

**AGENDA
TOWN OF JUPITER ISLAND
BOARD OF ADJUSTMENT MEETING
THURSDAY, MARCH 28, 2024, 9:00 AM
ISLAND ROOM – TOWN HALL – 2 BRIDGE ROAD**

1. Minutes of the November 30, 2023 Board of Adjustment Meeting

2. Minutes of the January 29, 2024 Board of Adjustment Meeting

3. 185 South Beach Road

In accordance with Article X, Division III, Section 3.00, General Alternative Development Standards, Article X, Division III, Section 3.02, Placement of more than 3’ of Fill, the applicant is requesting to use Article IV, Division III, Section 3.01, Fill, in order to create a level surface between the proposed guest house and main residence for the pool terrace and to fill in the area where the old pool existed.

4. 252 South Beach Road

In accordance with Article X, Division V, Section 5.00, Standards for Approval of Variances, the applicant is requesting a variance to Article IV, Division III, Section 3.16, Gates, in order to move a gate from the northern driveway to a new southern driveway location and requesting a variance to Article IV, Division III, Section 3.06, Walls, Fences, and Bulkheads/Seawall, A., 1. a., Front Yards, in order to install a coquina wall in the area where the northern gate was previously.

5. Other Items

- a. Next Meeting – April 25, 2024 – To be determined
- b. Other Items

** No advanced materials provided*

BOARD OF ADJUSTMENT

Marjorie Gadarian Graham, Chair

Mark Newman, Vice Chair

Hugh O’Kane

Jodi Dines

Nancy Auth

E.B. Smith, Alternate

Stephanie Flinn, Alternate

TOWN STAFF

Robert Garlo, Town Manager

Catherine Harding, Director of Building

Ruben Cruz, Director of Planning & Zoning

Kimberly Kogos, Town Clerk

STATE MANDATED STATEMENT

If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Any person requiring a special accommodation at this meeting because of a disability or physical impairment should contact the Town prior to the meeting. Please contact the Town Hall, 2 Bridge Road, Hobe Sound, FL 33455, telephone (772) 545-0103.

**MINUTES
TOWN OF JUPITER ISLAND
BOARD OF ADJUSTMENT MEETING
NOVEMBER 30, 2023**

TIME: Thursday, November 30, 2023 – 9:00 a.m.
PLACE: Town Hall Island Room
PRESENT: Chair Marjorie Gadarian Graham, Member Hugh O’Kane, Members Mark Newman, Nancy Auth, and Alternate Member E.B. Smith. Also present were Planning, and Zoning, Planning and Zoning Director Ruben Cruz, IT Director Bill Sutton, Town Attorney Thomas Baird, and Town Clerk Kimberly Kogos.

Chair Graham called the meeting to order at 9:00 a.m. and introduced the present Board Members. She determined there was a quorum present. Member Dines attended remotely but did not participate per Resolution 900 pertaining to remote participation.

1. Minutes of May 22, 2023, and September 29, 2023, Meetings

a. Minutes of the Meetings held May 22, 2023, and September 29, 2023

Chair Graham explained that she deferred reading and approving the May 22, 2023, minutes until those who attended the May 22, 2023, meeting could be present.

MOTION: Newman/Auth moved to approve the minutes from May 22, 2023, as presented.

ACTION: 5-0 motion passed.

MOTION: O’Kane/Newman moved to approve the minutes from September 29, 2023, as presented.

ACTION: 5-0 motion passed.

Chair Graham clarified that the next meeting will be December 28, 2023, with one item and potentially two items, to be presented. Discussion regarding availability ensued. Chair Graham, Vice Chair Newman and Member O’Kane confirmed they would attend in person.

2. 67 North Beach Road

This is the application of Jeffrey Levitetz, Trustee of the Jeffrey A. Levitetz, u/t/d 5/3/52007, represented by Jared Gaylord, Esq. of Marc R. Gaylord, P.A., requesting the following:

In accordance with Article X, Division III, Section 3.00, General Alternative Development Standards, Article X, Division III, Section 3.01, Initial Measuring Point for Building Height, the applicant is requesting the use of Article IV, Division II, Section 2.00, Building Height, in order to increase the initial measuring point from 10.25’ NAVD to 15’ NAVD;

AND

In accordance with Article X, Division III, Section 3.00, General Alternative Development Standards, Article X, Division III, Section 3.02, Placement of more than 3' of Fill, the applicant is requesting to use Article IV, Division III, Section 3.01, Fill, in order to create a more level property and comply with state regulations.

Ex-Parte Communication

- *Chair Graham stated she visited the site with Director Cruz and read all materials and support letters.*
- *Member Auth stated she visited the site with Director Cruz.*
- *Member O’Kane stated he had seen the property a couple of times and had no ex-parte communication.*
- *Vice Chair Newman stated he had seen the property a couple of times and had no ex-parte communication.*
- *Alternate Member E.B. Smith stated he spoke with the owners without their knowledge he was on the Board. He disclosed he also spoke with the neighbor on the south side of the property who expressed concern about the height.*

Town Clerk Kogos swore in those speaking and presenting including Jared Gaylord, Esq. of Marc R. Gaylord, P.A.; Kevin Asbacher of Asbacher Architecture, Inc., Richard Rutledge of Innocenti and Webel, and Planning and Zoning Director Ruben Cruz.

Director Cruz introduced the application and provided background information as well as his recommendations.

Attorney Jared Gaylord, representing Jeffrey Levitz, greeted the Board. He began his presentation by displaying aerial photographs of the property and provided history of the property and prior application approvals which have been extended based on State Statute. He explained that the current proposal is requesting less fill than previously approved. He reviewed a digital elevation model that displayed the Initial Measuring Point (IMP) and NAVD (North American Vertical Datum) of neighboring properties.

Attorney Gaylord displayed the property survey and site plan. He explained the site sections, basement grading plan (including equipment location), first floor plan as well as the roofing plan, and the elevations. He displayed the site data table and concluded his presentation by explaining the unique standards (i.e. setbacks) of the North Beach community compared to other neighborhoods on the island.

Attorney Gaylord displayed the civil plans including the drainage and septic systems. He explained the numerous exfiltration trenches and their function. He provided the cut/fill plan and explained the areas in question.

Attorney Gaylord provided site photographs of the property prior to the demolition of the structure as well as the current site conditions. He also provided photographs of the neighboring homes.

Member Auth asked about neighboring properties and if those properties used extra fill. Attorney Gaylord stated that those properties did not use fill but rather used pilings/stilts to raise the structure.

Alternate Member Smith asked about the inconsistency of the permitted building height for an existing building vs. a new building with fill.

Attorney Gaylord and Mr. Asbacher provided explanations.

Alternate Member Smith asked, in layman's terms, if either fill or stilts must be used. Mr. Asbacher confirmed.

Chair Graham asked for the definition of "habitable space". Attorney Gaylord explained the permitted uses and provided the source of the definition.

Chair Graham asked if the bathroom and recreation room in the plan is considered non-habitable. Mr. Asbacher explained that "habitable spaces" include bedrooms, living rooms, kitchens, etc. Member Auth asked about the staff kitchen. Mr. Asbacher confirmed that the staff kitchen is not defined as a habitable space. He added that the staff kitchen is not a full kitchen since it lacks a stove, full size refrigerator, etc. Director Cruz confirmed that the Town's code refers to the state regulations that Mr. Asbacher referred to.

Alternate Member Smith asked about the building materials. Mr. Asbacher clarified that the exterior materials include Mexican shell stone and lime washed cypress.

Mr. Richard Rutledge reviewed the landscape plans including the existing vegetation, removal, and relocation plans. He explained the proposed buffers and elevation renderings.

Alternate Member Smith asked about the fill in the rear yard. Mr. Rutledge explained the location of the fill.

Alternate Member Smith, who is a neighbor to the proposed property, expressed concern regarding the buffering on the north and south sides, and asked for a denser buffer. Mr. Rutledge displayed the landscape grading plan and explained the proposed buffer material. Alternate Member Smith asked to extend the buffer another 10' on the north and south sides. Mr. Rutledge stated the owners are happy to work with neighbors. It was clarified that this topic is not in the purview of the BOA, but rather the Impact Review Committee.

Attorney Gaylord concluded his presentation by reviewing the development standards and explaining how the application demonstrates that the general alternate development standards are satisfied.

Chair Graham asked if the approval runs with the property title. Attorney Gaylord replied affirmatively. He further explained that the variances, zoning changes, etc. would run with the land.

Attorney Baird asked Attorney Gaylord if he is suggesting an approval today would vacate the prior approval. Attorney Gaylord said yes and added, if not approved today, the prior approval remains, and property can be developed accordingly.

Director Cruz explained that the prior approval expiration date is December 2024.

Discussion ensued regarding the prior approval and the current approval.

Attorney Gaylord continued with his review of the development standards.

Public Comment:

There was no public comment.

Member Auth stated that the Board is between a rock and a hard place with the prior approval. She expressed concern regarding the amount of requested fill. She also stated that she does not feel the standards have been properly met.

Discussion ensued regarding the issue of fill. Member O’Kane noted concerns from residents are typically about water runoff and amount of construction truck traffic.

Chair Graham confirmed that the prior approval is not for the current proposed structure but rather for the previously proposed structure.

MOTION: *Newman/O’Kane moved to approve the application with the conditions below:*

- *The applicant will seek and obtain a Florida Department of Environmental Protection permit.*
- *The applicant will incorporate all plans submitted and approved by the Board.*

ACTION: *The motion passed 4-1. Member Auth voted Nay.*

3. Other Items

- a. Next Meeting – December 28, 2023
This item was previously discussed.
- b. Other Items
Director Cruz introduced the new Building Official, Ms. Catherine Harding.

No other items were addressed.

Adjournment

The meeting was adjourned at 10:46 a.m.

Respectfully submitted,

Kimberly Kogos, Town Clerk

**MINUTES
TOWN OF JUPITER ISLAND
BOARD OF ADJUSTMENT MEETING
JANUARY 29, 2024**

TIME: Monday, January 29, 2024 - 11:00 a.m.

PLACE: Town Hall - Island Room

PRESENT: Chair Marjorie Graham, Vice Chair Mark Newman, Members Hugh O’Kane, and Eleanor Seaman. Also present were Town Manager Robert Garlo, Director of Building Catherine Harding, Director of Planning & Zoning Ruben Cruz, Town Clerk Kimberly Kogos and Town Attorney Thomas Baird

Director of Building Catherine Harding opened the meeting at 11:03 am, introducing herself and Director of Planning & Zoning Ruben Cruz. Director Harding noted that the meeting would be informal, discussing some proposed changes in the Land Development Regulations (LDR) language.

Director Harding defined “living space vs. habitable space” as defined in Article 2, Section 1 by Florida Building Code, noting that they are not similarly classified within the Town’s LDR; moving forward the goal is for conformity and consistency. Board of Adjustment Chair Graham questioned where the term “habitable space” is used in the Town’s LDR. Director Harding noted the wording does not currently exist in the LDR’s but is being added because there appears to be confusion between the definition of each space. Habitable space has ventilation and lighting (such as a bedroom), whereas living space could be defined as a game room, theater or another area not used for sleeping according to the FL Building Code. Chair Graham also asked why the Town is clarifying the definition of the term unless it is used somewhere in the LDRs. Director Harding clarified that because the Town uses the term in its Building Code, and is also used in the FL Building Code, the term should be consistently used in the LDRs. Director Harding added that more plans are being submitted with defined basements, and it must be clarified if that space will be utilized for sleeping. The Building Code states that a basement is not a habitable space - unless it was designed as such when the plans were originally submitted. Chair Graham noted that bedrooms should also be clearly defined. Director Harding added that the FL Building Code defines a bedroom as a room with a closet in which to sleep.

Vice Chair Newman asked if the Building Department intends to apply the term “floor area” to basements, which Director Harding replied that if a basement has a floor area that space would be

identified as such but added that storage and utility rooms are not considered living space. Attorney Marc Gaylord asked if a home has an existing basement and is not currently included in the floor plan of the structure, would it now be taxed as additional floor area. Director Harding explained that if the basement is used for living space it will be treated as such. Living space is defined as “a space within a dwelling utilized for living, sleeping, eating, cooking, bathing, washing and sanitation purposes”. She added that living space and floor area are identified as being the same under Florida Building Code, and that bedrooms will also be defined in the description.

Director Harding then discussed the term NAVD, which architects use as a reference to flood elevation, and the Town uses the acronym NGVD with a different interpretation. She proposed replacing NGVD with NAVD on plans when they are submitted and added that NAVD is the standard used for flood elevations, noting the difference between the two is about 1.5 feet.

Director Harding advised that residential parking is currently allotted at one space per bedroom but is now proposing two spaces per bedroom as the maximum.

Additional topics included:

- State regulations associated with home-based businesses within a municipality that have been adopted by other municipalities will also be adopted by the Town
- Maximum floor area of a building shall not exceed 10,000 square feet for the primary residence
- Changing the terminology of a “building” to a “principle dwelling” in a residential zone
- Maximum square feet of an accessory building shall not exceed 3,000 square feet
- The definition of “floor area” and “living area” shall be the same

Director Harding also recommended changing the wording “shall approve” to be consistent with the original BOA language of “may approve”, which infers “must approve” which limits the ability to deny approval. Mr. Gaylord cautioned that “may vs. shall” is not always appropriate as many dimensions must be precise and remain as stated, exempt from verbiage substitution.

Suggested changes for development standards included:

- Adding fencing or screens (without signage) in front of ongoing construction
- Utilization of vehicle cleaning blankets on unpaved driveways
- Construction gatekeeper to control site access and regulate traffic
- Monthly pest control commencing on the clearing of acreage to eliminate disturbance on adjacent properties during construction activity
- Port-a-let may be placed during construction at an approved location

Director Harding concluded that Alternative Development Standards cannot result in the creation of a building being more visible than the adjacent properties, structures, or public rights-of-way. Vice Chair Newman noted that many existing structures on the Island are outdated; new structures may end up being taller than the existing neighboring homes and will be considered out of compliance, and those buildings may end up being demolished by its new owner. Director Harding opined that the community's extensive use of landscaping may aid in averting the situation.

Chair Graham commented that although the recommendation is monthly pest control, exterminators are now advising application no sooner than every two months. She added that several of the proposed revisions classified as "mandatory" may be misconstrued as taking away an existing right, such as limiting accessory structures to 3,000 feet, so timely delivery of this information will be important for those impacted by the proposed changes. Town Attorney Baird confirmed that the Commission must approve any suggested modifications and verbiage. He confirmed there would be three public hearings before a final decision is determined.

In response to a question, Director Harding clarified that the Land Development Regulations (LDR) defines a basement as a subgrade level of occupiable space with no more than three (3) feet of exposed daylight at the top of the basement with the rest lying below grade fill; if there is an opening of any one of the four walls surrounding the basement it is considered a living space and is calculated as square footage. If it's not definable by an area and less than three (3) feet we take five (5) feet in for the length of the area that's exposed and calculate that as square footage or living space. The amount that qualifies for the living space under the LDRs is deducted from the 10,000 square feet approved. Accordingly, it is not a new concept to consider living space in the basement area.

Discussion ensued regarding fill, drainage, square footage and habitable space.

Attorney Baird cautioned that Takings Law is a very complex area of constitutional law, and it questions if someone's investment backed expectation resulted in them being deprived of the use of their property. Furthermore, changing a word from *may* to *shall* is not going to be a Taking in itself, and reduction of a living space in a dwelling, or the way square footage is calculated is not going to be a Taking because there already exists a reasonable use of property. He explained that what he may be hearing is actually a concern about a change of regulation that results in a deprivation of property rights, which is a different category. Property rights law talks about whether you have created an inordinate burden on someone's property rights.

Vice Chair Newman recapped that Director Harding is simply trying to conform with the Florida Building Code in respect to defining living space and habitable space. There were no further comments.

The meeting was adjourned at 12:00 pm.

Respectfully submitted by:

Kimberly Kogos, Town Clerk

TOWN OF JUPITER ISLAND MEMORANDUM



TO: Members of the Board of Adjustment
CC: Catherine Harding, Thomas Baird
FROM: Ruben Cruz, Director of Planning & Zoning
DATE: March 14, 2024

**Please notify the Building Department if you are unable to attend the hearing.
772-545-0150**

The next meeting of the Board of Adjustment of the Town of Jupiter Island will be held in the Island Room on **Thursday, March 28, 2024, at 9:00 a.m.**

There are three (3) items on the agenda for Thursday, March 28, 2024:

1. Minutes

Approval of the November 30, 2023, and January 29, 2024, Board of Adjustment Minutes.

2. 185 South Beach Road

In accordance with Article X, Division III, Section 3.00, General Alternative Development Standards, Article X, Division III, Section 3.02, Placement of more than 3' of Fill, the applicant is requesting to use Article IV, Division III, Section 3.01, Fill, in order to create a level surface between the proposed guest house and main residence for the pool terrace and to fill in the area where the old pool existed.

3. 252 South Beach Road

In accordance with Article X, Division V, Section 5.00, Standards for Approval of Variances, the applicant is requesting a variance to Article IV, Division III, Section 3.16, Gates, in order to move a gate from the northern driveway to a new southern driveway location and requesting a variance to Article IV, Division III, Section 3.06, Walls, Fences, and Bulkheads/Seawall, A., 1. a., Front Yards, in order to install a coquina wall in the area where the northern gate was previously.

4. Other Items:

- a. Next Meeting – April 25, 2024
- b. Other Items from members of the Board.

1. Minutes

Approval of the minutes from the November 30, 2023, and January 29, 2024, Board of Adjustment meetings.

2. 185 South Beach Rd

Application Request:

This is the application of Langdon Vista LLC, represented by Jared Gaylord, Esq. of Marc R. Gaylord, P.A., requesting the following:

In accordance with Article X, Division III, Section 3.00, General Alternative Development Standards, Article X, Division III, Section 3.02, Placement of more than 3’ of Fill, the applicant is requesting to use Article IV, Division III, Section 3.01, Fill, in order to create a level surface between the proposed guest house and main residence for the pool terrace and to fill in the area where the old pool existed.

Background:

The applicant (Langdon Vista LLC) acquired the subject property in June 2022. The residence was originally constructed around 1938 and consisted of a nonconforming one & two-story main residence with a detached one-story structure, an existing pool, pool patio, a motor court, and two gravel driveways off South Beach Road. In addition, there were existing nonconforming walls along the side and rear of the property along with a nonconforming dune crossover that was outside the middle one third (1/3) of the property. On August 3, 2023, the applicant received approval from the Impact Review Committee (IRC) to demolish the existing structures and nonconforming features. The applicant is now before this Board as part of the new development for the subject site. To go before the Impact Review Committee (IRC) for approval of the proposed project, the applicant must receive approval from the Board of Adjustment regarding their request to use the Alternative Development Standards of Section 3.02, placement of more than 3 feet of fill. As just stated, the application needs to go before the BOA, as the proposed plans reviewed by staff indicate a total placement of 6.23’ of fill. Please note that this fill material is cut material from the existing site and is being placed where the previous swimming pool was located. As required by the application, the applicant has provided responses to Article X, Division III, Section 3.00 (A-D) and Article X, Division III, Section 3.02 (A-E). The applicant has indicated in their application as to why they are making the request. To support their request, the applicant has provided their justifications. Even with their justifications, the applicant must request and receive approval from the Town’s BOA when requesting the use of Alternative Development Standards to proceed with the proposed plans to the IRC.

Site Analysis:

Zoning District: B-40 1-Acre Estate Residential District

Development Standards	Required/Permitted	Existing	Proposed
Lot Area:	1 acre	1.31719 acres	
Lot Width:	140 ft	200 ft	
Floor Area:	8,481 sf		8,466 sf
Front Yard Setback:	50 ft		50.4 ft
Rear Yard Setback:	Rear Yard Per Ord 376- Exhibit “C”		4.1’ from structure to WFSL

Side Yard Setback:	One Story: 20 ft Two Story: 25 ft		Main House North: 25.1 ft South: 20.1 ft Guest House North: 60.1 ft South: 70.4 ft Main House North: 25.1 ft South: 20.1 ft Guest House North: N/A South: N/A
Initial Measuring Point (“IMP”):			Main House 16.8’ NAVD Guest House 12.1’ NAVD
Fill:	3 ft		*6.23 ft
Roof Height: One-Story-Flat: One-Story-Sloped: Two-Story-Sloped:	14 ft plus 2-foot Parapet Wall 22 ft 30 ft		Main House – 13.33 feet plus 1.75 feet Parapet Wall Guest House – 14’ plus 2’ Parapet Wall Main House – 21.83’ Guest House – N/A Main House – 30 ft Guest House – N/A
Exterior Wall Height: One-Story: Two- Story:	14 ft 22 ft		Main House – 13.86 ft Guest House – 14 ft Main House – 21.58 ft Guest House – N/A
Parking Spaces: (1 per Bedroom)	4 Spaces		7 Spaces
Driveway Setback:	8 ft		8 ft
Landscape Area:	50%		66.59%
LHSM:			N/A
FEMA Flood Zone:	Zone “X”, Zone “VE” (EL 7)		

**Planned Date of
Construction:**

May 2024

***= Requires BOA approval**

Analysis of the Application:

The following code sections are the applicable regulations regarding this application.

1. Use of Alternative Development Standards:

Criteria for Alternative Development Standards:

Article X, Division III, Section 3.00 (A-D)

Sec. 3.00. - General alternative development standards

No application for use of alternative development standards shall be approved unless the applicant demonstrates that, in addition to the alternative development standards in this division that are specifically applicable to the application, the proposed use of alternative development standards:

- A. *Will not cause substantial injury to the value of any other property in the neighborhood where it is to be located; and*

Staff Comment: The applicant has provided their justification for addressing this item. The proposed project does not appear to *cause substantial injury to the value of any other property in the neighborhood* and will have no adverse or unreasonable effect on other properties in the area since it is to be developed for residential use.

- B. *Will be compatible with adjoining development and the intended purpose of the district in which it is to be located; and*

Staff Comment: The applicant has provided their justification for addressing this item. The proposed project appears to be *compatible with adjoining development and the intended purpose of the district* as the use is to be residential.

- C. *Will be consistent with all relevant elements of the town's comprehensive plan;*
And

Staff Comment: The applicant has provided their justification for addressing this item. The proposed development appears to be consistent with the goals, objectives and policies of the Comp Plan.

- D. *Will not result in substantial noise, dust, glare, or odor impacts on any other property in the neighborhood where it is to be located.*

Staff Comment: The applicant has provided their justification for addressing this item. The proposed development is to be consistent with the regulations set forth within the Town's Code of Ordinances. The BOA may impose additional safeguards or conditions if deemed appropriate.

2. Use of Alternative Development Standards to use more than three feet of fill:

Criteria for Alternative Development Standards regarding the use of more than three feet of fill:

Article X, Division III, Section 3.02 (A-E)

Sec. 3.02. Same—Placement of more than three feet of fill.

The board of adjustment shall approve the use of alternative development standards to article IV, section 3.01, regarding the placement of more than three feet of fill on a lot, if the applicant demonstrates that:

-
- A. *The additional fill will not result in a building which is taller than the maximum height permitted on any adjacent lot without the use of alternative development standards; and*
Staff Comment: The applicant has provided their justification for addressing this item. The information provided by the applicant and the proposed landscape plans and elevation plans satisfies this item.
- B. *Fill will be placed in a manner that will not result in additional stormwater runoff onto adjacent property or public rights-of-way; and*
Staff Comment: The applicant has provided their justification in the form of Civil Plans to address this item. The stormwater requirement of the Town's LDRs has been reviewed by the Town's Engineer during the Development Review Committee (DRC) process and found to be satisfactory.
- C. *Fill will be placed in a manner that will not result in significant soil erosion; and*
Staff Comment: The applicant has provided their justification in the form of Civil Plans to address this item. The proposed fill is demonstrated within the Civil Plans and has been reviewed by the Town's Engineer during the Development Review Committee (DRC) process and found to be satisfactory.
- D. *The portion of the lot for which the fill is proposed has not previously been filled pursuant to a special exception or the use of alternative development standards, or the elevation of said portion of the lot has decreased by more than three feet since the fill was placed; and*
Staff Comment: The applicant has provided their justification for addressing this item. Staff was not able to find any documents/plans/information relative to previous placement of fill on the subject property.
- E. *Either:*
1. *The use of alternative development standards will not result in a building which is more visible from adjacent property or public rights-of-way than that which could be constructed without the use of alternative development standards, or*
Staff Comment: The applicant has provided their justification for addressing this item. The information provided by the applicant with the proposed landscape plans and elevation plans satisfies this item.
 2. *The fill is necessary in order to build the finished floor of the building at an elevation of 8.0 NGVD or 6.5 NAVD.*
Staff Comment: As item E requests the applicant to address "either" sub-section #1 or #2, the applicant has addressed sub-section #1 and did not provide a response for item #2. In review, the extra fill is not necessary in order to build the finished floor of the building to an elevation of 8.0 NGVD or 6.5 NAVD.

Recommendation

Prior to rendering a decision, the request noted above should be reviewed and discussed by the BOA for adherence to the standards set forth in Article X, Division III, Section 3.00 (A-D), and Article X, Division III, Section 3.02 (A-E). If necessary, staff recommends implementing conditions of approval that the BOA deem appropriate. (Please note that the Development Order will state any conditions implemented by the BOA.)

3. 252 South Beach Road

Application Request:

This is the application of Mr. Edward Hamm, Jr., Trustee of the Edward Hamm Jr. Revocable Trust, represented by Jared Gaylord, Esq. of Marc R. Gaylord, P.A., requesting the following:

In accordance with Article X, Division V, Section 5.00, Standards for Approval of Variances, the applicant is requesting a variance to Article IV, Division III, Section 3.16, Gates, in order to move a gate from the northern driveway to a new southern driveway location and requesting a variance to Article IV, Division III, Section 3.06, Walls, Fences, and Bulkheads/Seawall, A., 1. a., Front Yards, in order to install a coquina wall in the area where the northern gate was previously.

Background:

The applicant (Edward H. Hamm, Jr) acquired the property on October 1, 2021. Currently they consist of two separate parcels, designated Lot 1 (parcel abuts South Beach Road and known as 252 South Beach Road) and Lot 19 (vacant parcel abuts Isle Ridge Road). Lot 1(252 South Beach Road) currently has an existing main structure with accessory structures along with associated hardscape, and Lot 19 is currently vacant with landscaping and pathway that runs between the properties. As stated in the applicant's letter, the owner is interested in redesigning and redeveloping the properties with the recent applications to the BOA, IRC and Town Commission. Their current request to the BOA is the ability to modify the existing northern driveway and the new southern driveway hardscape/entrance features. This modification entails closing a gap where the previously existing gate at the northern driveway existed, and fill/connect that gap with like material, with the historic two-foot-high coquina stone wall that is representative of the property and neighborhood. In turn, the gate feature will move from the northern driveway to the new southern driveway. To go before the Impact Review Committee (IRC) for approval of the proposed project, the applicant must receive a variance approval from the Board of Adjustment regarding their request. As required by the application, the applicant has provided responses to Article X, Division V, Section 5.00 (A-G). The applicant has indicated in their application as to why they are making the request. To support their request, the applicant has provided their justifications. Even with their justifications, the applicant must request and receive approval from the Town's BOA when requesting a variance to proceed with the proposed plans to the IRC.

Site Analysis:

Zoning District: A-80 2-Acre Estate
Residential District

Development Standards	Required/Permitted	Existing	Proposed
Lot Area:	2 acre	6.43858 acres	
Lot Width:	200 ft	268.98 ft	
Front Yard Setback (wall):	30 ft	nonconforming	*On Property Line/ROW
Front Yard Setback gate):	One-third of the depth of the required front yard: 16'8"		*12 ft
Wall/Fence Height:	6 ft	2 ft	2 ft
Gate Height:	6 ft	6 ft	3 ft
Driveway Side Setback:	8 ft		10'3" ft

Planned Date of Construction: May 2024

*= Requires BOA approval

Analysis of the Application:

The following code sections are the applicable regulations regarding this application.

3. Use of Variance Request:

Criteria for Standards for Approval of Variances:

Article X, Division V, Section 5.00 (A-G)

Sec. 5.00. – Standards for approval of variances.

Except as provided in article V, section 5.09 (variances related to subdivision standards), the board of adjustment shall grant a variance from the terms of these land development regulations if the applicant demonstrates that:

- A. *Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district; and*

Staff Comment: The applicant has provided their justification for addressing this item. The proposed project is trying to keep in character with existing features that highlight the subject property and that are characteristics with neighboring properties.

- B. *The special conditions and circumstances do not result from the actions of the applicant; and*

Staff Comment: The applicant has provided their justification for addressing this item. The special conditions and circumstances appear to already exist and not a result of the applicant's action.

- C. *The variance requested will not confer on the applicant any special privilege that is denied by these land development regulations to other lands, buildings or structures in the same zoning district; and*

Staff Comment: The applicant has provided their justification for addressing this item. The proposed request appears to be consistent with existing conditions on the subject property and neighboring properties.

- D. *Literal interpretation of the provisions of these land development regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these land development regulations and would work unnecessary and undue hardship on the applicant; and*

Staff Comment: The applicant has provided their justification for addressing this item. The literal interpretation would render the applicant unable to enhance/restore the existing wall and gate feature.

- E. *The variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and*

Staff Comment: The applicant has provided their justification for addressing this item. This request appears to be minimal in nature in order to enhance the existing features of the subject property.

- F. *The variance will be in harmony with the general intent and purpose of these land development regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and*

Staff Comment: The applicant has provided their justification for addressing this item. This request appears to be in harmony with the existing character of the neighborhood and general intent of the regulations while not being injurious to the area involved or otherwise detrimental to the public welfare.

G. *The variance does not authorize a use of land that is prohibited in the underlying zoning district.*

Staff Comment: The applicant has provided their justification for addressing this item. This request will not authorize a use of the land that is prohibited within the A-80 zoning district.

Recommendation

Prior to rendering a decision, the request noted above should be reviewed and discussed by the BOA for adherence to the standards set forth in Article X, Division V, Section 5.00 (A-G). If necessary, staff recommends implementing conditions of approval that the BOA deem appropriate. (Please note that the Development Order will state any conditions implemented by the BOA.)

4. Other Items

- a. Next Meeting – April 25, 2024
- b. Other Items from members of the Board.