moore comments were as follows:

1. No piling plans were approved by the Town for the pool.
2. The power line problem would not have been known prior to the involvement of the pool contractor.
3. The Town did, in 1988, delete the exceptions allowed in the 1987 N.E.C.
4. Mr. Bennett has the ability to design the pool using the existing pilings and a cantilevered grade beam so that it can comply to the Code.
5. The requested pool is not a standard 15'x30' pool, but is an 18'x40' pool. The size is excessive by normal standards, yet, perhaps, not for Palm Beach. Had this pool involved a zoning variance request, the Staff would have had a difficult time defending the request, as it is excessive. Further, since electricity and water are involved here, the Town being a barrier island, " the Town wants to be clear on

its position in granting a variance to a barrier island community for a restriction that the Town did not feel should be waived, even though the National Electrical Code did, because we don't use screen enclosures here in the Town of Palm Beach. We are not typical of why that exception was put in, according to Mr. Wright's research with a committee of the National Electrical Code that institututed that."

6. Although we respect the problems of the architect and the contractor, and realize that it was truly convenient to install the pool pilings when the pilings for the house were installed, we would have hoped they would have been installed properly. As they were not, the problem must either be corrected, or relief from the provisions of the Code be sought, as is being done here today.
7. There are other, perhaps costly, methods of solving this problem, but safety is what is important, and should not be traded for convenience or money.
8. Further, if the Board would grant exemption from the Code in this case, they will find themselves with many more of this type of request.

Mr. Smith suggested that the pool be made 2'4" smaller than it is currently designed. Mr. Bennett responded that the load on the pilings, in his estimation, would be adversely affected.

Mr. Bennett maintained that the Town's Codes, i.e., Zoning and Electrical, etc., be better coordinated to eliminate this sort of problem, as the pool in its location is permissible by the Zoning Code, but is a violation with respect to the National Electrical Code. Mr. Moore responded that it is an unwritten guideline that the most restrictive code always applies, therefore, the Electrical Code must be observed in this case. Mr. Randolph added that this type of coordination of codes is very difficult to achieve.

Mr. Walton questioned whether the pool could be reviewed by an engineer to see if it could safely be made smaller. Mr. Bennett stated that the owner would like to retain the same 18'x40' design. Mr. Martindale added that soon guniting the pool will be a problem with respect to the Noise Ordinance.

Mr. Smith felt that approval of this request, as it was stated, would be setting precedent for other pool contractors to be able to create larger pools, exactly 2'4" larger, by allowing the power lines to encroach into the setback by that distance. Additionally, Mr. Smith stated that usually when variances are requested, the applicant should be able to show that they have taken measures to minimize their request or improve the situation. Little has been done towad this pursuit thus far.

Mr. Moore's comment was that this request is exorbitant. They are asking for a variance of one-quarter of the required distance, i.e., 2'4" being approximately one-quarter of the required distance. He felt that they should minimize the request.

MOTION BY MR. SMITH TO APPROVE A REVISED MINIMUM REQUEST, TO BE DETERMINED BY THE BUILDING OFFICIAL AS TO WHAT THAT REQUEST WOULD HAVE TO BE.

Mr. Randolph stated that the Board cannot pass this judgement on to Staff, but instead should provide some guidelines.

Mr. Bennett stated that they would be in agreement to move the power lines back as far as they could be moved, and to attempt to move the pool a little closer to the house, but they do not wish to argue "inches" with either Mr. Moore or Mr. Ackerman.

MOTION BY MR. SMITH TO MOVE THE POWER LINES BACK AS MUCH AS CAN BE DONE, AND TO MOVE THE POOL CLOSER TO THE HOUSE TO THE GREATEST EXTENT THAT A CERTIFIED ENGINEER WILL ALLOW, TO COME WITHIN THE PROVISIONS OF THE CODE.

MOTION SECONDED BY MR. CASSIDY.

MOTION CARRIED UNANIMOUSLY.

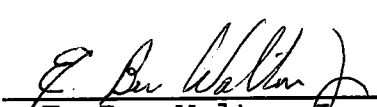
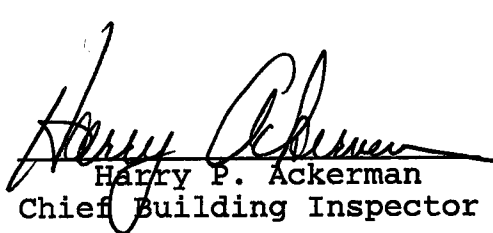
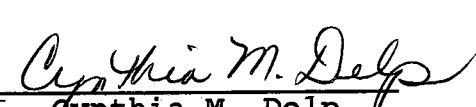
Mr. Walton questioned how these measurements could be checked in advance so that other situations like this need not come to the Board. Mr. Moore responded that if the pool engineer had visited the site, instead of just looking at a site plan, he would have been able to avoid this problem.

IV. Adjournment:

MOTION TO ADJOURN AT 3:10 P.M. BY MR. CASSIDY.

MOTION SECONDED BY MR. SMITH.

MOTION CARRIED UNANIMOUSLY.

		
E. Ben Walton Sr. Chairman	Harry P. Ackerman Chief Building Inspector	Cynthia M. Delp Recording Secretary

FORM 8B MEMO ANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Bennett, Ames	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Building Board of Adjustments & Appeals
MAILING ADDRESS 242A Royal Palm Way	THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach, FL 33480, Palm Beach	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED November 1, 1990	MY POSITION IS: ☐ ELECTIVE ☒ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION OR VOTE AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF STATE OFFICER'S INTEREST

I, AMES BENNETT, hereby disclose that on NOVEMBER 1, 19 90:

(a) A measure came or will come before my agency which (check one)

☐ inured to my special private gain; or

☒ inured to the special gain of HARVIN ROSENBERG, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows:

DESIGNING ARCHITECT FOR PROJECT
AS WELL AS MEMBER OF BOARD.
DID NOT VOTE. SPOKE ONLY
ON BEHALF OF MY CLIENT

November 1, 1990
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.