MINUTES
TOWN OF JUNO BEACH

BOARD OF ADJUSTMENT AND APPEALS HEARING

October 26, 2016
Council Chambers
340 Ocean Drive

PRESENT: JASON HASELKORN, MAYOR
JIM LYONS, VICE MAYOR
FRANK FAHY, VICE MAYOR PRO TEM
BILL GREENE, COUNCILMEMBER
ELLEN ANDEL, COUNCILMEMBER

ALSO PRESENT: JOSEPH LO BELLO, TOWN MANAGER
VANESSA M. MUTCHNIK, TOWN CLERK
LEONARD RUBIN, TOWN ATTORNEY
ANTHONY MERIANO, DIRECTOR OF PUBLIC WORKS
RUBEN CRUZ, DIRECTOR OF PLANNING AND ZONING
FRANK DAVILA, PRINCIPAL PLANNER

Mayor Haselkorn called the Board of Adjustment and Appeals Hearing to order at 5:30 pm.

Audience: 19

~ CALL TO ORDER
~ INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG
~ ADDITIONS, DELETIONS, SUBSTIUTIONS TO THE AGENDA - *None*

1. **VARIANCE REQUEST BY WEXFORD COURT HOMEOWNER'S ASSOCIATION (220 CELESTIAL WAY)**
Director of Planning and Zoning Cruz explained the application and backup information (see attached).

A. Swearing in of Witnesses – Town Attorney Rubin swore in all witnesses.

B. Disclosure of Ex Parte Communications –

Mayor Haselkorn, Vice Mayor Lyons, Vice Mayor Pro Tem Fahy and Councilmember Greene stated that they met with a few residents regarding this issue.

C. Staff Comments -

Director of Planning and Zoning Cruz stated that this variance was presented to the Planning and Zoning Board and a motion to recommend approval failed by a 2-3 vote. He stated that the applicant is proposing a five to six foot automatic vehicular gate, a pedestrian gate and entry features, all of which exceed the four foot height limit set forth in the Town Code. Mr. Cruz stated that the applicant did not demonstrate a hardship to staff; therefore, staff is recommending denial of the variance application.

Vice Mayor Pro Tem Fahy questioned why the Town Code does not reference "gates".

Director of Planning and Zoning Cruz stated that fences, walls and gates are considered one in the same, notwithstanding the fact that gates are not specifically referenced.

Vice Mayor Pro Tem Fahy stated that he believes this issue took too long to be considered by the Board and he did not want to drag it out any longer.

Vice Mayor Lyons questioned if the applicant met the five variance criteria. Director of Planning and Zoning Cruz stated that the applicant did not meet each of the five criteria and that is why staff was not recommending approval of this variance. He added that the Board makes the final determination as to whether the criteria are met and can approve the variance.

Vice Mayor Lyons asked if the Planning and Zoning Board recommended the Town Council review the Town Code regarding height of walls and gates.

Director of Planning and Zoning Cruz stated that the Board did recommend this and added that the Town Council could do this at another meeting.

Mayor Haselkorn questioned if there was substantial evidence made by the applicant to demonstrate a non self-imposed hardship.

Director of Planning and Zoning Cruz stated that staff did not believe that the application demonstrated that all of the criteria were met.

Councilmember Andel questioned if the applicant met with staff regarding their variance.

Director of Planning and Zoning Cruz stated that staff met with the applicant several times.

Councilmember Greene stated that he agrees with Vice Mayor Pro Tem Fahy that this issue has gone on long enough. He added that there are other gates in the community that exceed the 4 foot height limit.

Director of Planning and Zoning Cruz stated that the other gates were approved as part of a PUD or by his predecessors through other means. Staff must apply the Town Code as currently written.

Councilmember Greene questioned if a higher gate would be safer.

Director of Planning and Zoning Cruz stated that public safety is not his expertise. He added that he believes the reason why the Town decided to put the maximum height at 4 feet was to keep an open small Town feel and not wall off communities from their neighbors.
Vice Mayor Pro Tem Fahy stated that the applicant's main purpose for the gate is safety and a 4 foot gate can be easily scaled.

Councilmember Andel questioned if this variance was approved tonight, would other single family homes be able to apply for permits to put a gate at their homes which exceed 4 feet?

Town Attorney Rubin stated that the approval of a variance does not set a precedent. Each variance application must be considered based on its own facts and circumstances..

D. Applicant Presentation –
Donna Hamilton, Applicant, 220 Celestial Way #6, gave more detailed information about the application. She stated that their development was built 35 years ago and that was a different time back then. Ms. Hamilton stated that recently she has noticed a different quality of people that come by her community. She proceeded to give examples of different safety issues that could have been prevented if this gate was in place.

Councilmember Greene questioned if a gate would cause a limitation to access for the police department.

Town Manager Lo Bello stated that the police department has all the codes to gates in Town.

Councilmember Greene questioned if there were any objections from neighboring communities regarding this gate.

Director of Planning and Zoning Cruz stated that there were no objections from neighbors.

Robert Hamilton, 220 Celestial Way, stated that this gate is a life safety issue and they are only asking for what other communities have in Town.

E. Public Hearing
Public Hearing Opened at 6:02 PM

Stuart Katz, 800 Ocean Drive, stated that he supported this variance and provided written comments to Council and staff (*document attached*).

Anne Bosso, 765 Hibiscus Avenue, stated that she could not see how this variance could not be approved tonight. She added that this issue has gone on long enough.

F. Council Discussion -
Vice Mayor Lyons stated that he would be concerned with changing the code regarding the height limit on gates. Vice Mayor Lyons stated that he would be in support of this variance as it is only fair that Wexford Court be allowed the same gate height as other communities in Town.

Town Attorney Rubin stated that there is a very high legal standard that staff must look at when reviewing variances. He added that ultimately it is the Board's decision to approve or not approve the variance based on the evidence presented.

Mayor Haselkorn questioned if a 4 foot gate would provide adequate safety to the community and asked the applicant if they did any research on this.

Ms. Hamilton stated that they did not research the safety of a 4 foot gate.

Anne Bosso, 765 Hibiscus Avenue, stated that she spoke with Chief Smith in the morning and he stated that he did not have any statistics, but logically a higher gate would add more protection.

Madeline Morris, 800 Ocean Drive, stated that by her community they have serious problems with young people jumping the fence at the lower end of the fence. She added that the Board should approve this variance to give Wexford Court additional safety protection.

G. Council Motion

MOTION: *Lyons/Greene made motion to approve the requested variance from Wexford Court subject to the following staff conditions;*

- *At time of Building Permit submittal and prior to the issuance of a building permit, the applicant shall provide an agreement executed by the applicant and existing easement holders (i.e. 230 Celestial Way) allocating the maintenance responsibility for the proposed entry gates;*
- *At time of Building Permit submittal, applicant shall provide a survey/site plan that indicates the proposed location of the gates;*
- *Proposed entry gates shall be in accordance with Palm Beach County Fire Rescue Standards to allow ingress/egress of the subject property; and*
- *If the proposed construction does not commence within 6 months of the date the variance is granted, the variance shall become null and void.*

Councilmember Lyons questioned if the applicant agreed with staff's conditions.

Mr. Hamilton stated that they did.

Mayor Haselkorn stated that he did not believe that there was sufficient evidence presented tonight by the applicant for the Board to approve a gate exceeding the height limit in Town.

H. Council Action

The motion passed 4-1, Mayor Haselkorn opposed.

2. **ADJOURNMENT – 6:20 PM**

Mayor Haselkorn adjourned the meeting at 6:20 pm.

Jason Haselkorn, Mayor

Vanessa M. Mutchnik, Town Clerk

Oral Presentation to Zoning Board of Adjustment and Appeals

October 26, 2016

My name is Stuart Katz. I live at 800 Ocean Drive. I support the variance request of Wexford Court. In his memorandum of August 24, 2016 Director of Planning & Zoning, Ruben Cruz, recommended denial of the variance request on the narrow grounds that our Code of Ordinances limits front yard wall and fence height to 4 feet and that were no special conditions and circumstances applicable to this property sufficient to relax terms of the code.

Wexford Court's petition cited life safety issues from nonresident traffic, safety issues from illegal trespassing and property damage from such intruders. These are reasonable concerns. While it is not clear to me that a six foot maximum height gate would be 50% more effective a four foot gate, it seems proper to make direct comparison to the existent gated communities on Celestial Way. The contiguous properties, Beachbound and Cote de la Mer, both have gates taller than four feet, avoiding the four foot code limitation via the building permit review process for the former and via the Planned Unit Development process for the latter. Other comparable PUD properties include Alicante and Pelican Walk. These communities have gates that are more than five feet above grade.

Mr. Cruz revealed at the September 26 P & Z Board meeting that staff has a rather liberal interpretation of Sec. 34-905, and that the Town would have permitted a design sloping upward from four to five feet as an "ornamental feature" exception. Sec. 34-905 regulates walls and fences. The term "gates" never appears in the language of this section. Gates tend to be taller than their associated walls and fences. The rear apartment associated with 350 Ocean Drive, directly behind Town Center, has a 6 foot 9 inch gate. This "ornamental feature" was permitted because the Town regarded it as a door, not a gate. Sec. 34-905 is not explicit with respect to the maximum height of gates.

The P & Z Board voted 5-0 to recommend to the Town Council consideration of amending our code to allow up to six foot gates for beachfront property. While I do not have a strong opinion on the precise height the Council might authorize, I do feel that Sec. 34-905 is flawed by failing to precisely define differences between gates and walls or fences. In this context I believe the Zoning Board of Adjustments and Appeals has ample practical and legal reasons to grant the variance request of the Wexford Court Homeowners' Association.