MINUTES
PLANNING AND ZONING BOARD MEETING
TUESDAY, MAY 19, 2020 6:00 P.M.
CITY OF ST. AUGUSTINE BEACH, 2200 A1A SOUTH, ST. AUGUSTINE BEACH, FLORIDA 32080

I. CALL TO ORDER

Chairperson Kevin Kincaid called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairperson Kevin Kincaid, Vice-Chairperson Berta Odom, Larry Einheuser, Dennis King, Steve Mitherz, Chris Pranis, Senior Alternate Victor Sarris, Junior Alternate John Tisdall.

BOARD MEMBERS ABSENT: Hester Longstreet.

STAFF PRESENT: Building Official Brian Law, City Attorney Lex Taylor, Executive Assistant Bonnie Miller, Recording Secretary Lacey Pierotti.

IV. APPROVAL OF MINUTES OF PLANNING AND ZONING BOARD MEETING OF MARCH 24, 2020

Motion: to approve the minutes of the March 24, 2020 meeting. Moved by Ms. Odom, seconded by Mr. Mitherz, passed 7-0 by unanimous voice-vote.

V. PUBLIC COMMENT

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

VI. NEW BUSINESS

A. Conditional Use File No. CU 2020-02, for renewal of a current conditional use permit to allow 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 on Lots 11 and 17, Block 4, Chautauqua Beach Subdivision, at 570 A1A Beach Boulevard, Genesis Property & Management Group LLC, Margaret Kostka, Applicant

Ms. Miller said this conditional use application is for renewal of a current conditional use permit for Cone Heads Ice Cream at 570 A1A Beach Boulevard, owned by Maggie Kostka since 2011. Ms. Kostka applied for her first conditional use permit for outside seating in 2012, and this was granted for three years. In 2015 she applied for renewal, which was granted for five years, so she’s now here to renew this current conditional use permit, which expires June 1, 2020. The Building and Zoning Department has had absolutely no complaints or issues with the outside seating at Cone Heads Ice Cream since the original conditional use permit was granted in 2012. Staff recommends the renewal be granted for as long as Ms. Kostka owns and operates the business, but that it be granted as non-transferable to a new owner, as it is not known what a new owner would do with the business.
Maggie Kostka, 570 A1A Beach Boulevard, St. Augustine Beach, Florida, 32080, applicant, said as the inside seating at Cone Heads is limited to four to six chairs if you can squeeze them in, the outside seating is important because it provides space for her customers to sit and enjoy what they purchase at her ice cream shop.

Mr. Mitherz asked if the drive-thru window is still being used at Cone Heads, and if so, what the status is on the conditional use permit granted to allow the drive-thru.

Ms. Kostka said the drive-thru window is still being used at Cone Heads per a separate conditional use permit.

Ms. Miller said the conditional use permit for the drive-thru was renewed in 2017 for 10 years and expires in 2027.

Mr. Mitherz asked how many parking spaces are onsite, including parking for the residence above Cone Heads.

Ms. Kostka said Cone Heads has 22 available parking spaces. She lives in the upstairs residence and has two additional parking spaces reserved and designated as tenant parking only for her use.

Mr. Kincaid said he lives down the street from Cone Heads, which is a very welcoming place that always seems to have happy people hanging out front. During the past few months when they've all been living under different circumstances due to COVID-19, he noticed the tables for the outside seating were turned over. They are now in use and separated. He thanked Ms. Kostka for the efforts to comply with social distancing guidelines.

Motion: to recommend the City Commission approve the renewal of the current conditional use permit for food and/or beverage service and consumption outside of an enclosed building at Cone Heads Ice Cream, 570 A1A Beach Boulevard, subject to the condition that it be granted as non-transferable to the current property owner and applicant for as long as she owns the property and operates the business. Moved by Ms. Odom, seconded by Mr. Mitherz, passed 7-0 by unanimous voice-vote.

B. Land Use Variance File No. VAR 2020-04, for reduction of the minimum rear yard setback requirement of 25 (twenty-five) feet, per Section 6.01.03 of the City’s Land Development Regulations (LDRs), to 10 (ten) feet, for proposed new construction of a 459-square-foot in-law suite addition to an existing single-family residence in a low density residential land use district on Lot 27, Block A. Ocean Woods Subdivision Unit 2, at 52 Ocean Woods Drive East, John S. Antonio, Agent for Noel and Lois C. Toonder, Applicants

Ms. Miller said this application is a variance request for a rear yard setback reduction from 25 feet to 10 feet for a 459-square-foot mother-in-law suite addition to an existing single-family residence at 52 Ocean Woods Drive East. The owners of this property, Mr. and Mrs. Toonder, are asking to build the addition for Ms. Toonder's mother, who has lived with them for the past several years and is dealing with several medical issues. Staff received just this afternoon four letters of support from neighboring property owners, hard copies of which have been provided to the Board members. The survey on the overhead screens shows the proposed mother-in-law suite located 10 feet off the rear property line, and two of the letters of support were signed by the owners of the two lots, Lots 28 and 29, Block A, at 577 and 575 16th Street, respectively, directly behind the applicants' lot. [Recording Secretary's Note: Ms. Miller was interrupted at this point by the applicant's agent, John Antonio, who submitted a new survey and site plan for the proposed addition showing the requested rear yard setback to 12.5 feet, instead of 10 feet.] With this new survey and site plan, Ms. Miller said the requested rear yard setback reduction is now from 25 feet to 12.5 feet, so this is good news. The property owners living at 575 and 577 16th Street, who will be most affected by the requested variance for the rear yard setback reduction, submitted letters of support for the variance for a rear yard setback reduction to 10 feet, which is a bigger setback reduction than what is now being requested. The owners of 575 16th Street have some concerns about drainage, which Mr. Antonio and Mr. Toonder can address. She displayed a location map on the overhead screens showing where the adjacent property owners who submitted letters of support live in relation to the applicant's property.

Mr. Mitherz asked if the City currently has any mother-in-law suites built on low density residential properties.
Ms. Miller said yes. Last year, the Board approved a variance for a mother-in-law suite on Poinsettia Street. The applicants built their house under the former minimum rear yard setback requirement of 20 feet and applied for a variance to build the in-law suite with a 20-foot rear yard setback to be in line with rest of the house. As was the case with this in-law suite addition, Mr. Toonder was asked to sign the letter of agreement stating the in-law suite shall not be rented as a separate unit, and as the property is zoned low density residential, short-term or transient vacation rentals of 30 days or less are prohibited. Low density residential only allows one residential unit per lot, so the in-law suite can’t be rented as a separate unit for short-term or long-term use but can only be used for family members or guests staying with the family. If it is found that the in-law suite is being rented as a separate unit, the issue will be turned over to code enforcement and the property owners will be cited with a violation notice. The document signed by Mr. Toonder says the in-law suite shall not be rented as a separate unit at any time from now into infinity, so this applies to not only the current property owners, but any future owners.

Mr. Kincaid asked if, even without the letter signed by Mr. Toonder, the City will keep people from renting it through the current regulations for low density residential.

Ms. Miller said correct, if the City found out it was rented as a separate unit or this was reported by neighbors, code enforcement would contact the owners and initiate any code enforcement action necessary to shut down and further prohibit the in-law suite from being rented as a separate unit.

Mr. Mitherz asked if the in-law suite could be rented for six months or more as a separate unit.

Ms. Miller said no. It couldn’t be used as a separate rental unit at all because the property is zoned low density residential and can only have one single-family unit per lot. The question was asked by a neighbor as to what would happen if the applicants wanted to subdivide their lot into two lots, with the existing house on one lot and the in-law suite on another, but the lot isn’t big enough to subdivide it into two separate lots and a 459-square-foot unit doesn’t comply with the minimum floor area for a single-family residence in low density residential.

Mr. Law said keep in mind, there will only be one electric service to the property, as a separate meter to the in-law suite won’t be allowed at the same address. Also, the floor plans submitted with the application don’t include a kitchen or a cooking appliance such as a stove. This doesn’t mean it couldn’t have a microwave or a hotplate. The letter signed by the applicants was something he brought with him from St. Johns County, as the County allows what they call accessory family units, which are essentially the same principle as mother-in-law suites. The applicant will be asked to have this letter recorded with the variance order, if the variance is granted, at the St. Johns County Clerk of Courts Office, so it will be transferred in the event of a sale, and the new owners won’t be able to say they didn’t know the unit could never be rented separately. Once it’s recorded it should be part of the closing documents in the event of a sale of the property so it can be reviewed by any prospective or future owners.

Mr. Sarris asked if granting this variance will expose the City to other similar requests for variances to build mother-in-law suites in not just this neighborhood but in all the other neighborhoods in the City.

Mr. Law said with every variance, there is the risk of setting a precedent, which is why it’s imperative for the Board to consider each variance application individually as to the conditions for applying for any variance to the LDRs. Without a variance, the applicants would have to build to the current setback requirements, as this City does not offer reduced setbacks for accessory structures, with the exception of small sheds, or anything of that magnitude.

Mr. Sarris said this seems like a very good and worthy cause, but if other applicants come before the Board in the future with similar requests for setback reductions for in-law suites because they know other people have been granted variances for the same, will the Board be able to turn down future applicants if they don’t meet the same criteria? He asked if this is kind of like a moving target that will be hard to defend the next time it comes up.

Mr. Law said he’d say this is possible, but he’d like to defer these questions to the City Attorney.
Mr. Taylor said the Board has a lot of discretion in issuing variances, which is why the Board is supposed to look at each application on an individual, case-by-case basis. If the Board has twenty variances for setback reductions to 12.5 feet for in-law suites such as this one and approves them all but then turns down the twenty-first one, this would open up a little exposure, but the Board still has to individually look at each one because every case, even if they look similar from the outside, is going to be different. For example, this particular variance request includes letters of support from four neighboring property owners, while another application may have letters of support from property owners who are not so close. In issuing a variance, each approval is a tailored decision, even though there’s always a danger that the more that are approved, the more of a precedent is built up, and this could cause a good challenge if one is turned down. As long as the Board is being fair and looking at each situation independently, however, the Board’s decisions are going to be upheld and it is going to be very hard doable terms.

Mr. Kincaid said he has a number of questions, but he’d like to listen to the applicant’s presentation and then have Board discussion afterward, because he thinks this will involve staff and the City Attorney weighing in again.

John Antonio, Ancient City Construction, 2614 Joe Ashton Road, St. Augustine, Florida, 32092, agent for applicant, said he’s the contractor for this project, and has been hired by the applicants because Mrs. Toonder’s mother, Nancy Hill, has some health issues and is having a hard time living the rest of her life in an eight-foot by-ten-foot bedroom with cans of soup and all her other possessions in it. The Toonders are trying to improve Ms. Hill’s comfort and quality of living, whereas every request to build an in-law suite might not involve these medical issues. Regarding the neighbor’s concerns about water running downhill to his property, the in-law suite building will be built with two gables, so the water will shed to the right and left and not to the rear, and not affect this neighbor’s property. Also, the property is at a good elevation, so with water shedding to the right and left on either side, it won’t affect either of the adjacent neighbors abutting the back of the Toonders’ property.

Noel Toonder, 52 Ocean Woods Drive East, St. Augustine Beach, Florida, 32080, applicant, said he and his wife have lived in their house for about 17 years, and his mother-in-law, Nancy Hill, has lived with them intermittently over the years. In the past few past years, she’s had total shoulder replacement surgery and has limited range of motion. Their family is small, as his wife is his mother-in-law’s only living child, and their daughter is his mother-in-law’s only grandchild, so they’re trying to keep her close but also in an environment where she has freedom to do what she wants. They’ve looked at other options, such as assisted living, but due to financial constraints and other things, it’s just not feasible. The neighbors who would be most impacted by the in-law suite are Bryan and Chandra Heifner, who live behind them at 575 16th Street. He’s had extensive conversations with them regarding the three issues they have, the first and foremost of which has to do with the impact of water run-off, which Mr. Antonio addressed. He’ll be putting gutters on the house post-construction to ensure the water run-off from the gutters flows to the south and is drained to the lawn area in front of his home, and not to the rear, or north side. His lot is elevated, and the water run-off will actually plane off onto his own lot like a bowl. Another issue has to do with renting the in-law suite through Airbnd and that sort of thing, but they have no intention of doing anything like that. He’s worked from home for the last 20 years, so in the event his mother-in-law passes, he’ll use the in-law suite for his personal office space. Also, now that their daughter is home due to COVID-19, any extra space in the house has kind of been absorbed by her, so with the configuration of their lot, the proposed addition is the best they can do with what they have available to work with. They’ve looked at adding different structures or levels to the house, but it just got to a cost structure that wasn’t sustainable. The last of the Heifners’ concerns was the proximity of the in-law suite window facing their bedroom window. He’s communicated to them he’s willing to move that window to either the north side or anywhere else where it’s not facing their bedroom window.

Mr. King asked why the in-law suite is proposed to be built as a detached structure.

Mr. Toonder said they’re working around a couple of factors, including having an artesian well on the east side of the house. He looked at the cost, which would be pretty substantial, of filling in this well and moving it, but the other issue is that a detached addition will save them a little money as it relates to connectivity and other things.
Mr. Pranis said the description of the hardship in the application doesn’t really address the ongoing medical issues which are very important in this decision, so he’s not sure the hardship is correct in the way it is stated.

Mr. Kincaid said he has similar concerns. Looking at the actual regulations for granting a variance, there are a number of references as to whether the requested variance is specific to the property, which in this case, it is, but it is also precedent-setting. If the condition is common to numerous sites, requests for similar variances might come in, so the Board needs to make a required finding based on the cumulative effect of granting the variance to all who may apply. This gives him a little bit of pause because the hardship as stated in this case is not created by the physical characteristics of the property or the house, or an inability to reasonably use that property to the applicant’s benefit. He certainly understands the hardship and supports the sentiment behind it, he’s just having a difficult time with it because the considerations for granting a variance specifically talk about self-created hardship, and this hardship is specific to the applicant’s family and circumstances, it is not specific to the property or the use of the land. There probably needs to be more discussion about how the hardship is evaluated. One of the things he was questioning before the meeting was the effect of the variance on neighboring properties, and it’s obvious the applicant has the support of the neighboring property owners. Another consideration for granting a variance says if this has been granted in the past, the Board could use that in favor of granting the variance. He asked if staff could tell them more about the similarities between this application and the variance Ms. Miller mentioned was granted by the Board last year also for a mother-in-law suite addition in low density residential.

Mr. Law said he’ll answer this, as he was the plan reviewer for this addition, and is very familiar with it. The applicants asked for a variance for a rear yard setback reduction from 25 feet to 20 feet, because the entire street, including their house, had been built to the former 20-foot rear setbacks. The Board granted a variance to allow construction of the addition with the old setbacks at 20 feet, as the applicants didn’t have enough room to build it with a 25-foot rear yard setback. This was a rather large lot, but it wasn’t quite big enough to subdivide into two separate lots to build a new single-family residence for the mother-in-law, so they built an attached addition for which a variance was granted to allow it to be built at the former 20-foot rear setback. So, the circumstances for this variance, even though it was granted to allow a mother-in-law suite to be built, were completely different.

Ms. Odom asked if this has been the only variance granted to allow a mother-in-law suite that anyone can recall, to which staff responded with an affirmative nod. Her experience with variances is that the Board is always concerned about setting a precedent with every variance granted, and they’re always trying to justify a hardship. This may not sound right, but she’s seen the Board grant variances for less of a hardship than is shown here, and whether or not they’ve created the hardship, the in-law suite is for the applicant’s family. While she understands the Board’s concerns about the hardship and setting a precedent, she thinks there has to be some compassion.

Mr. Kincaid said his concern is that by allowing this, anybody could now apply for a variance to build an additional building on a lot, and the hardship doesn’t really matter, because while it is a personal hardship, it is not a hardship created by topography or by the lot size or by any restrictions on the lot. This is a hardship specific to this family on this property, so he’s having a hard time fitting that in the hardship definition without setting a precedent.

Mr. Pranis said in the past the Board has recommended the application be resubmitted without additional fees to enter in an amended demonstration of the hardship, so a precedent isn’t set for what the current applicant is asking for. He asked if this is something they want to consider for this application.

Mr. Kincaid said the Board has also granted variances in the past for setback reductions to allow property owners to better utilize properties for current and future owners.

Mr. Law said the biggest variance recently granted by the Board was a rear yard setback reduction to five feet for a detached two-car garage. This property backed up to a stormwater tract and there were no adjacent residences behind it. Also, the location of the garage was moved to the rear of the lot to save two rather large oak trees. This detached garage was for a new single-family residence off Old Beach Road, across from Ron Parker Park.
Mr. Antonio said there are no other complaints or opposition from the neighbors, and the in-law suite will be built as a deed-restricted addition binding to any future owners. Mr. Toonder’s mother-in-law, Ms. Hill, has been living a pretty tough life in a bedroom that's pretty small, and she really has no other place to go. His idea is, for future considerations, this would be a compassionate thing, for example, if someone just wanted to build an in-law suite without medical issues involved, this would be evaluated differently. Otherwise, just anybody could do it. Also, like most corner lots, the Toonders’ lot isn’t a regular-sized lot but is pie-shaped with a different configuration.

Mr. Kincaid said he understands and appreciates that, and also understands and appreciates the neighborhood support as well as the future use restrictions on the property, which he did drive by and look at. The proposed addition will be hidden in the back and won’t be an eyesore, so he doesn’t have a problem with any of that, but his concern is the precedent-setting they’ll be doing by opening the door for other people to apply for variances to build additional structures on their properties with setbacks that don’t meet the minimum requirements per the City’s LDRs. The Board isn’t asking the applicant to prove any medical issues, just as they wouldn’t ask anybody to prove any medical difficulties. If somebody wanted to come in and say there are medical issues involved, the Board would take this at face value. The issue is whether that creates a hardship under the variance structure that gives the Board the ability and flexibility to evaluate properly without setting a precedent and without weakening the LDRs. It is not really about the medical at all. He asked for the City Attorney’s advice on this.

Mr. Taylor said the Board doesn’t have to worry about setting a precedent because, for example, say at one time, the Board allowed 12.5-foot setbacks and now every time someone else asks for 12.5-foot setbacks, the Board thinks they have to approve the same thing. Each lot location and each location of a structure or whatever the applicant is asking for is subject to its own separate evaluation. If the policy of the City Commission is that they don’t want any variances approved for mother-in-law suites, this can be the Board’s decision. But each variance application is by itself an independent evaluation of the situation, and he agrees that the medical is not really supposed to be the fundamental for what is decided. It could be a factor, but it should not be the fundamental factor, which should be the property, the structures, etc. The Board should make decisions based on what makes sense and what’s coherent so when the logic is applied to something else, it makes sense in that case as well. If the Board decides that as a community, it’s important to be able to take care of family members, and mother-in-law suites are something that should be allowed with a variance if it makes sense, once you step past that, you’re just evaluating whether these particular setbacks work, and whether the Board needs to ask the applicant to do something different, for example, there might be a neighbor who has concerns about drainage or something else. Each variance application is separate, and if the Board has allowed mother-in-law structures in the past, that’s where they’re at, so the questions then are really whether the requested variance meets the conditions listed on the variance application and whether there are any neighbors’ concerns that need to be addressed.

Mr. Kincaid asked what the Board would be doing to the City’s variance process by allowing a compassionate consideration into the hardship process.

Mr. Taylor said without giving offense, he doesn’t think that’s exactly the test. If there’s a community desire to keep families intact, regardless of whether there’s a medical condition involved, that’s usually the legislative reasoning behind having family out-building structures and allowing these kinds of things. Once the Board has taken the step of deciding they’re going to allow these kinds of structures, it’s not really all that important what the compassionate reasons for it are, as you then get to a set of circumstances pertaining to whether the variance is reasonable with the use of the property and whether it makes sense to grant it for the proposed use.

Mr. Kincaid said the variance process, however, requires a hardship, so at what point does the hardship become that the property owner bought too small of a house, and now needs a bigger one? If that is what they’re opening this up to, anyone who moves to the City and buys a two-bedroom house can expect to be able to build onto it or add an out-building. He thinks the compassionate part almost has to be added if this variance is approved, as this separates it out from everyone else who applies for a variance because they bought too small of a house.
Mr. Taylor said not that he’s trying to guide anything, because the Board can decide what it wants to decide, but the logic when you think about out-building structures is more looking at the square footage on the lot itself.

Mr. Law said residential properties are limited to 35 percent maximum lot coverage and low density residential is limited to 40 percent maximum impervious surface ratio (ISR) coverage, so the applicant won’t be able to get a permit for the in-law suite if the lot coverage and ISR coverage exceeds this, unless he applies for another variance.

Mr. Taylor said this individual lot does have an irregular shape, so that might be a good reason to grant a variance, if the proposed new building does not go over the allowable lot coverage and ISR coverage percentages. If a variance is granted to allow the applicant to build the in-law suite, the analysis should really be focused on what’s the best positioning of the out-building and if the variance requested is really the minimum needed to build it.

Ms. Odom said the additional square footage would increase the value of the property, in the case of a resale.

Mr. Kincaid said he agrees with all of that, and that’s all fine, but everybody could make the argument that they could make their property worth more if they did this to it, and at some point, the LDRs become worthless if they don’t follow them and don’t have a reason, which is what he’s looking for here, to go outside and around them.

Mr. Toonder said they’ve done probably three or four different drawings to fit within the configuration of their lot lines, and he wasn’t thinking about this until it was brought up, but if he brought the in-law suite in five or ten feet from the rear, or north, property line, he’d need a variance to encroach into the setback on the east side, and if he tried to put it on the back of his house, where his porch is, he’d also need a variance. He’s in a position where he really can’t do anything else, and while he understands the point made that people should buy a bigger house, he bought a house 17 years ago, he and his wife had one child, and now their sentiment is to take care of another of their family members. They’d prefer not to have to move from the area to make this accommodation, and they’re just trying to do everything they can. As to the hardship part of it, he’d say they’re facing a bit of a hardship trying to work in the square footage of the proposed addition, as a result of the extreme pie-shape of their lot.

Mr. Kincaid said in driving by and looking at it, he thinks Mr. Toonder has done a good job putting it where it is. His problem is not with the applicant or where the in-law suite is located, as right now, he thinks the Board is looking for a way to help him. The Board’s problem is that they have to sit here next month and the next month after that and listen to the next applicants applying to build a similar addition based on what they’ve approved.

Mr. Law said to answer the questions about square footage for lot coverage and ISR, per the information provided by St. Johns County Property Appraiser’s Office, the lot size is approximately 10,890 square feet. If the screen porch has a hard roof, to which the applicant nodded assent that it does, the total square footage for existing lot coverage is at 25.675 percent, so they’re allowed an additional 1,015 square feet, and the proposed in-law suite is less than that. In theory, what’s proposed would comply and be less than the allowable maximum lot coverage of 35 percent. He recommended they go through the limitations on granting variances item by item, so the Board can discuss each one individually, and that way, they’ll stick to the conditions required to grant the variance. He put Section 10.02.03.B, “Required considerations for the granting of a variance,” of the LDRs up on the overhead screens, starting with Section 10.02.03.B.1, “The nature of the hardship, whether it is as a result of an inability to make reasonable economic use of the property consistent with the provisions of these land development regulations, circumstances in common with other property owners, or personal to the applicant, it being the intent of this provision that an inability to make reasonable economic use of the property acts in favor of the granting of the variance and personal hardship and hardship in common with others act against the granting of the variance.”

Mr. Kincaid said he’d go out on a limb to venture that the conditions of this paragraph are not met, because the economic use of the property is not inhibited by not granting the variance.

Ms. Odom said she sees what Mr. Kincaid is saying, that the economic use of the property is not inhibited by not granting the variance, but on the other hand, if the variance is granted, it will give it increased economic value.
Mr. Kincaid said yes, granting the variance would increase the economic value of the property, but there's no inability to make reasonable economic use of the property if the variance is not granted.

Mr. Mitherz said he would agree.

Mr. Law displayed Section 10.02.03.B.2, which states, "The precedential effect of the variance, it being the intent of this provision that the prior granting of similar variances to persons similarly situated shall act in favor of the granting of the variance and the prior denial of similar variances shall act against to the granting of the variance."

Mr. Kincaid said the Board has discussed that they think it is precedential, and that the other variance that was granted for a mother-in-law suite and discussed by the Board is not really similar.

Mr. King said they would actually have to look further back to see what the Board has approved in past years to really get a good comparison.

Mr. Law displayed Section 10.02.03.B.3, which states, "Whether the granting of the variance will create a precedent. The creation of a precedent shall act against the granting of the variance."

Mr. Kincaid said they've already discussed this. He asked for any additional comments. There were none.

Mr. Law displayed Section 10.02.03.B.4, "Whether the hardship is self-created; that is, whether the applicant acquired the property following the adoption of the regulation from which the variance is sought or the hardship is as a result of construction or other activities undertaken by the applicant following the adoption of such regulation. Acquisition of the property following the adoption of the regulation shall act against the granting of the variance. Acquisition preceding the adoption of the regulation shall act in favor of the granting of the acquisition."

Mr. Kincaid said the applicant has owned his property for 17 years, and he thinks the setbacks have kind of moved back and forth over the years.

Mr. Law said yes, front and rear yard setbacks have gone from 25 feet to 20 feet then back to 25 feet each, but he doubts they've ever been 12 feet in this City. He next displayed Section 10.02.03.B.5, which states, "Whether the variance requested is the minimum variance that will permit the reasonable economic use of the property."

Mr. Kincaid said he thinks the requested variance clearly meets this.

Mr. Law displayed Section 10.02.03.B.6, "The effect of the variance on neighboring properties. The absence of an effect on neighboring properties will act in favor of the granting of the application. An adverse impact upon neighboring properties or the immediate neighborhood will act against the granting of the application."

Mr. Kincaid said this has been taken care of with neighbors supporting it. They've received no dissenting letters or opposing opinions on this, and the applicant addressed the concerns of the one neighbor about water run-off.

Mr. Law displayed the last paragraph, Section 10.02.03.B.7, which states, "Increases in congestion on surrounding streets, increases in the danger of fire or flooding will act against the granting of the application."

Mr. Kincaid said he doubts any of that is going to happen.

Mr. Taylor said he's a little concerned they may be analyzing the first consideration wrong, so he'd like to go back to Section 10.02.03.B.1, referring to the nature of the hardship. The reason he brought up the square footage usage was because if the lot were a different shape, the applicant would be allowed to build the addition regardless of the purpose, which in this case, is for his mother-in-law. That's not the problem, the problem is economically, he could build out bigger but for the shape of the lot. The applicant also stated there is an artesian well and other things causing issues with placing the in-law suite elsewhere. The Board has to make a decision based on consideration of all of these factors, but he thinks they may be analyzing this part a little too strictly.
Mr. Kincaid said reinterpreting that, the hardship is the applicant could build the in-law suite legally and in conformance with the LDRs without any problem if the lot were big enough and it could be built within the 25-foot rear yard setback line, but because the lot is shaped the way it is, and because of the position of the artesian well and different factors on this lot alone, the applicant is unable to build the addition without a variance.

Mr. Law said you could look at it that way, based on where the proposed location of the in-law suite is. The applicant also briefly touched on the cost aspect, saying it's much more cost-effective to build a detached building, but another option is to go into a full renovation of the house, and attach the proposed in-law suite to the rear of the house. However, the applicant would still need a variance, as there's only 26 feet from the wall of the house to the rear property line. They're just limited as to space, and honestly, if he were still a contractor, the way the applicant is proposing to build the addition in the location shown in the variance application is the route he'd take.

Mr. Kincaid said so this is the minimal variance that is being requested, which is another of the conditions to be considered for the granting of a variance.

Mr. Law said yes, he would say so.

Ms. Odom said in looking at the map showing the location of the neighboring property owners who wrote letters of support, it looks like most of the adjacent property owners could build what the applicant wants to do without a variance, due to the size of the lots in this neighborhood. However, the applicant is applying for this variance for the most part because of the pie-shaped dimensions of his lot, which isn't big enough to do what he wants to do without the requested variance. She thinks the applicant has positioned the addition in the best place possible.

Mr. Kincaid said if the applicant were to move the addition forward, it would encroach into the side setback.

Mr. Toonder said yes, they've pulled it in as close as they could so as not to encroach into the side setback on the east side, so they're only dealing with one setback reduction for the variance. Even if he filled in the artesian well to move the addition so it meets the 25-foot rear yard setback, it would encroach into the east side setback.

Mr. Law suggested they go through some conditions before a motion is made, and recommended the motion include verbiage stating it is based upon the configuration of the lot, support in favor of the variance from adjacent neighbors, demonstration by the applicant of the minimum variance necessary to construct whatever the square footage of the mother-in-law suite is, and as such, the variance is granted under the conditions that the mother-in-law suite shall not be rented and shall not violate any of the City's Land Development Regulations. The Board can also discuss whether they want to prohibit a stove or an oven in the in-law suite.

Mr. Kincaid asked if there is sentiment from the Board to prohibit cooking appliances or a stove in the addition.

Ms. Odom said in the City of St. Augustine, you can't have a stove in a mother-in-law suite.

Mr. Law said during the time he worked for St. Johns County, this wasn't allowed in the County either, except, he believes, in the special zoning district of Ponte Vedra.

Mr. Kincaid asked if this would be prohibited during the City's inspections of the in-law suite.

Mr. Law said he has no legal authority under the building code or zoning code to prohibit this, it would have to be listed as a condition of the motion to grant the variance.

Mr. King said he thinks this should be added as a condition of granting the variance. The Board agreed, by general consensus.

Motion: to approve Land Use Variance File No. VAR 2020-04 for a rear yard setback reduction from 25 feet to 12.5 feet for proposed construction of 459-square-foot in-law addition based on the hardship of the configuration of the lot; support in favor of the variance from adjacent neighbors; demonstration by the applicant of the
minimum variance necessary to construct said addition; and subject to the conditions that said addition shall not be rented as a separate unit, shall not violate any of the City’s Land Development Regulations, and a stove and/or oven shall be prohibited in the 459-square-foot mother-in-law suite addition. Moved by Mr. Kincaid, seconded by Mr. Einheuser, passed 7-0 by unanimous voice-vote.

VII. OLD BUSINESS

There was no old business.

VIII. BOARD COMMENT

Ms. Odom said she knows the paperwork was submitted today or maybe tomorrow to reopen vacation rentals, and she heard it may be three or four weeks before it’s approved. She asked what the City’s stance is on people violating the still-in-effect ban on vacation rentals.

Mr. Law said the City is enforcing this through code enforcement. Staff has probably investigated at least five or six complaints and he believes some people have left as a result. Code enforcement is complaint-driven, so if staff receives a complaint or it’s just obvious, the City’s Code Enforcement Officer is sent out to make contact with the tenants, and if nobody answers the door, the property owner or property management company is contacted.

Ms. Odom said you hate to tattle on people, but if one person is doing what they’re supposed to and another is reaping a profit because they’re not, it’s hard not to say something.

Mr. Law said that’s exactly what’s happening, as most of the complaints they’ve gotten are from people who are doing what they’re supposed to and seeing a transient vacation rental going on two doors down from them.

Mr. Kincaid asked what’s being built behind Jack’s Bar-B-Que.

Mr. Law said this is a microbrewery addition to Jack’s Bar-B-Que, which was approved as a mixed use application by this Board last year with a variance to reduce the front setback from 10 feet to 5 feet. The concrete for the microbrewery was just poured this morning.

IX. ADJOURNMENT

The meeting was adjourned at 6:57 p.m.

Kevin Kincaid, Chairperson

Lacey Pierotti, Recording Secretary

(THIS MEETING HAS BEEN RECORDED IN ITS ENTIRETY. THE RECORDING WILL BE KEPT ON FILE FOR THE REQUIRED RETENTION PERIOD. COMPLETE AUDIO/VIDEO CAN BE OBTAINED BY CONTACTING THE CITY MANAGER’S OFFICE AT 904-471-2122.)