



**MINUTES
CITY OF ST. AUGUSTINE BEACH
PLANNING AND ZONING BOARD
REGULAR MONTHLY MEETING
TUESDAY, MAY 19, 2015 7:00 P.M.**

City Hall
2200 A1A South
St. Augustine Beach, FL 32080

I. CALL TO ORDER

Chairman Steve Mitherz called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Steve Mitherz, Vice-Chairman Jane West, David Bradfield, Roberta Odom, Elise Sloan, Zachary Thomas, Karen Zander, Junior Alternate Jeffrey Holleran.

BOARD MEMBERS ABSENT: Senior Alternate Mary McCarthy.

STAFF PRESENT: Building Official Gary Larson, City Attorney James Whitehouse, City Manager Max Royle, Recording Secretary Bonnie Miller.

IV. APPROVAL OF MINUTES OF APRIL 21, 2015 REGULAR MONTHLY MEETING

Motion: to approve the minutes of the April 21, 2015 regular monthly meeting. **Moved** by Roberta Odom, **seconded** by Elise Sloan, passed 7-0 by unanimous voice-vote.

V. PUBLIC COMMENT

There was no public comment pertaining to any issue not on the agenda.

VI. NEW BUSINESS

- A. Land Use Variance File No. VAR 2015-01, for a rear yard setback reduction to 7.5 (seven-and-one-half) feet for proposed construction of a screen porch addition to an existing single-family residence in a Planned Unit Development land use district at 28 Bermuda Run Way, Phillip A. and Alyce W. Finder, Applicants

Phillip A. and Alyce W. Finder, 28 Bermuda Run Way, St. Augustine Beach, Florida, 32080, said they've lived at their current address for the past 10 years, since June of 2005. They have no neighbors behind them, as common ground and a roadway for Sea Winds condos are directly to the north of the six-foot-high privacy fence on their rear yard property line. The screen room they

propose to build will not be seen from the street, and it has been approved by the Bermuda Run Property Owners Association. The hardship for the variance is that though they have a back yard patio, they rarely use it, because of the sun and heat from the hot patio paver bricks, and they've both had multiple skin cancers on their noses since they've retired to Florida. They have an extended, large family, with five kids and nine grandkids, who seem to be visiting all the time, so they'd like to have a more convenient room where they can all get together and eat. They've been told that along with needing a variance to build the screen room with a 7.5-foot rear yard setback, they also need a variance to exceed the maximum height limit of nine feet allowed for screen rooms, as the screen room roof will be 14 feet high at the highest ridge. The inside height of the screen room will be nine feet high, to allow for the installation of a ceiling fan. Their home currently has a 22.5-foot rear yard setback, and the screen room they propose to build will extend 15 feet from the house into the back yard, with a red-clay tile, gabled roof that will match the roof of their house, as the Bermuda Run Planned Unit Development (PUD) covenants and restrictions require a tile roof. This would be complimentary, and an improvement, to their home.

Mr. Larson said as stated in his staff memo, the Board needs to make a determination as to the hardship claimed for the variance. The applicants have presented a very good case, and have referenced in their application two or three other properties in Bermuda Run that have been granted variances for reduced setbacks for decks and screen room additions to five feet and 7.5 feet, with roofs that match the height and architecture of the houses. They live in a private, gated subdivision, and they've submitted a copy of the approval letter from the property owners association.

Ms. West asked the applicants if they have any neighbors who object to the variance request.

Mr. Finder said no, not as far as he knows. As part of the application process, notices of the variance hearing date before the Board were sent to about 40 neighboring property owners.

Mr. Larson said his office hasn't received any objections whatsoever.

Ms. Zander said the letter dated March 12, 2015, sent from the applicants to the Bermuda Run Property Owners Association, says their plan is to build a structure with a poured concrete slab, stuccoed posts, with a 16-inch-high wall and screens all around, and a few other specifications. However, the plans drawn by the applicants' architect, Mr. Steven Schuyler, show a portion of a wall on the left elevation drawing, which would be the side view, that's much higher than 16 inches, so she's wondering if these plans were in fact the plans approved by the property owners association. The approval from the association was for a structure with 16-inch-high walls all around, with no additional upgrades, and it specifically states the structure must stay an open porch.

Mr. Finder said the letter to the property owners association was written before they actually had the plans drawn up by the architect. The reason the architect's plans show the wall on the left elevation as being higher is because there are two air-conditioning units on this side of the house, so they wanted to have a higher wall for just this portion of the porch to provide shelter from the noise of the air-conditioning units. All of the other sides of the porch will be screened down to a wall he actually thinks will be 24 inches high, as it will be three concrete blocks high.

Mr. Bradfield asked if this modified version has also been approved by the property association.

Mr. Finder said no, they haven't been back to the association with the architect's drawing.

Mr. Mitherz said the architect's plans also show the porch foundation as being on pavers, but the letter to the association says the porch will have a poured concrete slab.

Mr. Finder said yes, when he wrote the letter dated March 12, 2015, to the property owners association, they envisioned building the porch on a concrete slab, which he has been told would cost over \$1,000, so their architect suggested they build the footings and the wall, and then recycle the pavers that are already there for the patio, and use them for the floor of the porch.

Ms. Sloan said she thinks the plans sound great, but she has concerns that the approval from the property owners association doesn't match what the applicants are proposing to do, as the approval from the association specifically states the structure must stay an open porch.

Ms. West said she doesn't think this is relevant to the Board's consideration of the variance. The City's approval isn't contingent upon the property owners association, as that's a separate matter.

Ms. Zander asked if a hardship variance is an economic variance, or just a hardship variance, and the criteria used to define a hardship.

Mr. Whitehouse said the hardship can't be of the applicant's own creation, it has to be some hardship of the land, or the topography, or for other reasons. The applicants have given reasons in their application in answering the six conditions to be considered by the Board for the granting of a variance, including why they think there is a hardship, so if the Board finds these reasons are adequate and meet the six conditions required for the granting of a variance, the Board may grant it, if a majority of the Board members agree. Going back to the property owners association, the Board can always grant a variance subject to the association's approval. In this case, it doesn't look like there's that big of a difference between what the association has approved and the changes made to the plans drawn by the architect. If there was a huge difference, he might caution the Board about this, and advise the applicants to go back to the association for approval first, because the City tries to give deference to the individual governing associations of different subdivisions and private planned unit developments. However, if the applicants are comfortable with the Board's approval, if the majority of the Board members agree, to grant this variance contingent upon the association's approval of the modified plan, it would be okay to move forward with it.

Mr. Bradfield asked the applicants if they intend to go back to the property owners association to ask for approval of the modified plans. He doesn't see any major ordeal or problem with their intentions, aside from the inconsistencies in what the association approved and what the plans show, but he thinks it's important that the Board's approval of the variance and the approval of the property owners association are for the same thing.

Mr. Finder said no, they hadn't thought about going back to the association for approval, as they were hoping to get a favorable approval from the Board for their variance request, and didn't realize they had a problem with the association's approval.

Mr. Whitehouse said the Board needs to come back to the issue at hand, which is the variance, and

not get involved in the purview of other things. As he said, the Board can approve the variance pursuant to a future approval of the modified plans by the property owners association, but they don't need to get into what the purview of the association is, as this isn't the Board's purview.

Mr. Mitherz said the Board is to consider whether there is a hardship for the two variances requested by the applicants, for a rear yard setback reduction and to exceed the height limit.

Ms. Zander said she's sorry, but she doesn't see the hardship here.

Ms. West said in her opinion, she thinks cancer is a sufficient hardship, which one doesn't bring upon oneself, so she moved to approve the variances as requested.

Mr. Bradfield seconded the motion.

Ms. Zander said she just doesn't see how cancer comes into play here, as the variance stays with the property and the next buyer, so she doesn't understand that rationale, or see a hardship.

Mr. Bradfield said he thinks it's also based on other homeowners in this subdivision being granted variances to do the same thing.

Motion: to approve the variance for a rear yard setback reduction to 7.5 (seven-and-one-half) feet and to exceed the maximum height limit of nine feet for a screen room addition with a maximum roof ridge height of 14 (fourteen) feet in a Planned Unit Development land use district at 28 Bermuda Run Way. **Moved** by Jane West, seconded by David Bradfield, declined 3-4 by roll-call vote, with David Bradfield, Elise Sloan, and Jane West assenting, and Roberta Odom, Zachary Thomas, Karen Zander, and Steve Mitherz dissenting.

Mr. Whitehouse said as the motion did not pass, an affirmative motion is needed from someone who voted in opposition.

Motion: to deny the variance for a rear yard setback reduction to 7.5 (seven-and-one-half) feet and to exceed the maximum height limit of nine feet for a screen room addition with a maximum roof ridge height of 14 (fourteen) feet in a Planned Unit Development land use district at 28 Bermuda Run Way. **Moved** by Karen Zander, seconded by Roberta Odom, passed 4-3 by roll-call vote, with Mr. Thomas, Ms. Zander, Mr. Mitherz, and Ms. Odom assenting, and Ms. Sloan, Ms. West, and Mr. Bradfield dissenting.

- B. Conditional Use File No. CU 2015-02, for renewal of a conditional use permit for food and/or beverage service and consumption outside of an enclosed building on the premises of Cone Heads Ice Cream, in a commercial land use district at 570 A1A Beach Boulevard, Margaret Kostka, Genesis Property & Management Group LLC, Applicant

Margaret Kostka, 570 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080, said when she opened her business, Cone Heads Ice Cream, in 2012, she was granted a conditional use permit for outside seating, which expires at the end of this month. She's asking to renew this conditional use permit, as she's made

substantial improvements to the area and the entire corner of 7th Street and A1A Beach Boulevard, and she'd like to ask that it be renewed for as long as she owns the business.

Mr. Larson said as stated in his staff memorandum, he recommends approval of the renewal of the conditional use permit for five years.

Mr. Mitherz said he looked at the property site, and saw four tables which fit nicely under the shade awning put up outside in front of the ice cream shop. He also noticed some nice landscaping has been put in.

Motion: to recommend the City Commission approve the renewal of the conditional use permit application for food and/or beverage service and consumption outside of an enclosed building on the premises of an existing business, Cone Heads Ice Cream, in a commercial land use district at 570 A1A Beach Boulevard, for a period of five (5) years, subject to the condition that it be non-transferable, and granted only to the current property owner and applicant. **Moved** by Elise Sloan, **seconded** by Jane West, passed 7-0 by unanimous roll-call vote.

- C. Scheduling of Workshop Meeting to Review Building Setbacks and Other Land Development Regulations, per the City Commission's request that the Board hold a workshop meeting to discuss concerns from residents about the new building setbacks mandated by Ordinance No. 13-14, passed on second reading by the City Commission on November 4, 2013

Tom Ringwood, 8 F Street, St. Augustine Beach, Florida, 32080, said his wife, Linda Ringwood, presented a letter she wrote about the zoning changes implemented by Ordinance No. 13-14, to the City Commission, with the request that it be forwarded to the Board, and he'd like to add his own comments to this. They've been in St. Augustine Beach since 1976, and when they were getting ready to build their house on F Street in 2008, they thought the overlay district ordinance was well-thought out, as it emphasized aesthetics, and was very transparent. To receive a building permit for the house they built they had to apply for a variance under the overlay district, which included notification to all the neighbors within a certain distance from their property, and they had to follow the tiered-concept which is part of the architectural design for the overlay district. The new setbacks under Ordinance No. 13-14 do not require applying for a variance or notification of adjacent property owners, and this new ordinance seems to have been fast-tracked through a City Commission meeting where there was more discussion of which way a fence should face than the consequences of these major zoning changes, which seem to completely reverse the aesthetics of the original overlay district plan. This paves the way for tightly-packed, immense structures with a total lack of privacy, no sunlight, no birdsong, and no breezes. He suggested this ordinance be repealed now, and workshops be convened to amend the original overlay plan that had an emphasis on aesthetics and respecting personal space and privacy.

Lee Ann Kendall, 7 C Street, St. Augustine Beach, Florida, 32080, showed photos of the new property being built next door to her, at 5 C Street, under the new setbacks allowed by Ordinance No. 13-14. Her family bought the property at 7 C Street, which is a duplex, in 1981, and for most of that time, it's been a rental property. She lived there briefly in the 1990s and has been living there since 2005, after living in California from 1997-2005, and what she found while in California was that the towns that best managed and controlled their natural resources and the pressure for development and preservation were the ones with the toughest zoning laws, and also the ones with

the highest property values and the greatest beauty. The communities that allowed unbridled development, that paved paradise and allowed tiny lot lines, became crowded, had parking issues, drug and alcohol problems, and crime. To preserve and protect the neighborhood feeling of the City with requirements for architectural interest, privacy, green space and trees, and to preserve and protect the beauty and natural resources of Anastasia Island, particularly the areas that aren't planned unit developments from 16th Street to F Street, she urged the City to return to the setbacks established in the overlay district, and that Ordinance No. 13-14 be repealed.

Craig Thomson, 6-A D Street, St. Augustine Beach, Florida, 32080, said he and Ms. Kendall have been speaking to Commissioners and have been concerned about this problem since December of last year. He sent a letter via email today that he asked be forwarded to the Board, specific to repealing Ordinance No. 13-14, and to try to clear up some of the confusion as to what it affects. Whereas the overlay district area affects a small area on the east side of A1A Beach Boulevard from 16th Street to F Street, Ordinance No. 13-14 affects all property, residential and commercial, in the City that isn't in a planned unit development, and it basically creates the same setbacks allowed in the overlay district. He thinks this is excessive, and while they could talk about how to improve what was passed in the ordinance, he'd like the Board to consider recommending to the Commission that Ordinance No. 13-14 be repealed, as he thinks it's a dire thing in conflict with the City's Comprehensive Plan and certain specific intents of the Land Development Regulations.

Ms. West said she was at the last City Commission meeting, and it was pretty clear to her, from what she heard, that the Commission's directive to the Board was much broader in scope than just merely the scheduling of a workshop meeting to discuss these issues. Rather, the Commission's directive to this Board in its advisory capacity was to review the Land Development Regulations in a comprehensive fashion, with specific attention to Ordinance No. 13-14, and then, for once, make very strong recommendations as to how the Commission should proceed from there.

Mr. Whitehouse said he was also at this meeting, and Ms. West is right, the Commission wants the Board to make specific recommendations, but the Commission requested the Board to schedule a workshop meeting so it could be announced to the community a specific date and time for these issues to be discussed. The topic on tonight's agenda isn't to discuss these issues here and now, but to schedule a workshop meeting so everyone can be noticed to discuss these issues.

Ms. West asked for clarification as to the purpose of the workshop meeting the City Commission has scheduled for Tuesday, August 4, 2015.

Mr. Royle said the City Commission has scheduled this workshop to review the City's Land Development Regulations and strategic plan objectives, along with some other things. The Commission has requested the Board to schedule a workshop meeting prior to the Commission's August 4, 2015 workshop meeting, to concentrate on the Land Development Regulations, and make recommendations to the Commission as to possible amendments and/or revisions.

Mr. Mitherz asked for a consensus from the Board as to a date for a workshop meeting in June, preferably on a Tuesday night, with the exception of Tuesday, June 16, 2015, as the third Tuesday of the month is the Board's regularly scheduled monthly meeting. By general oral consensus, the Board agreed to hold a workshop meeting on Tuesday, June 2, 2015, at 7:00 p.m. at City Hall.

Steve Bartlett, 509 F Street, St. Augustine Beach, Florida, 32080, asked if any workshop meetings were held, or if there was a public referendum, on changing the setbacks.

Mr. Mitherz said no, there wasn't a public referendum for Ordinance No. 13-14.

Ms. Sloan said when this ordinance was originally drafted, it was discussed at several Board and City Commission meetings, and put on Board and City Commission meeting agendas, which are posted on the City's website, and advertised in the newspaper. The Board has been encouraging more public participation and input at these meetings for a while.

Mr. Thomas asked if the City utilizes social media to announce meeting agenda information.

Mr. Royle said no. The workshop meeting will be posted on the City's website and TV channel, advertised in the newspaper, and the date and time will be posted on the City's marquee sign along State Road A1A South, at City Hall door entrances, and in front of the meeting room in City Hall.

Ms. West said it seems to her the area between 16th Street and F Street is the most impacted area that should receive direct notice, as opposed to planned unit developments in the City, which aren't impacted by Ordinance No. 13-14 whatsoever. At the very least, she thinks notice should be sent directly to the property owners in the area between 16th Street and F Street.

Mr. Royle said they'd have to see how many property owners there are in this area, and get the names and addresses from the Property Appraiser's Office, as a lot of these properties are rented and owned by absentee owners, but they'll check it out.

Mr. Thomson asked what the process would be if the Board decided at its workshop meeting to recommend the City Commission repeal Ordinance No 13-14, versus trying to tweak it.

Mr. Whitehouse said the process would be to first have a workshop meeting where members of the public will have the opportunity to present their opinions to the Board and the Board members can discuss the recommendations they'd like to make to the Commission. The Commission has asked for some definitive recommendations as to whether the Board thinks Ordinance No. 13-14 is appropriate in its current form, or whether certain things in it need to be changed, or whether the Board recommends it be done away with altogether. The Board is the land planning agency for the City, which is why the Commission wants its recommendations. For the ordinance to be repealed, a recommendation would have to be made to the Commission from this Board, and the Commission would have to agree to repeal the ordinance, either by passing an ordinance to repeal it, or by passing a new ordinance to override it. Any ordinance to repeal or override it would require public hearings and readings and recommendations from this Board to the Commission, and a final reading and vote to adopt it by the Commission.

VII. OLD BUSINESS

There was no old business.

VIII. BOARD COMMENT

Ms. Zander said at the Board's regular monthly meetings in June 2014 and October 2014, the Board discussed the addition of a wood deck to a structure on A1A Beach Boulevard and then the subsequent enclosure of this wood deck. The mixed use order for this specifically states it is for the enclosure of a wood deck, and in the meeting minutes the Board was told the deck construction would be wood or composite. She'd like to put staff on notice that there is a violation of this order, as there is concrete poured on that deck. She asked if she has to reference which property this is.

Mr. Whitehouse said it isn't prohibited from specifying the property being referred to, but he thinks staff has already been made aware of this issue, and will look into it per City Code regarding alleged violations. If there is an issue with this property that may come back before the Board, however, it would probably be better not to discuss it tonight, as the property owners are not present. The best way to move forward with this is not to have discussion about it tonight, but put staff on notice about it and maybe talk to staff further about it after the meeting.

Ms. Zander said the property owners actually are here tonight in the audience.

Mr. Whitehouse said okay, but the point is, the Board isn't going to talk about this tonight, as it's not on tonight's agenda but may come back before the Board at a later date as a noticed agenda item. The appropriate way to address it is to bring it up with the directive to staff to look into it to see if there's a violation, and if there is, the process for violations will be followed per City Code.

Ms. Zander said she'd like to staff to look into this, as she believes there's a violation of the order issued by the Board for this property.

Mr. Mitherz said as the two townhouses built on Lots O and P, on 15th Street, are now both finished, he asked Mr. Larson if, to the best of his knowledge, they were completed in the fashion in which they were supposed to be built.

Mr. Larson said yes, they were approved by the Planning and Zoning Board per the overlay district ordinance.

Ms. Zander requested that the Board be provided with copies of everything read aloud and presented by applicants and members of the public on the overhead projector at meetings.

IX. ADJOURNMENT

The meeting was adjourned at 8:00 p.m.



Steve Mitherz, Chairman



Bonnie Miller, Recording Secretary

(THIS MEETING HAS BEEN RECORDED IN ITS ENTIRETY. THE RECORDING WILL BE KEPT ON FILE FOR THE REQUIRED RETENTION PERIOD. COMPLETE VIDEO CAN BE FOUND AT WWW.STAUGBCH.COM OR BY CONTACTING THE OFFICE OF THE CITY MANAGER AT 904-471-2122.)