



**MINUTES
CITY OF ST. AUGUSTINE BEACH
PLANNING AND ZONING BOARD
REGULAR MONTHLY MEETING
TUESDAY, MARCH 22, 2016, 7:00 P.M.**

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

I. CALL TO ORDER

Vice-Chairman David Bradfield called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Vice-Chairman David Bradfield, Steve Mitherz, Roberta Odom, Elise Sloan, Zachary Thomas, Karen Zander.

BOARD MEMBERS ABSENT: Chairman Jane West, Senior Alternate Jeffrey Holleran, Junior Alternate Hester Longstreet.

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

IV. APPROVAL OF MINUTES OF FEBRUARY 16, 2016 REGULAR MEETING

Motion: to approve the minutes of the February 16, 2016 regular monthly meeting. **Moved** by Elise Sloan, **seconded** by Roberta Odom, **passed 6-0** by unanimous voice-vote.

V. PUBLIC COMMENT

Tom Reynolds, 880 A1A Beach Boulevard, Unit 1106, St. Augustine Beach, Florida, 32080, thanked the Board members for all the hard work they do.

Craig Thomson, 6 D Street, Unit A, St. Augustine Beach, Florida, 32080, said he noticed survey stakes were up on the Runk property, the last large undeveloped tract of land in St. Augustine Beach, which is being developed as Ocean Ridge Subdivision. He looked at the final development order and plans for this 72-lot subdivision, and received a copy of the clearing permit issued by the Building Department. It says in the final development order that clearing and/or tree removal permits will not be issued prior to the acceptance of a substantially complete application for a building permit. Mr. Larson said only the roads are being built at this time, and there is a partial tree survey which shows the layout of the roads. His concern is that this not a development like Sea Colony, Sea Grove, or even Island Hammock, but the type of development found in the County, where the density of the property is calculated based on the acreage to determine the number of units, a loop road is built, and a big retention pond is put in the middle,

with the excavated dirt used to fill the lower lots. As the City's Tree Board and Comprehensive Plan try to discourage clear-cutting and fill, he and other citizens have objected to, and even asked for a code enforcement review, of the property on the east side of the Boulevard between 5th Street and 6th Street, where this has been done. He asked the Board members to speak to Mr. Larson about the Ocean Ridge development, and try to use the Codes available to preserve what they can of the tree canopy, as Mr. Larson indicated he was going to bring this development plan back before the Board, even though it has already been issued some previous approvals.

Ed Slavin, P. O. Box 3084, St. Augustine, Florida, 32085, thanked the Board members for their service, and called their attention to something he hopes can be done in the next couple of years to solve a lot of the problems the Board deals with. There's a website for the St. Augustine National Historical Park and National Seashore, staugustgreen.com, which has information on protecting and preserving approximately 130,000 acres of existing government lands in two counties, Flagler and St. Johns, consisting of water management district lands, state parks and forests, and places that are holy and pretty much as they were when Menendez marched through here and the Spanish came in 1565. These places are now at risk, but legislation this website promotes will protect and preserve these lands, including the tree canopy and beaches in St. Augustine, forever. He asked everyone to check it out, talk to him or call him, and get involved.

Jan Brown, 24 Lockhart Lane, St. Augustine Beach, Florida, 32080, said there is organization going on right now to put in a skate park at Ron Parker Park, but there are a number of people greatly opposed to this, especially in her neighborhood, which is right across the street from the park. She submitted a letter in opposition to the proposed skate park, and said she and others in opposition to it are currently in the process of getting signed petitions to oppose it and consulting with lawyers, as they don't want to lose the quiet they currently enjoy in their neighborhood.

VI. NEW BUSINESS

- A. Conditional Use File No. CU 2016-03, for a conditional use permit for proposed new construction of two (2) single-family residential units in a commercial land use district on Lots 15 and 17, Block 38, Coquina Gables Subdivision, at 14 F Street and 16 F Street, respectively, 810 Beach Inc., Rich O'Brien, Applicant

Mr. Larson said this is a request for a conditional use permit to allow residential structures on a commercially-zoned parcel on the northeast corner of F Street and A1A Beach Boulevard. The subject parcel, which is approximately 100-feet-by-93-feet, consists of two lots. As the Board is aware, they've had numerous problems with commercial businesses on some of the smaller lots in the City, due to parking and other issues. Based on what's been approved in the past, staff recommends the Board provide a recommendation of approval to the Commission to allow the construction of two residential units, as this will be the best use of the property due to its size.

Ms. Zander said she believes there's an error in the packet information provided to the Board, as Mr. Larson's staff memo says each of the two lots in this parcel measure 100-feet-by-93-feet, but the maps she pulled from the County's web page show the lots are approximately 50-feet-by-93-feet each, for a combined total of 100-feet-by-93-feet.

Mr. Larson said that's his error, as Ms. Zander is correct, each of the lots is 50-feet-by-93-feet, for an overall parcel size of 100-feet-by-93-feet.

Cora Johnston, 740 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080, said she's the owner and contractor of Generation Homes, and represents Rich O'Brien and Lauren Ringhaver, the owners of the property for which this application is submitted. They're seeking a conditional use permit to build two private, single-family residences on a commercially-zoned parcel. She displayed aerial views of the site on the overhead projector, which currently has a 2,064-square-foot heated-and-cooled building on it being used as a single-family residence, showing that all of the lots around the two lots owned by the applicants, with the exception of one lot across the street, are currently single-family residences. Their plan is to demolish the existing building, which was built in 1978 and basically has no architectural value, and build a new single-family home on each of the two lots. The goal of building two new homes is to create a very lovely presence to the entrance of F Street, which will complement the existing homes on the street. The house proposed on Lot 17, at 16 F Street, has 3,062 square feet of heated-and-cooled space, and a total of 4,392 square feet under roof, which includes two porches in front and two porches in back, and a two-car garage. The house proposed on Lot 15, at 14 F Street, has 2,674 square feet of heated-and-cooled space, and a total of 4,285 square feet under roof, including porches and garage. In addition, she submitted a petition in support of the conditional use application to build two single-family homes in commercial zoning, signed by 26 neighboring residents. Basically, they're requesting the Board's recommendation of approval of this conditional use application, to build two single-family residences on commercially-zoned property which is currently being used for residential purposes, and because there is construction and development involved, they'd also like to request the conditional use permit be granted as transferable, and run with the land, as part of the Board's recommendation of approval to the City Commission.

Mr. Mitherz asked if approving house plans is part of the Board's recommendation to the Commission regarding the zoning.

Mr. Larson said no, the Board is only considering a recommendation to the Commission as to the proposed residential use of a commercially-zoned property.

Ms. Zander asked if the applicants have a site plan for the Board.

Ms. Johnston said they have not developed a site plan at this time.

Ms. Zander said so if the conditional use application is approved, the site plan doesn't come back to the Board.

Mr. Larson said no, it does not.

Mr. Bradfield asked if the building parameters, setbacks, etc. that apply are those in the current Code, not the old setbacks or regulations, and also if staff's recommendation to approve this is based on what the adjacent properties have been approved for in the past.

Mr. Larson said current the Code applies, and yes, staff recommends approval based on the use

of the adjacent properties, and also because it's the best use of the property, as the parcel is too small for commercial use. The commercial zoning runs east 150 feet from the centerline of A1A Beach Boulevard, so the parcel for which the conditional use is requested is zoned commercial.

Ms. Sloan said what she doesn't understand is that Mr. Larson's staff memo asks the Board to determine the best use of the property, but she's not sure that this is within the Board's purview.

Mr. Whitehouse advised the Board members that what they're determining is a recommendation to the Commission as to whether or not the requested use is an appropriate use in this location.

Ms. Odom asked if the driveways to both proposed residences will be from F Street, and not A1A Beach Boulevard.

Ms. Johnston said the driveways will access F Street, not A1A Beach Boulevard, or the alleyway behind the lots.

Mr. Bradfield asked if, like the residential property on the southeast corner of E Street and the Boulevard which abuts this parcel, there will be palm trees and landscaping planted along the western side of Lot 17, which is the lot on the northeast corner of F Street and the Boulevard.

Mr. Larson said yes, palm trees will be planted in line with the "Avenue of Palms" ordinance, which applies to the right-of-way along the Boulevard.

Ms. Johnston said particular attention has been given to the architecture and articulation on that side of the house, so there's not just a solid wall, along the Boulevard. The applicants are very concerned about creating a nice architectural presence, façade, and view from the Boulevard.

Mr. Bradfield asked for public comment.

Tom Reynolds, 880 A1A Beach Boulevard, Unit 1106, St. Augustine Beach, Florida, 32080, urged the Board to vote yes to this application, for two reasons. First, the final outcome will enhance this whole area, as anyone who knows the owners know they keep their other properties extremely beautiful, and they add a lot of class to the surrounding neighborhoods. Second, he's someone who likes to allow property owners to do what they want with their properties.

John Carvellas, 4 F Street, St. Augustine Beach, Florida, 32080, said from what he's seen of the plans, the proposed houses seem like an upgrade, and are consistent with the rest of the street.

Lauren Ringhaver, 812 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080, applicant, said the building currently on the property she and her husband own is very old, and was a hair salon when she came here as a little girl. Trying to make it something else is like trying to make a chicken a cow, so in demolishing it they'll add two new lovely homes to the area, build up the neighborhood, and keep the consistency of proper landscaping and screening along the Boulevard. The size and square footage of the existing building really doesn't matter, and the Board really isn't involved in making decisions on the design of what they want to build. Their contractor, Generation Homes, has a great reputation and they're great people to work with.

Craig Thomson, 6 D Street, Unit A, St. Augustine Beach, Florida, 32080, said quality of life and tree canopy preservation involve a community, interested citizens, informed volunteer boards and committees, who know the Codes and City regulations, and supportive City staff and responsible Commissioners. This is what's needed to preserve and maintain the natural beauty of the City, and avoid the syndrome of becoming yet another anywhere U.S.A. He wants to compliment the mayor and his wife for trying to improve their property, which he thinks has a lot of potential, but his concern, as he's voiced before, is that there are a lot of new buildings and overdevelopment on small lots, and there's also the issue that this proposed development is on the Boulevard. The City has a Vision Plan as to how the Boulevard should be developed, so he thinks they need to consider appropriate use based on the Boulevard as a whole. Going back to basics, this parcel consists of two 50-foot-wide lots, and abuts an adjacent two-story residence immediately to the north, on the corner of A1A Beach Boulevard and E Street, and this residence has 15 palm trees planted in front of it, so the building is basically camouflaged. He suggested the applicants get a side elevation for the lot adjacent to the Boulevard and have a site plan done, and also look at the "Avenue of Palms" ordinance, as he thinks everyone could use some more information. The current building setbacks are allowing overdevelopment, eliminating any landscaping, and not counting pools and driveways in impervious surface coverage ratios, all of which are creating parking problems and other issues, and so should be taken into consideration.

Ed Slavin, P. O. Box 3084, St. Augustine, Florida, 32085, said he agrees with Mr. Thomson, as there is no principal reason why the Board has to approve this conditional use permit request tonight. The problem is, the application has been submitted by the Mayor, so it shouldn't be rubber-stamped just because the Mayor is the applicant. Mr. Thomson made some very good points, as "McMansions" are being built that are way too tall, way too big, and cover way too much of the lots they're built on. The people of this community voted 60-70 percent to have a 35-foot height limit, so anything that's too big or too much should be questioned. He also has a problem with staff, because staff always comes up to make a recommendation for the applicant/developer. Staff should make recommendations with pros and cons, and for each of the cons, the applicant/developer should have to come up with a resolution if the application is to be approved.

Ms. Odom said a couple of months ago, the Board heard an application for outdoor seating on a deck at "The Kookaburra," the coffee shop across the Boulevard from the two lots on F Street owned by the current applicants. There was a lot of talk about the traffic on F Street and the Boulevard, and parking issues, and these were the main concerns behind the Commission not giving the "The Kookaburra" applicants what they wanted. The Board heard testimony from a gentleman who built his home on a commercial lot next door to the coffee shop, and that's how it all started. Also, the Board doesn't have a site plan, which she doesn't feel comfortable about, as they've approved things in the past that everyone agreed to, but then later, they were changed.

Mr. Thomas said he tends to agree that residential properties are slammed right up against existing commercial properties, but that being said, the two lots in question haven't been used as commercial properties for a long time. Looking at the proposed designs of the houses the applicants are asking to build, he thinks they're an improvement, though he worries about some of the height regulations in the City Charter, and thinks the Board needs to be more sensitive to grade than they've been asked to be in the past. Also, there are some questions that need to be asked, and which they need answers to, for the Board to do its due diligence.

Ms. Sloan said the deed is for one parcel that includes two lots, and what's before them is the potential to build two houses, so again, to clarify, as Mr. Whitehouse said, the Board is just being asked to provide a recommendation to the Commission for a conditional use to allow a commercial parcel to be used as residential. She has no objection to that, but she understands what her colleagues are saying, as they're concerned about what will then go up on the two lots. However, she doesn't think this is what is before the Board at the moment.

Mr. Bradfield said the Board has been given information on the heated-and-cooled square footage and total square footage under roof of the two proposed residences, which means there are footprints for these two homes, so to figure out what the lot coverage is, you simply site the footprints of the houses on the lots. It's clear to him the intent to build these two homes is there, and he thinks the applicants have every right to build residential properties on these lots, under an allowable conditional use permit. His concern is that an existing 2,000-plus-square-foot structure will be replaced with two single-family homes with a combined total of over 8,000 square feet, which more than triples the volume of mass that is currently there. The precedent that this sets is where he really gets concerned, as it's clear by examples in the past that the City wants to move away from residential structures on the Boulevard, and he's also concerned with the mass, volume, size and scope of what can be built on these lots, given the new setbacks and regulations, which allow three times as much structure in the same space.

Mr. Mitherz said he thinks the Board's consideration is just on the zoning of the parcel, and on that score, he really has no problem with allowing what's proposed. The houses are a little large, and the setbacks are the new setbacks, not the old ones, as they haven't been changed back yet.

Ms. Zander said she has a number of concerns about this request. First, she thinks what's been submitted is an inadequate package, and that the Board should have a very detailed site plan. This is a conditional use, meaning the City can set the requirements, and can put any and all requirements they want on it, as there's no right to build residences on this site. The commercial zoning, in fact, prohibits this, as it would be a nonconforming use, and the applicants are before the Board asking to build what would be nonconforming structures. A site plan should be in the packet with lot coverage, impervious surface coverage, and buffer requirements between commercial and residential uses, so in her mind, this is an inadequate package, and she can't support it as is, because she has no idea what will be built on these lots. She also has a problem with this request being submitted as a conditional use, as she doesn't think a conditional use is the appropriate way to approach this. She's a stickler for upholding the Land Development Regulations, as she doesn't like to just make things up, and she's also a stickler for consistency. The section of the Land Development Regulations that addresses conditional uses says a conditional use shouldn't be permanent, but obviously, if you're going to build nonconforming structures on these lots, they're going to be permanent, as once they're there, they're there, so approval of the conditional use will change the use of these lots. She asked how long the existing structure has been a residential, nonconforming use, on a commercial zoning parcel.

Mr. Larson said he cannot give an exact date on that.

Ms. Zander said that's another of her concerns, as to how there is a residential, nonconforming use in commercial zoning. When Obi's came before the Board for an expansion of a commercial

use, staff gave a recommendation in the packet for approval, because there were no concerns with parking and parcel size, and this is a .17-acre parcel. The parcel under consideration now is bigger than the Obi's parcel, so she has an issue with consistency, as the staff memo to the Board for this conditional use application states that the overall size of the parcel does not warrant a positive use for commercial businesses due to sizes of structures and parking requirements. This, to her, is a very inconsistent way to apply the Land Development Regulations. She agrees with a previous speaker who said usage as a whole along A1A Beach Boulevard is what needs to be taken into consideration, not the immediate surrounding parcels. However, kitty-corner across the street from these two lots, there is a commercial usage, and the owner of this building was here before the Board and the Commission a month or two ago asking for a conditional use permit to put up a deck. That commercial usage on a commercial parcel met the Code for zoning, and Mayor O'Brien made a motion to deny the conditional use requested, as according to him, the neighborhoods matter in this community. One of the problems with the conditional use application filed by the owner of "The Kookaburra" was that there was a residence allowed to be built on a commercially-zoned parcel right next door to it. So "The Kookaburra" was in compliance with its commercial zoning, but the residence was allowed to be constructed next door on a commercially-zoned lot, and now the owner of this residence doesn't like the commercial usage that's right next door to his home. She's just flabbergasted that the Mayor is now asking to do exactly the same thing, build residential structures on commercial property, when as Mayor he made the motion and voted to deny the approval of a conditional use permit for the business right across the street. Page one of the Land Development Regulations states, "Nothing in this section shall be construed to authorize development that is inconsistent with the St. Augustine Beach Comprehensive Plan." A nonconforming use is inconsistent with the Comprehensive Plan, and Section 10.01.01 of the Land Development Regulations, which addresses nonconforming uses, states, "It is the intent of this Code to permit these nonconformities to continue until they are removed, but not to encourage their survival," and also that nonconforming uses are declared to be incompatible with permitted uses in the districts involved and shall not be extended or enlarged. She doesn't think the Code supports making a recommendation of approval of this application to the Commission. The Code also states in Section 10.03.02 that conditional use permits shall be nontransferable and granted to the applicant only, and that conditional use permits will be transferable and run with the land when the facts involved warrant same, or where construction or land development is included as part of the permit. Her main concern is that the City has a problem that has been created by allowing a residence to be constructed on a commercially-zoned parcel right next to a commercial use that complies with the commercial zoning it is on, and the residents in the home allowed to be built in commercial zoning don't like the commercial use next door. By approving this conditional use application before the Board tonight, they'd be adding to this problem, so she can't support this.

Ms. Sloan said the part of Section 10.03.02 referenced by Ms. Zander, which says a conditional use permit will be transferable and run with the land when the facts involved warrant same, or where construction or land development is included as part of the permit, kind of comes back to what was said earlier, that they need to see more of what's proposed in order to approve this.

Ms. Zander said she believes the conditions to allow conditional use permits to be transferable and run with the land are just exceptions, as the section on conditional use permits starts out by saying conditional use permits shall be nontransferable and granted to the applicant only. With a

conditional use, she believes they need every single piece of information they can get, including lot coverage and impervious surface coverage, and required buffers between uses.

Mr. Bradfield said on the conditional use application, under supporting data that should be considered by the Board and Commission, the applicants reference two lots directly behind their property, on the southeast corner of E Street and A1A Beach Boulevard, which were granted a conditional use permit in 2001 for two residential homes. He asked what the requirements were when this conditional use permit was granted for residences in commercial zoning, as the size, scope and volume of the two homes built on these lots is a fraction of what's currently proposed to be built on the two lots for which the current conditional use application has been submitted.

Mr. Larson said elevations of the proposed residential structures were required. Size, scope, and volume of construction are determined, per the Land Development Regulations, in the permitting process. For the conditional use application before the Board, elevations of the proposed residences have been submitted for the Board's information, and the Board is asked to make a recommendation to the Commission as to what the best use of the property is.

Rich O'Brien, 812 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080, applicant, said as everyone knows, he's the Mayor of this City, and he did not intend to come up here and speak tonight for that specific reason. Cora Johnston, whom he and his wife have been working with on the beautiful homes they'd like to build on their lots, offered to speak on their behalf, just for that reason, to which they agreed. As they haven't made a final decision on the design of either of the homes, the elevations submitted with their application aren't their specific designs, but file copies of designs they're interested in. These are only three-bedroom, three-and-a-half-bath homes, they're not hotels, or grand "McMansions," but are very fitting for this neighborhood. Their neighbors are absolutely thrilled with what they're proposing to build, as the existing building is the "ugly duckling" on the block, something he and his wife don't like. They could build something in compliance with the commercial zoning, which allows up to 70 percent impervious surface coverage, but this would be totally incompatible with the neighborhood, as the properties behind their lots are residential, all the way down the block. The homes they're proposing to build will comply with all of the setbacks, and all of their properties are beautifully landscaped. The model home they're looking at for the lot on the corner of A1A Beach Boulevard and F Street will be stunning from the Boulevard, he can't think of anything else that could be built there that would look nearly as attractive, and they feel they've done an excellent job presenting something that would be extremely compatible to the neighborhood. In taking the petition in support of their application to the neighbors, everyone asked who would be against these beautiful, small homes, not "McMansions," being added to the neighborhood. Yes, the property is zoned commercial, so he went to Mr. Royle and Mr. Larson and asked them how he should approach this, and they told him to get a survey done, but it is not about what he plans to build on these lots, it's about whether or not the Board will recommend, and the Commission will approve, residential construction on them, like the properties behind his lots and those across the Boulevard on F Street, and a number of other commercial lots. If there was a legitimate, reasonable, realistic commercial use of this parcel, he thinks he would know this, as he's been in the City for 14 years now. What they've presented is the most compatible use of the property.

Ms. Zander said first off, she thinks Mr. O'Brien has so far done an excellent job as Mayor, and

she looks forward to him being Mayor, as he's extremely well-qualified. She also thinks it's clear that what he's proposing to build and the properties he has along the Boulevard absolutely look great, and if she remembers correctly, he's won beautification awards in the past, and takes excellent care of his properties. But this is a conditional use, so it really is about what he's going to build, by its nature, so therefore, having more information is always good. She disagrees when Mr. O'Brien says it's not about what he's going to build, as she believes it actually is, as with a conditional use permit, the usage he's asking for frankly isn't compatible, because the zoning doesn't allow it. If it were compatible, the zoning would allow it, so she thinks by the very nature of Mr. O'Brien having to come here to ask to rezone the property, this makes it incompatible. That's not to say it can't be done, but it's not compatible with the zoning of the property as it stands right now. The zoning along the Boulevard was the choice of the City and the residents, as they got to choose, at some point, how they wanted it zoned, and the zoning for Mr. O'Brien's parcel is commercial. She has a concern with the fact that the designs that have been submitted in the application aren't the specific designs of the houses that will be built, as again, Mr. O'Brien is asking for a conditional use that will be permanent, as it's for structures, so it can't be nontransferable, but the Board doesn't have the exact designs of what will be built.

Mr. O'Brien said the designs aren't final, they're in CAD (computer-aided design) right now, but they're not big houses, they're 2,600 and 3,100 square feet of heated-and-cooled space.

Ms. Zander said the Board should have the finalized designs and site plans for these houses, as well as impervious surface coverage and how buffer requirements will be addressed, as any and all requirements they want can be put on a conditional use, which by its very nature, has conditions. Again, she doesn't think this is the appropriate use of a conditional use, or that the application packet is complete, and she frankly doesn't understand how they can increase the residential use on a commercial parcel and then have an issue with the commercial property across the street, which complies with its commercial zoning.

Mr. O'Brien said in response, things change, and there are pockets in the City that have become more residential. He thinks this would complete that section of F Street, and pretty much all the neighbors on F Street agree, on both the east and west sides of the Boulevard. Every single person on the east side of F Street, with the exception of one, who was out-of-town, said they were in favor of this. He and his wife really worked hard to come up with something that would improve their City, as they don't like having what's known as the "ugly duckling" on the block. They're sort of known for having attractive properties, and have worked very hard and spent a lot of money doing this, so they really feel that this is exactly just the right thing to do.

Ms. Zander said again, staff told the Board that Obi's, which has .17 acres, has plenty of room for its usage, and actually recommended approval of expansion of that commercial use. So clearly, they have a precedent for the fact that a smaller commercial parcel is appropriate for commercial usage, and actually, a lot more commercial usage, according to staff.

Mr. O'Brien said he thinks Ms. Zander is comparing apples to oranges, as he's asking for residences with two-car garages and driveways that can hold four more cars, while Obi's created a nightmare when it first opened, as the Board well knows, and had to lease the lot next door to alleviate the parking problems. This application is for two residences, not a hamburger stand.

Ms. Zander said she understands that, but part of the packet information says Mr. O'Brien's parcel doesn't warrant a positive use for commercial businesses, due to size of structures and parking requirements. So when you look at precedent, and at what was approved on a smaller lot, where staff recommended increasing the coverage on that lot and expand the commercial use of that lot, and now they're being told Mr. O'Brien's parcel is clearly too small for commercial usage, to her, that's extremely inconsistent. Frankly, she thinks Mr. O'Brien, as the Mayor, should be worried about that, because inconsistency in applying the Code always concerns her.

Mr. O'Brien said he tried to make it clear he's not here as the Mayor. The two lots directly behind his lots were given the same conditional use permit he's asking for, to allow residences to be built in commercial zoning, with no conditions attached, so when you talk about precedent, that's what you're talking about. He's asking to build two small, nice houses in an appropriate area on an appropriate scale. They'll be about 34-35 feet high, but they have to be small, because the lots are small, and the setbacks will be greater than what the current Code requires.

Ms. Zander said the use of a commercial building right across the Boulevard from Mr. O'Brien's lots, on the southwest corner of F Street and the Boulevard, where the commercial usage complies with Code, has proven problematic to the residents who built residential structures on commercially-zoned property. So the fact that the nonconforming use of residential structures built on commercial properties next to a commercial structure, right across the Boulevard from Mr. O'Brien's lots, is an issue for residents, is something that concerns her, because Mr. O'Brien is asking to do the very same thing, and allowing residential structures on commercially-zoned property is what caused the problem for the business owner across the street.

Mr. O'Brien said his property, however, is adjacent to the Boulevard, and there's nothing around it to create any conflict.

Ms. Zander said there may be nothing to create conflict now, but Mr. O'Brien doesn't know what's going to go in there in the future. By asking for a conditional use and making it permanent, which is what would happen here, as it would be transferable and run with the land, Mr. O'Brien is asking for a permanent, nonconforming use.

Mr. O'Brien said yes, based on his information from staff, as to how to proceed to build two small, beautiful houses in that small enclave on F Street, with the precedent of the two houses directly behind his lots which were granted a conditional use to build residential in commercial.

Mr. Bradfield said he thinks the precedent that was set some 15 years ago was a bad precedent, and set a bad example of bad zoning and a bad conditional use. That being said, it is what it is, and it exists where it is, so the consideration to allow residential use for current commercial zoning that abuts up against it certainly should be considered. The long-term disposition of this conditional use is absolutely certain, as this isn't a temporary condition, but a permanent change forever. He thinks the fact that it is a permanent change and it is a conditional use on this property, and that it has conflicts within the written Code as it's scripted, commands the Board to exert a little more control if they're going to allow the change of use from commercial to residential, as they need to understand what's going to be built. Mr. O'Brien says these aren't big houses, but they are the absolute maximum-size homes allowed to be built on these lots, so

he doesn't understand Mr. O'Brien saying they're not large homes while in the same breath saying they're three-bedroom, three-and-a-half bath, three-story, 35-foot-tall houses.

Mr. O'Brien said no, they're not to the full extent that could be built on these lots.

Mr. Bradfield said because they have the ability to control the size, scope and scale of what goes on the Boulevard, they can't be built to the maximum extent. Most of them have agreed the new Code regulations have let homes get too large, and allowed too much massing and percentage of volume of lot coverage, so that scope and setbacks have been manipulated to where the average size of homes being built in the last two to three years is too big for the size of the lots they're being built on. Going back some 15 years ago to 2001, when the rules apparently seem to have been somewhat haphazardly applied, he's only aware of two circumstances where residences have been allowed to abut the Boulevard, and that's at F Street and then one block north of Obi's. Both of these have been problematic, as there have been complaints, issues and consideration to revise the Land Development Regulations and plan for the Boulevard to not allow residential structures to be built on commercial lots because of those complaints and issues. The example that's been set on F Street puts them in a position where they must consider Mr. O'Brien's application, because it's clearly been done right behind his lots, but he thinks it certainly should also be considered with more information, including a site plan and specific setbacks for each individual home. It's been stated that a commercial structure can have up to 70 percent lot coverage, but that's for one building, not two residential buildings. He thinks it's a bad example to set the precedent to approve residential structures in commercial locations along the Boulevard, so if this is approved, it shouldn't be an example of what they continue to do, but should only be considered because of the circumstances of F Street being what they are.

Ms. Sloan said going back to Section 10.03.02 of the Land Development Regulations, this Board has to rule based on the regulations, not based on what they necessarily like or don't like. As Ms. Zander pointed out, it does say conditional use permits are nontransferable, and granted to the applicant only, but they can be granted as transferable to run with the land, where construction or land development is included as part of the permit. She asked if they need to have that information in order to grant the conditional use as transferable.

Mr. Whitehouse said clearly, this is an application asking for land development or construction, there's no question about that, so the point of the Code is that if there's going to be a permanent structure attached to the land, the conditional use should be transferable, so you don't put somebody in a position where you build a permanent structure on a piece of property and grant the conditional use permit as nontransferable, as that doesn't make sense. This is why the Code provides for allowing conditional use permits to be granted as transferable, under these circumstances. As to what kinds of things the Board can ask for or require, obviously, every applicant is required to meet the standards and regulations of the Code. He's heard a lot of talk about parking, setbacks, lot coverage, and things like that. Clearly, this applicant is not coming forward, at least not at this time, asking for any type of variances or exceptions other than for this use. That's why he told the Board earlier, that what they were considering is whether or not this use is appropriate in this location. This Board makes a recommendation to the City Commission, and the Commission makes the decision whether or not to approve the conditional use permit, so any kinds of recommendations the Board may have pertaining to conditions on the granting of

the conditional use can be forwarded to the Commission. Per some of the comments he's heard, he needs to caution the Board that they need to stick to the Code, as they can't just force somebody to do something smaller because they feel that's what is appropriate there. The main consideration is whether or not the proposed use is appropriate in this location. Once the Board gets beyond the use there may be some other conditions they'd like to recommend, such as landscaping, or certain setback requirements, or whatever, but the applicant has to meet the requirements of the Code, regardless, so that's where they need to bring the discussion back to.

Ms. Zander said again, with a conditional use, the applicant is asking to change the zoning.

Mr. Whitehouse said no, he's heard the term "rezoning" used a few times, but this is not a rezoning, it's a request for a conditional use permit to build residential structures in commercial zoning. As the Code provides for this, the applicant has submitted an application and brought it to the Board. They can discuss all the things they're discussing, but he cautioned that they should keep the discussion within the Code, as that's what the Board's consideration is constrained by.

Ms. Zander said the applicant is asking to change the use of this parcel from commercial to residential in asking for a conditional use permit to build residential structures, which would be nonconforming uses on a commercially-zoned parcel as it stands right now. She understands the setbacks and other regulations must be followed, but when someone comes before them with a conditional use, she wants to see the lot coverage, impervious surface coverage, and buffers. The City Commission cracked down on this Board and wasn't happy with them for approving some big projects in the past year, so perhaps they didn't have enough information, and she doesn't want to make that mistake again. She thinks this is the incorrect use of a conditional use permit, and as Mr. O'Brien has a history of doing an incredible job on his properties, she wondered if he'd perhaps consider doing something that really follows the Vision Plan, which encourages structures with commercial use on the bottom and residential use on top.

Mr. O'Brien said he thinks that would be totally incompatible with F Street on the east side of the Boulevard, and not one of the people who signed the petition in support of his application to build two residences would be in favor of this. The east side of F Street is a small enclave of residential structures, so he doesn't think what Ms. Zander suggested would fit, as he looked into this, and to him, this would be an incompatible use. If you look at all the lots up and down F Street on the east side of the Boulevard, they're 50-feet-by-93-feet, with the alley behind his lots vacated, as shown on the survey he submitted with his application, and they're platted for homes.

Mr. Whitehouse said he's heard it mentioned a few times as to whether or not commercial is appropriate in this location or whether staff said anything to the effect that commercial couldn't be done in this location, but this is not a competition as to whether or not this should be commercial. The application is for a conditional use permit for residential use in a commercially-zoned land use category, so this is what the Board's consideration should focus on, not whether commercial is appropriate here. Whether or not commercial is appropriate is not what the applicant is asking for, he's asking for residential use in a commercially-zoned land use category.

Mr. Bradfield said he wants it to be clear the applicant is asking to build two large, single-family

homes where there's currently one small, commercial structure. It's fully allowable, as he sees it, but there's no question that when it's a conditional use, the ability to control what is built, above and beyond the standard setbacks and application requirements, is there, for good reason, because without this control, people could be recklessly building commercial or residential structures with three-stories of hardiboard plank and only one or two windows staring at the Boulevard. He doesn't think anyone wants to see that as an example of what the City has up and down its main thoroughfare. Again, he believes if it wasn't for the erroneous decision to allow two residential homes to be built on commercially-zoned property directly behind Mr. O'Brien's lots, this wouldn't even be a consideration, and he'd say absolutely not, these lots are zoned commercial, so they should be used as commercial. The two lots abutting up to Mr. O'Brien's lots on F Street both have single-family homes on them, but they both are two-story, not three-story, homes, and they're both probably 1,500-2,000 square feet less in size than the two homes Mr. O'Brien is proposing to build, so Mr. O'Brien's homes will be dominant in size in comparison to the houses behind his lots, in both scale and height. That's going to look a little disproportionately uneven up and down the Boulevard, so unless the City implements specific setbacks and minimizes third-floor volumes, the mass, scope and scale will be a bit much. Given that the conditional use is the only way you can build residential on commercially-zoned property, he thinks they should reserve the right to have some scrutiny as to what gets built there.

Mr. O'Brien said if he were to build a commercial structure, it could go up to 35 feet in height, and it could be bigger. The existing building probably underutilizes the property, and if a commercial structure was built on this parcel today, it would be much larger, and probably have to be built with parking at least partially under the building. The houses he's asking to build will meet Code, and are planned to have some amazing articulation. These are the first two houses he and his wife have ever built, and they've put a lot of time and effort into designing something that will not only be attractive, but complimentary to the City and the neighborhood. They're approximately the same height as the houses to the east, but they're smaller. One house has 3,050-square feet of heated-and-cooled space, and the other has 2,600-square-feet. The rest of the square footage consists of outside decks, porches, and balconies, like most homes have today.

Mr. Bradfield said he has no doubt the homes will be beautiful, but as this is not an acceptable use without the granting of a conditional use permit, they have the right to scrutinize what will be built, beyond the general scope, as the Board, as well as the Commission, has to protect the public's view along the Boulevard. As this conditional use involves a property that abuts the Boulevard, with an entire side of some 60 linear feet three stories high facing the Boulevard, they have the right to scrutinize it above and beyond the normal conditions, to be certain what's built isn't just one big straight wall, with no windows, porches, or any relief, and that the only landscaping isn't simply the palm trees planted in the right-of-way along the Boulevard. If a conditional use to build two large, single-family homes on two commercial lots that are only 5,000-square-feet each is approved, first of all, this should never be allowed again, as it should not set a precedent, and second, they should retain the right to see what will be built there.

Ms. Zander said granting the conditional use permit actually would set a precedent.

Mr. Bradfield said the precedent has already been set on F Street, so he thinks the way they allow this to move forward needs to be clear that the only reason it's being allowed is because it backs

up to the two commercial lots that were granted a conditional use to build residential in 2001. If Mr. O'Brien's property didn't back up to these two lots, he'd be very clear that he'd say no.

Ms. Zander said she appreciates Mr. O'Brien's role in the City government, as he's been a longtime volunteer for the City, but that also means they have to be very sure they make smart decisions, as he well knows, because of his role in the City government.

Motion: to recommend the City Commission deny the application submitted for Conditional Use File No. CU 2016-03, based on the fact that it does not meet the conditional use guidelines in the Land Development Regulations. **Moved** by Ms. Zander, **seconded** by Roberta Odom, **passed 4-2** by roll-call vote, with Mr. Bradfield, Ms. Odom, Mr. Thomas, and Ms. Zander assenting, and Ms. Sloan and Mr. Mitherz dissenting.

VII. OLD BUSINESS

There was no old business.

VIII. BOARD COMMENT

Mr. Mitherz asked if Jay McGarvey, the developer of the new 72-unit Ocean Ridge Subdivision, will be coming back before the Board.

Mr. Larson said yes, this will be coming before the Board for review again, possibly at the Board's May meeting. St. Johns County Utility Department has come up with some changes to the diagonal boring lines under Mickler Boulevard and how they enter into the subdivision.

Ms. Zander said as she wasn't on the Board when this new development first came before the Board, she asked if the Board had a site plan that showed trees that would be removed for the construction of roads, and if so, if this is what is currently happening at the development site.

Mr. Larson said he'll gladly get together with Ms. Zander to go over that.

Mr. Whitehouse said he'd like to introduce Mr. James Wilson, who has been appointed as the new City attorney, and will be taking over as of April 1, so he'll be at the Board's next regular monthly meeting. Obviously, it's been a pleasure serving the City and working with the Board, and he thanked the City for letting him and Mr. Burnett be here for them. He knows Mr. Wilson very well, as he worked with him at the City of St. Augustine as Mr. Wilson's assistant City attorney. Mr. Wilson is very knowledgeable in this area of the law, and he'll serve the City well.

Ms. Sloan thanked Mr. Whitehouse for his service, as he's been very helpful.

Mr. Bradfield said he'd like to remind everyone that there is a joint workshop meeting tomorrow, with the City Commission and all City boards, including this Board, and the Northeast Florida Regional Planning Council (NFRPC), which has been hired to guide the City as to how to amend the Land Development Regulations to make them more consistent with the A1A Corridor Vision Plan, the Comprehensive Plan, and the City Charter, which apparently don't all read the same.

Leonard Lyons, 10 E Street, St. Augustine Beach, Florida, 32080, asked why a vote would even be taken if an applicant comes before the Board, and he's not talking about the applicant who came before the Board tonight, but about any applicant who comes before the Board for a change in zoning or a modification in zoning, etc., and the Board expresses that more information is needed. He asked if it wouldn't be more appropriate for the Board to tell an applicant what specific information is needed, and defer a decision or recommendation to approve or deny until such time the Board is provided with that material. Tonight, they sent an applicant away without giving him a chance to defend his position or to accommodate the Board with the information to make the decision, which he thinks is a mistake, but he doesn't know what the Board is bound to.

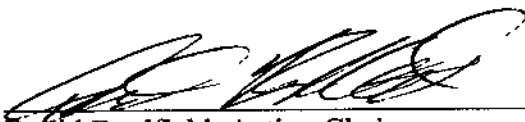
Mr. Bradfield said per past example, the Board's recommendation will probably get reversed, as basically, most of the things the Board decides and makes recommendations to the Commission on get changed and reversed. He's guessing the Board's recommendation on the application heard tonight will probably get reversed, and the applicant will be building his houses. Procedurally, however, the course suggested by Mr. Lyons probably should have been taken.

Mr. Whitehouse said as the hearing on the application that came before the Board tonight is closed, he thinks it's better not to talk about it, but to move forward on the agenda.

Ed Slavin, P. O. Box 3084, St. Augustine, Florida, 32085, thanked the Board for the vote on the application heard tonight, and for listening to people, and doing the right thing.

X. ADJOURNMENT

The meeting was adjourned at 8:35 p.m.


David Bradfield, Acting 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)