

[REDACTED] (Homeowners)
467 River Prado
Fort Pierce, Florida 34946
Town of Saint Lucie Village

March 02, 2023

VIA EMAIL

Richard V. Neill, Jr.
Saint Lucie Village General Council
311 South Second Street, Suite 200
Fort Pierce, F 34950
Phone: 772-464-8200

*IN RE: Town of Saint Lucie Village-**Amendment/Supplement/Addition** to March 02, 2023 Variance Application*

Dear Sir:

Thank you for the correspondence regarding our Variance request. Also, we appreciate your office forwarding a copy of the email from Attorney Peter Sweeny representing Mr. Doug Wright that outlines their concerns about variance matters. We understand their efforts and concerns to ensure all matters are completed in accordance to requirements. Please add this supplement information to the March 02, 2023 request.

Basis for Granting Variances

The town of Saint Lucie Village was incorporated in 1961, and our home was built in 1965. Our home is 1232 total square feet including a single carport. Our home is constructed of a concrete foundation and concrete block walls. Our home is currently located 23.7 feet from the bulkhead at the nearest southwest corner inside the current setback requirement.

The current 25' setback requirement from the bulkhead was adopted decades after the original construction of the home, approximately 1990, which in itself created a hardship. After conferring with our legal counsel, it was opined any home structure built prior to the adopted setback ordinance would be "Grandfathered" and exempt from adopted requirements decades later. However, we feel the facts depicted in this supplement exceed those concerns.

Our relief sought to remodel above FEMA flood plain requirements with an addition of a covered rear porch are "**Not Self-Imposed**". We desire to keep the original home foundation and concrete walls and elevate the foundation to within FEMA legal requirements. FEMA requires a residence below flood plain must be at 5 feet above base flood plain elevation for property improvements that exceed 50% of the structure value. Currently the Saint Lucie County Property Appraiser has our home structure valued at \$34,600.00. Our current base elevation is 3.8 feet, and limiting us to \$17,300.00 for improvements unless we raise the

elevation to the 5-foot minimum. Our home currently has the original roof and windows and replacement would surely exceed \$17,300.00. Our variance request includes engineered plans to elevate our foundation to 5'8", eight inches above the minimum FEMA requirement. Our desire is only to construct a covered concrete patio off the home with 4 concrete columns to support the engineered roof to withstand 170mph winds.

The proposed detached garage variance request falls under the same guidelines of not self-imposed. Due to our home being situated at an angle to the bulkhead and front street, and originally built closer to the canal than the street, a variance was requested to construct the detached garage forward of the existing home as too optimize space of our lot and to align both buildings together for aesthetics. It should be noted that the proposed location of the garage is within the setback requirements. If the garage is constructed parallel with the front street it will restrict the distance between the home and garage for a walkway and adversely affect the current location of our septic tank and drain field. Additionally, our home has no current storage or garage and the additional garage is a necessity to protect property.

The 2 Prong Test requirement cited by Attorney Peter Sweening in opposition to our variance request:

- 1- Our hardship is not self-imposed. The residence was constructed in 1965 and has always been located 23.7 feet from the bulkhead, within the current 25' setback requirement adopted decades later.

-When we purchased the home in 2019, we were aware the home was 23.7 feet from the seawall per our survey, but unaware of a 25-foot setback requirement from the bulkhead was required with a variance approval to make improvements.

-We had no knowledge of the FEMA requirement (50%) rule for improvements due to our home being at 3.8-foot elevation until we met with the Village Building Official.

- 2- Our hardship is very unique to our property and not shared by many other homeowners.

-Our home was built in 1965, one of the first homes built in the community of concrete construction. The home was constructed at an angle to the bulkhead and the southwest corner of the building is 23.7 from the bulkhead. Only decades later were a new 25' setback requirement adopted.

Authority to Grant Variances, per FS 166.041 as indicated by Attorney Peter Sweening:

- 1- The variance we are requesting is consistent with the comprehensive plan adopted in 1990.
-We intent to keep the original home structure to honor the previous owner's request and keep our home in accordance to the (Existing Character of the Village) per the comprehensive plan.
- 2- The variance we are requesting is the minimum variance necessary to alleviate our hardship.
- We are not intending to build a large mansion, simply keeping the pre-existing structure and adding a covered porch within new building code standards to protect from rain, wind, and storm damage. It has always been our intention to keep the original home and keep any renovations and remodeling to within the spirit of the community, keeping the "small town fishing village" feel.
- 3- The variance will not be detrimental to the public health, safety or welfare of others

-The variance has no effect on public health and in no way detrimental to anyone including our neighbors

4- The variance will not be contrary to the spirit and intent of the zoning ordinance

- The zoning ordinances are intended by design to protect the well-being of the tax payers and historic structures

-The 1990 Housing Unit Comprehensive Plan explicitly details the development and implementation of appropriate housing standards and zoning regulations as the primary goal. "The village is very concerned with maintaining a high quality environment for all existing and future residents".

Objective 3.1.5.: Preserve and protect significant housing in terms of history and architecture and encourage reuse of such housing to meet residential needs.

In December 2021, the Town of Saint Lucie Village -Board of Adjustment approved our variance request for a proposed construction of a second story living space to convert the existing concrete home into storage and garage space below the new second floor construction. The board approved and granted relief from the setback requirements of the Zoning Ordinance, so the structure could extend to within 17.7 feet from the bulkhead. This variance request is identical to the previous request and approved measurements. The concrete roof supports are in the exact same location as the previous variance.

It is our desire to maintain, restore, and remodel our original 1965 built structure to keep in conformity and spirit of our Village neighbors' homes.

Respectfully,



467 River Prado

Saint Lucie Village

Richard Neill

From: Peter Sweeney <psweeney@blockscarpa.com>
Sent: Monday, March 13, 2023 4:11 PM
To: Richard Neill; Richard Neill
Cc: Doug Wright
Subject: Objection to variance applications for Town of St. Lucie Village

Good afternoon Richard,

As you know, I have the pleasure of representing Mr. Doug Wright, resident and homeowner at 496 Peninsula Drive in the Town of St. Lucie Village. We are aware of several recent variance applications made to the Board of Aldermen for St. Lucie Village and believe for multiple reasons that the variances requests are incomplete, do not meet the legal requirements for a variance and generally are in contravention of both the Comprehensive Plan and the applicable Code of Ordinance provisions for the Town of St. Lucie Village. Specifically, please see the comments, thoughts and analysis outlined below. I know that the hearing for the application for 467 River Prado (Parcel ID: 1421-602-0007-000-3) was cancelled, but Mr. Wright's justifiable concerns continue to apply to all of the currently pending variance applications as submitted and reviewed by myself and Mr. Wright. If you would like to discuss further, please email or call me.

Thank you,

Pete

I write in connection with three variance requests (Requests) that were posted to the Village website last week. I remain opposed to these and similar variances because, among other things, none of the Requests conform with the Village's Variance Application requirements and each are based on the desires or actions of the property owners (self-imposed hardships) and are prohibited under the Village's ordinances.

Proper Notice & Due Process

When these Requests were passed to the Variance Board (Board) absent all the elements required in the Village's ordinances, residents were deprived of their due process rights. In zoning matters, due process violations arises when, among other things, a municipality arbitrary waives notice requirements.

See for example, *Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993)*. In *Snyder*, the Court held that due process requires that a zoning variance must be granted in accordance with clear and objective standards that guide the decision-making process. The Court explained that a variance is a legislative act and, therefore, must be based on "definite standards" that are "consistent with the public interest." The Court also held that due process requires that a property owner be given notice and an opportunity to be heard before a variance is granted.

With respect to the variance Requests first mentioned above, "fair notice" has not been provided. Key facts were omitted from the Requests and the Requests did not comply with the Village's variance application process.

Basis for Granting Variances

I have opposed granting variances in the past where the basis for the relief sought was based on a self-imposed hardship. Self-imposed hardships arise, for example, when a property owner desires to improve a property and a set-back ordinance prevents such improvement. Indeed, the Village's own ordinances specifically preclude granting variances based on self-imposed hardships.

The guiding precedent used by the Florida Supreme Court for deciding whether a hardship cited by an applicant for a variance to zoning set-back ordinances is self-imposed or not, is the two-pronged test established in Lupo v. City of Sunny Isles Beach, 778 So. 2d 1025 (Fla. 2000).

Under this test, the applicant must demonstrate that:

1. The hardship was not self-imposed, meaning it was not caused by the applicant's own actions or decisions, such as purchasing the property with knowledge of the zoning regulations; and
2. The hardship is unique to the property and not shared by other properties in the area.

If the applicant fails to satisfy both prongs of the test, a variance request should be denied. However, if the applicant meets both prongs, a court may grant the variance based on the specific facts and circumstances of the case.

On their face, the Requests note that the applicants wish to improve a structure or add a structure. Each application fails to substantiate legitimate hardships, other than an implied hardship of wanting to improve a property and being prevented from doing so by set-back and other ordinances. Consequently, none of the Requests can be granted because, among other things, each rests on hardships caused by the applicants' own actions or decisions. Finally, if the Board were to grant relief from set-backs sought in the Requests, it would, in effect, do so and knowingly disregard the Village's Comprehensive Plan.

Authority to Grant Variances

Under Florida Statutes section 166.041, a municipality may only grant a variance if the following conditions are met:

1. The variance is consistent with the comprehensive plan of the municipality;
2. The variance is the minimum variance necessary to alleviate the hardship or practical difficulty;
3. The variance will not be detrimental to the public health, safety, or welfare; and
4. The variance will not be contrary to the spirit and intent of the zoning ordinance.

Furthermore, the decision to grant a variance must be made based on evidence presented at a public hearing, must be supported by written findings of fact and conclusions of law, and must be included in the minutes of the hearing. A municipality may not grant zoning variances in an arbitrary or capricious manner and must follow specific procedures and standards to ensure that the decision-making process is fair and consistent with the law.

Since the Requests first referenced above lack any findings of fact or conclusions of law that support a variance grant, the Requests should not be granted. Further, at least in my view, variance requests that fail to conform with the Village's application requirements and/or lack findings of fact or conclusion of law in support of a grant, are improperly before the Board to begin with.

Why I Persist in Opposing Improper Variances

It is not my goal to prevent anyone from enjoying full use of their property – I believe that everyone should be subject to the same applicable laws and regulations. I do not believe, however, that as a citizen of the Village, that I should be required to waive due process rights to be considered neighborly, or that I should sit idle when ordinances like set-backs are waived without legal foundation. I am concerned that, with the growing popularity of the Village and its adjacency to a sensitive ecosystem, that waiving ordinances without a legal foundation places the entire Village at risk because doing so could unleash unintended consequences.

Thank you,

Doug Wright

Peter J. Sweeney, Jr.

Block & Scarpa