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, Hester Longstreet, Dennis King, Steve Mitherz, Chris Pranis, Senior Alternate Victor Sarris.

BOARD MEMBERS ABSENT: Junior Alternate John Tisdall.

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 MAY 19, 2020

Motion: to approve the minutes of the May 19, 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. Land Use Variance File No. VAR 2020-05, for reduction of minimum 25-foot rear yard setback requirement to 19 feet for proposed new construction of a 224-square-foot addition to an existing single-family residence in a medium-low density residential land use district on Lot 11, Block 58, Coquina Gables Subdivision, at 412 F Street, Ryan Halcrow, Agent for James S. Cooper and Susan F. Horowitz, Applicants

Ms. Miller said this variance application is for a rear yard setback reduction from 25 feet to 19 feet for a 224-square-foot enclosed sunroom addition to an existing single-family residence at 412 F Street. Included in the application submittal is a petition signed by 10 neighboring residents in support of the reduced rear setback.

Ryan Halcrow, 17 Linda Mar Drive, St. Augustine Beach, Florida, 32080, agent for applicants, said he’s also the contractor for this 16-foot-by-14-foot addition described on the application as a sunroom that will actually be a fully-functional, heated-and-cooled conditioned space. The minimum rear yard setback per City Code is 25 feet, and they’re requesting to encroach another six feet for the addition, for a rear yard setback reduction to 19 feet.
No trees will be removed to build the addition, which won’t exceed the current height of the house, so the addition won’t be visible from the front, but it may be visible from some of the homes adjacent to the rear of the lot.

Mr. Kincaid said one of the things the Board looks for and requires in considering variance applications is a hardship, which he asked Mr. Halcrow to describe.

Mr. Halcrow said the existing house on this property is not very large, so the owners wanted to add some square footage, and they basically only had two options for an addition. There is no useable space on either the east or west sides of the house, the only useable space is in the back, as the house is located approximately 33 feet from the centerline of the vacated alley on the north side of the lot. With the current minimum 25-foot rear yard setback requirement, this only leaves room for an eight-foot-wide addition, which would make a very small tight room that is not a good option for the homeowners. The second option is to build up and add a second-story to the structure to create more square footage, but as the homeowners are getting up in age, that’s not what they want to do. This is their retirement home, and as they don’t want to bring in stairs, they thought applying for a variance for the 224-square-foot addition they propose to build would be the best possible use for more space.

Mr. Mitherz asked if the homeowners are currently living in this house.

Mr. Halcrow said yes, they are.

Mr. Pranis asked what the size of the current deck built off the back of the house is.

Mr. Halcrow said this deck has been demolished, but he believes it was about 150 square feet.

Ms. Longstreet said the paperwork turned in with the variance application all says the requested rear yard setback is from 25 feet to 20 feet, not 19 feet. This is only a difference of one foot, but legally, this needs to be clarified.

Mr. Halcrow said the variance request is for a rear yard setback reduction from 25 feet to 19 feet, as stated on the agenda for this meeting, and also as stated on the first page of the submitted variance application.

Mr. Einheuser said the rear yard setback reduction to 19 feet is also shown on the submitted site plan.

Mr. Kincaid said it’s also in the description in the staff memo the Board received from Ms. Miller. He said he went by and saw this property and agreed with Mr. Halcrow’s statement that the proposed addition won’t be seen from the street. He asked if the requested rear yard setback reduction to 19 feet includes the portion of the vacated alley at the back, or north, of the lot, which adds another 7.5 feet of depth to the back of the lot.

Mr. Halcrow said yes.

Mr. Kincaid said the one neighbor he did not see among the signatures on the petition in favor of the variance is the neighbor on E Street directly behind the property at 412 F Street, for which this variance is requested. He asked if there has been any comment from this neighbor.

Susan Horowitz, 412 F Street, St. Augustine Beach, Florida, 32080, applicant, said there are tenants living in the house directly behind her home, and she did knock on their door, but no one answered. The owner of this property also was not available to sign the petition.

Mr. Kincaid asked if this property owner is local.

Ms. Horowitz said yes.

Ms. Odom asked if page 4 of the variance application was filled out by the applicant, as it lists four examples of approved variances that were granted in the vicinity of the property.

Ms. Miller said yes, this information was provided by the applicant.
Ms. Odom asked about the hardships for these variances, most of which go back to 2019. A precedent is always set when a variance is approved, and obviously, they've set precedents by the four variances cited as examples, but she can't remember that far back as to what the hardships were or the details of these variances.

Ms. Miller said the examples given do not have addresses, just variance file numbers and the dates the variances were approved, so it is really hard to remember the actual details with just file numbers and no addresses. It looks like these variance file numbers were obtained from agendas or meeting information on the City's website.

Mr. Kincaid said example number 4, granted in September 2019, for a rear yard setback reduction from 25 feet to four feet, was granted for a carport that was already built. That was the hardship, that it was already built.

Ms. Odom said that was asking for forgiveness, not permission.

Mr. Law said he remembers the variance granted in January 2020 for a rear yard setback reduction from 25 feet to 20 feet, for construction of a new single-family residence at 129 14th Street for Dr. Wihbey and his family. As for the nature of the hardship, he believes it was that they applied for the variance to build the house they needed.

Mr. Kincaid said he believes the hardship in this case was also that all of the other houses on that street had been built back to the 20-foot rear setback line, as this was the minimum rear yard setback requirement until recently, so the requested variance was asking to build the house in line with all of the rest of the houses on the street.

Ms. Longstreet said the applicants can make a hardship case, but they are not doing a very good job of it. They can say this is their retirement home, that they are getting up in age and are very hesitant to add stairs because of their backs or legs, or whatever, but the Board should not have to do this for them. The applicants should be getting together and doing this, or someone in Planning and Zoning should have this written down for them so that by the time the application comes before the Board, the Board doesn't have to help them with this.

Mr. Kincaid said he sees the hardship they're talking about, but his fear is they're back again dealing with someone who bought too small of a house and now needs a bigger one, so they want to undo the City's Land Development Regulations (LDRs) by applying for this variance in order to accommodate an addition and have a bigger home. However, he does see this request in the hardship and thinks impact plays a part as well, even though that is not in the variance considerations. Taking into consideration that you won't be able to see the proposed addition from the street, along with the petition signed by surrounding neighbors who support the variance request, he thinks if this variance was allowed, the result would be a significant lack of impact or lack of negative impact, aside from the precedent-setting that would be done by granting another variance.

Mr. Einheuser asked when the setbacks were changed from 20 feet front and rear to 25 feet front and rear.

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Mr. Einheuser asked when the setbacks were changed from 20 feet front and rear to 25 feet front and rear.

Mr. Law said the setbacks were changed about two years ago. This house actually has an unusual construction type, if you look at the front right side of the house, where it juts out, that's approximately a 25-foot front setback based on his math, but the rest of the house comes in about 8 feet, and has a 33-foot front setback to the front property line adjacent to the street. Traditionally, with today's setbacks, the square footage would be maximized, and the front building wall of the house would come right across the front at the 25-foot front setback line. A possible hardship might be that the pre-existing construction with this extremely restrictive rear setback is denying the applicants the ability to build the proposed sunroom, which is actually a habitable living area.

Ms. Horowitz said she and her husband have owned their home at 412 F Street since 2006. She recently just retired, and her husband is in the process of retiring. He's 75 and she's 67. There are very few windows in their house, so they don't get a lot of light, and what they're really looking for is a room where they can get some light when it's really hot outside without having to be entirely enclosed with no windows. That's the motivation for wanting to build the addition in the back. They looked at alternatives, but without this variance, they could only have a little boxcar of a room, so it really wouldn't be worth doing it. They are not at all interested in climbing
stairs as they get older, and her husband has already had two knee replacements. She’s not sure what else the Board needs in terms of hardship, but that’s the way she would explain the purpose and the need for this addition.

Ms. Longstreet said that’s great, it just needs to be documented and written down for the description of the hardship on the application. That’s all the hardship that is needed.

Mr. Kincaid said he’d also put in what Mr. Law said about the property itself, and that the way the building is built presents a hardship as far as maximizing the use of the square footage of the lot. This gives the Board the ability to look at the lot or the building as causing the hardship, rather than a personal or medical issue causing it.

Mr. Taylor said as a point of information, everything said and done in this hearing is evidence and goes into the minutes, so if the Board wants the reassessed hardship information written down, they can ask that this be done, but it’s really not necessary, as everything they’re inputting here is part of the record and gets entered into the minutes of the meeting. The Board can incorporate any new findings or evidence regarding the hardship into a motion that will be put into the transcribed minutes of the meeting, which will describe what has been discussed.

Mr. King asked if the homeowners own one-half of the vacated alley behind their home.

Mr. Law said traditionally, when an alley is vacated, 7.5 feet of the typical 15-foot-wide alley is given to the adjacent property owners on either side. This 7.5 feet is incorporated into the adjacent property owners’ lots, and it can be used for setbacks, but nothing can be built within this portion of a vacated alley without prior approval, usually from the City’s Public Works Director. The vacated portion of an alley can be fenced in, or a deck may be allowed to be built in this area at the discretion of the Public Works Director, but most of the time, when the City vacates an alley, it is written in the ordinance to vacate that the City retains future rights to use it if needed, for whatever unknown reasons, such as technology changes or any other unforeseen circumstances.

Mr. Pranis said his initial question to the homeowner’s agent about the size of the deck that’s been removed was along the lines of Mr. Kincaid’s thinking about the impact of the space. The size of this deck was not specifically laid out on the survey submitted with the application, but it looks like it was pretty close in size to the addition the homeowners are asking to build, so the impact is not going to be dramatic over what was formerly there.

Mr. Kincaid said also, no negative comments have been received from any neighbors.

Ms. Longstreet said just for the record, the reason for building the addition is due to the physical impairments of the homeowners.

Ms. Odom said she doesn’t see that you have to build a room just because you have physical impairments.

Ms. Longstreet said if the owners could build stairs and go up, they wouldn’t have to build out.

Mr. Kincaid said it is his opinion they have to be careful with medical and physical impairments, because these are not permanent, and whatever gets built on this lot is probably going to be there for generations to come. The LDRs lay out that the hardship should be something to do with either the lot or the building or some physical attribute of the property that presents a hardship for the applicants. Mr. Law pointed out the current building would not be built the way it is today, so the building construction provides a hardship on the applicants’ ability to maximize the use of their property. Therefore, by granting the variance to allow the extra square footage needed for the addition, the Board is recognizing the current restrictions brought about by the original building construction. He’s opening this up for the Board to be able to evaluate each applicant’s lot and the building on that lot individually, so that they’re not really setting a precedent, as they have the ability to look at every variance as to the impact to the neighborhood as well as the restrictions of the lot or the ability to use the lot. Last month, the Board approved a variance based on a lot that was odd-shaped and therefore restricted the owners from being able to use the lot to its full advantage. The hardship was the odd shape of the lot, and he thinks in this case, the construction of the house is the easiest way to address the hardship, without getting into medical issues.
He’s afraid to get into the medical or physical ailments as aspects of the hardship, because these only last while the current owners own the property, whereas the building will be going forward forever, until it is demolished.

Mr. Taylor agreed and said the Board does not legally want to be making decisions about assessing somebody’s medical abilities or lack thereof. The Board can take everything into account, in some sense, but he thinks they should have a justification other than medical to approve a variance.

**Motion:** to approve Land Use Variance File No. VAR 2020-05 as requested for a rear yard setback reduction from 25 feet to 19 feet, based on the hardship that includes the way the current existing single-family residence at 412 F Street was built and the applicants’ inability to use the lot to its full potential. **Moved by Mr. Kincaid, seconded by Mr. Einheuser, passed 7-0** by unanimous voice-vote.

B. Land Use Variance File No. VAR 2020-06, for reduction of minimum 10-foot side yard setback requirement to seven feet for proposed new construction of a 96-square-foot bathroom addition to an existing single-family residence in a medium density residential land use district on Lot 98, Atlantic Beach Subdivision, at 115 15th Street, Sally Nichols, Applicant

Ms. Miller said this variance application is for a 96-square-foot bathroom addition to an existing single-family residence at 115 15th Street. The applicant is asking for a side yard setback reduction from 10 feet to seven feet on the east side of the lot, as the existing house was built in 1957, before the City was incorporated, with the current seven-foot side yard setback on the east side. The applicant is asking to build the bathroom addition on this same side, in line with the east building wall of the home, because even though there is plenty of room in the back, there’s a septic tank in the back yard, so the bathroom addition has to be built in the location shown on the survey submitted with the variance application. The application also includes approval from the State of Florida Department of Health and St. Johns County Environmental Health stating the bathroom addition will have no impact on the current septic system, and letters of support for the variance from the property owners at 113 15th Street and 117 15th Street, which are the properties next door on both the east and west sides, and a neighbor at 107 15th Street. Staff has received no negative feedback whatsoever regarding this variance request.

Sally Nichols, 115 15th Street, St. Augustine Beach, Florida, 32080, applicant, said she’s retired, and has four grown children and four grandchildren, who live in Atlanta, Tampa, and Canada. They all love to come visit her, sometimes for a month at a time. She has a very small bathroom in her home and really needs a second bathroom.

Mr. Pranis said the existing house on the lot is actually an odd-shaped home.

Mr. Einheuser said he doesn’t see a problem with this, as the proposed bathroom addition will stay inside the current east side yard setback of the existing home.

Mr. Kincaid said if the bathroom was put in when the house was originally built, this wouldn’t have been an issue, because it would have been in line with the house. He drove by this property and didn’t see any issues, as the bathroom addition will follow the same line of the house and the applicant is not asking to build outside of a setback that doesn’t already exist. In any case, this house predates anything in the City’s LDRs.

Mr. Law said the construction of the house predates the City, as it was built before the City was incorporated in 1959.

Mr. Mitherz asked why the septic system would be approved by St. Johns County Health Department when they are trying to get property owners to hook-up to the sewer system.

Mr. Law said that’s a long-term goal for the City. The Health Department has its own rules, he thinks if a septic system is functioning, and the proposed bathroom addition is of no impact, because bathrooms aren’t the definition of impact to septic systems, it has more to do with the number of bedrooms, the Health Department usually approves it. Ms. Nichols will most likely not be granted a new septic permit in the event of a massive
failure of the system if sewer is available, so if she needs a new tank or the drain field collapses, the Health Department would have to look at the State laws and determine if hook-up to the central sewer system is required.

**Motion:** to approve Land Use Variance File No. VAR 2020-06 for a side yard setback reduction from 10 feet to seven feet for proposed construction of 96-square-foot bathroom addition to an existing single-family residence at 115 15th Street. **Moved by Mr. Pranis, seconded by Ms. Odom, passed 7-0 by unanimous voice-vote.**

C. Ordinance No. 20—__, passed on first reading by the City Commission at its regular monthly meeting of June 1, 2020, to establish boundary designations for the mixed use district along A1A Beach Boulevard

Ms. Miller said the mixed use regulations for the City were first suggested in 2006, when consultants were hired by the City to create what became the A1A Beach Boulevard Corridor Vision Plan. The regulations for mixed use development were adopted and incorporated into the LDRs as Section 3.02.02.01, but there is no definition of the exact location or boundary limits of the mixed use district in this section. To remedy this, an ordinance has been drafted to define the mixed use district in line with what the Vision Plan suggested, basically defining the mixed use district as all the commercially-zoned land along both sides of A1A Beach Boulevard, starting at the City’s northern limits on the north side of Pope Road running south to the south side of F Street. The commercial designation runs 150 feet east from the centerline of A1A Beach Boulevard and 300 feet west from the centerline of A1A Beach Boulevard, so the proposed ordinance for the mixed use district incorporates the same commercial designation for the boundaries of the mixed use district. The City Commission reviewed this ordinance earlier this month on June 1, 2020 and passed it on first reading. The ordinance is now before this Board for the Board’s review and recommendation to the Commission as to whether the Commission should pass it on final reading.

Mr. Law said this ordinance provides a definition for the boundary limits of the mixed use district, which is intended to create a combination of retail and pedestrian-friendly businesses and residential and commercial buildings, to break up the monotony of the commercial land use district on both sides of A1A Beach Boulevard.

**Motion:** to recommend the City Commission approve passage of Ordinance No. 20—__ as drafted on final reading. **Moved by Ms. Odom, seconded by Mr. King, passed 7-0 by unanimous voice-vote.**

D. Rescheduling of the Board’s August 18, 2020 regular monthly meeting to proposed new meeting date of Tuesday, August 25, 2020, at 6:00 p.m. at City Hall, due to use of the City Hall meeting room on August 18, 2020 as a voting site for the primary election

Ms. Miller said staff needs a general consensus from the Board to reschedule the Board’s August 18, 2020 meeting to August 25, 2020, to ensure there will be a quorum of Board members who can attend this meeting.

Mr. Kincaid asked if anyone is not available on August 25.

Mr. Einheuser said he might be taking his children to college at this time, so he will have to check on this before he can confirm that he is available on August 25.

Mr. Kincaid said if a quorum consists of a minimum of four members, they have a quorum in any case. The Board agreed, by general oral consensus, to reschedule its August meeting to Tuesday, August 25, 2020, at 6:00 p.m.

**VII. OLD BUSINESS**

There was no old business.

**VIII. BOARD COMMENT**

Ms. Longstreet said when the Oceans Thirteen mixed use building on the corner of 13th Street and A1A Beach Boulevard was approved by the Planning and Zoning Board, she thought the Board put a caveat on the approval that if this new building was built as close as it is to the duplex on the lots next to it to the east, all of these lots
would have to stay together, and that the owners would not be able to sell off the lots separately. They are now trying to sell the duplex lots separately from the lot which the new Oceans Thirteen mixed use building is on.

Mr. Law said he talked with the contractor for Ocean Thirteen and property owner or property owner’s developer, as a question was posed to staff about a year ago about making the residential units of the duplex to the east into condominiums. If this were done, only the inside of the units would be sold, because when you buy a condominium, the condominium owners association (COA) basically retains ownership of everything else.

Ms. Longstreet said they can’t sell the duplex lots, because if you look at how close the mixed use building is to the duplex, the roof is overlapping onto the property of the other, and the Board said the other lots on which the duplex is on could not be sold off separately.

Mr. Law said first of all, while he was not working for the City when this was approved, the mixed use order for Oceans Thirteen does not address this. Second, he’s sure legal counsel would have a huge opposition if the Building Department tried to block a private property sale.

Ms. Longstreet said it was agreed upon by the owners and said at the meeting that they would not be able to separate the lots or sell them off separately. The Board told the owners that approval of their application was contingent upon them not separating the lots, because the buildings are too close together.

Mr. Taylor said he’d have to go back and review what the order was when this application was approved.

Mr. Law said there’s nothing in the order, which he’s read, but the fact is, if they were going to try to sell a part of this property, he’s sure it would get flagged in the closing, because it’s all under one parcel identification number. If the lots were sold separately, they’d have to break them apart into separate parcel numbers without a clear delineation and he’d be floored if somebody could actually pull that off.

Ms. Longstreet asked how they could possibly do that when they had to dig underneath the plots of the other lots just for the water and sewer and other utility hook-ups.

Mr. Law said that’s what he’s saying, he doesn’t think this could be done, but once again, his department will not intervene whether the owners try to do this now or in 10 years, because they’d have no legal right to intervene, as this is not referenced in the mixed use order. He doesn’t think this could happen anyway, because when a records and lien search is done for all the closing documents to get a clear title, there is no delineation as to where the properties could be broken off into separate lots or parcels. He thinks selling the inside of the duplex units as condominiums was something the owners were just thinking about. As far as he knows, the for sale sign has been taken down, but he doesn’t know if the property is still on the Multiple Listing Service (MLS). However, he’s pretty sure intervening in a private property sale would be treading fairly close to a government taking of property.

Mr. Taylor said yes, quite possibly, he’d be worried about that, but it probably isn’t a good candidate for a lot split from what Mr. Law is describing, as there’s no way to separate the different utility functions and everything else.

Ms. Longstreet said the paperwork for the new mixed use building did not show any decks, which it now has.

Mr. Law said there is a stop work order currently posted on the front door of the new building because of the decks. On next month’s meeting agenda, the Board will have an application for post-permit modifications to the Oceans Thirteen building, to address the decks that have been built and to change the parking configuration.

Mr. Kincaid said so the Board will have an opportunity to address the builder and the owners next month.

Ms. Odom said the property is still listed on the MLS, which says it is subject to homeowner association (HOA) documents, approvals and declarations currently being drawn up. There was previously no HOA involved with this property, something she knows because she’s sold this property three times in the past.
Mr. Law said the owners came to the Building Department and were told that converting existing property into a condominium is not a service the Building Department provides, as staff does not get involved with HOA or condominium associations, just whatever is involved in the construction of buildings. The reason he says it would be very challenging to break the lots apart is because of the property configuration, as the lots do not split clearly on the duplex or on the new Oceans Thirteen building, and the stormwater drainage is somewhere around where the new parking configuration is proposed. The Board will receive memos from the City's Public Works Director and St. Johns County Fire Department with the presentation of the proposed post-permit modification application at its next meeting, and until these modifications have been approved, the stop work order will remain as posted on the building. As far as he knows, the owners are intending to do some sort of condominium, but this has to be done by application to the State of Florida, which has its own rules and regulations for condominiums. As of now, work inside the Oceans Thirteen building can continue, but all work on the outside decks has to stop.

Ms. Odom asked, for clarification, if doing condominiums will include the duplex to the east of the Oceans Thirteen building.

Mr. Law said he doesn’t have that exact information, but it is something they can ask the applicant when the post-permit modifications for the decks and parking reconfiguration is presented to the Board next month. However, as he understands, the owners were just talking about the duplex east of the Oceans Thirteen building as being a condominium. Once again, this is not within the purview of the Building and Zoning Department. Staff had a meeting with the contractor and the owners last week about the decks and the stop work order, and they were advised they would need to apply for post-permit modifications to the approved mixed use order, in accordance with provisions in the LDRs for amendments, modifications or extensions of a final development or other approval.

IX. ADJOURNMENT

The meeting was adjourned at 6:53 p.m.

Kevin Kincaid, Chairperson

Lacey Pierotti, Recording Secretary

(THESE 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.)