

**PLANNING AND ZONING BOARD MINUTES  
THURSDAY, JUNE 15, 2023 - 1:30 PM  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**PRESENT:** Chairman, Jeb Bittner; Vice Chairman, Jose Prieto; **Members:** Robin Pelensky, Timothy Velde and Jason Ground **Also Present:** Senior Planner, Gayle Lafferty; Planning Director, Jason Jeffries; City Attorney, John Turner and Deputy City Clerk, Sherri Philo

**Excused Absences:** Jake McCrae and Elliese Shaughnessy

Today's meeting was called to order at 1:32 p.m.

**I. PRELIMINARY MATTERS**

**A. Agenda Additions and/or Deletions**

None

**II. APPROVAL OF MINUTES**

**A. Regular Meeting – June 1, 2023**

**Mr. Prieto made a motion to approve the minutes of the June 1, 2023 Planning and Zoning Board meeting. Mr. Velde seconded the motion and it passed unanimously.**

**III. PUBLIC COMMENT**

None

**IV. PUBLIC HEARINGS**

**[Quasi-Judicial]**

**A. Site Plan and Conditional Use Application Submitted by Mills, Short & Associates on Behalf of Christ Church Vero Beach, Inc. to Construct a 16,800 Square Foot School Building, 4,608 Square Foot Chapel and 4,368 Square Foot Pavilion Located at 665 20<sup>th</sup> Street (#SP22-000007)**

The Chairman read Site Plan and Conditional Use Application #SP22-000007 submitted by Mills, Short and Associates on behalf of Christ Church Vero Beach, Inc. by title only.

There were no ex parte communications reported.

The Deputy City Clerk swore in staff and the audience present for this hearing en masse.

Ms. Gayle Lafferty, Senior Planner, who has been sworn in, went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). Staff recommends approval of the site plan and conditional use for the subject site plan with conditions outlined in staff's memorandum.

Father Keith Allen, Director of Christ Church, Applicant, who has been sworn in, said their hope is that this would be a value added to the community. He said their landscaping meets the requirements

of the City, however they are still investigating using a preponderance of native plants to improve both the beauty of the City and their responsibility to the environment.

Mr. Wesley Mills, of Mills, Short and Associates, who has been sworn in, was present to answer any questions of the Board members.

Mr. Bittner said this area is prone to flooding. He asked if water would leave the site over land or would it be piped into existing storm systems.

Mr. Mills said the entire development was designed for a 25-year/24-hour rain event. The water would be routed through a series of pipes to the stormwater pond that is currently on the site. He said there would be a control structure that would release the water at a much less rate than the existing conditions of the site.

Mr. Bittner asked would the structure release the water onto the street or into an existing storm drainage structure.

Mr. Mills said it would release the water to the swale that is located towards the rear of the site. He noted that also would be increasing the capacity by 50%.

Mr. Bittner said at some point the water would go onto the road.

Mr. Mills said it would not go onto the road. The water would go into the stormwater pond, which would then be discharged to the swale and would ultimately make it to the Lagoon.

**Mr. Prieto made a motion to approve the site plan and conditional use application submitted by Mills, Short and Associates on behalf of Christ Church Vero Beach, Inc., to construct a 16,800 square foot school building, 4,608 square foot chapel and 4,368 square foot pavilion located at 665 20<sup>th</sup> Street, #SP22-000007 based on competent substantial evidence. Mrs. Pelensky seconded the motion and it passed 5-0 with Mr. Ground voting yes, Mrs. Pelensky yes, Mr. Velde yes, Mr. Prieto yes, and Mr. Bittner yes.**

At this time, a gentleman in the audience asked to speak.

Mr. John Turner, City Attorney, explained that with a quasi-judicial matter they generally do not take public comments. He said if he was an effective party then he could make a statement. He asked what his relationship was to this application.

Mr. Oliver Duchont (spelling may be incorrect), who has been sworn in, said that he lives across the street from this property and the water that comes from this property would affect him. He asked that they pay for representation for the neighbors so that they could look at what they were doing for drainage. He said that his only concern is what they were proposing for the drainage would work.

#### **[Quasi-Judicial]**

- B. Variance Application Submitted by Blaine Bergestresser, PE, to Reduce the Required Front Yard Setback from 25 Feet to 22.5 Feet and the Required Side Yard Setback from 15 Feet to 10 Feet [Section 61.06] Located at 130 McKee Lane (#V23-000005)**

The Chairman read Variance Application #V23-000005 submitted by Blaine Bergestresser, PE, by title only.

Ms. Lafferty handed out to the Board a letter that they received from Mr. John Byers (on file in the City Clerk's office).

Mr. Velde reported that he lives on this street and watched this house being built.

Mr. Turner asked if he spoke with the property owners. Mr. Velde answered no.

Mr. Turner asked if he had any preconceived ideas. Mr. Velde answered no.

Mr. Turner and if he could be fair and impartial. Mr. Velde answered yes.

Mr. Turner asked if anyone had any objections. There were none.

Mr. Turner said they can continue.

There were no ex parte communications reported.

The Deputy City Clerk swore in staff and the audience present for this hearing en masse.

Ms. Gayle Lafferty, Senior Planner, who has been sworn in, went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes).

Mr. Jason Jeffries, Planning Director, who has been sworn in, pointed out that all variances have to meet five (5) criteria items and it was up to the applicant to demonstrate that the application for the variance meets those criteria. He said staff does not take a position. He pointed out that the Code does allow for minor setback variances for errors during construction that the Planning Director can approve, but they are variances of up to two (2) feet and this variance exceeds two (2) feet.

Mr. Blaine Bergstresser, of KMA Engineering and Surveying, who has been sworn in, reported that the site plan was approved by the City, which showed a 15-foot setback on the western property line. During construction they performed the form board survey, which showed that they were right at the 15-foot setback. When the house was completed they performed the final as-built survey and it was discovered that the slab for the house was accidentally poured at a 10-foot setback from the western property line. That was when they submitted the variance request. They also contacted the neighbor to the west because that is the person that this affected the most. He said the letter that the Board received today was from that neighbor, which stated that he did not have an issue with this variance request.

Mr. Bittner asked was the approved site plan submitted with the variance request.

Ms. Lafferty reported that the City approved the site plan because it did meet all the setback requirements. The site plan was not included in the backup material submitted.

Mr. Bittner said if they moved the as built and shifted it five (5) feet to the east to bring it into compliance it would put the southeast corner in the front right-of-way. He asked if there was something that showed how this fit in the building envelope.

Mr. Bergstresser showed on the doc cam a copy of the approved site plan.

Mr. Bittner said there was no doubt that this was a hardship on the property owner. The property owner didn't build the house. It was almost malpractice on the part of the builder to miss something this large. He wondered why they were before the Board to solve this issue. He said they were

basically there to bail out a builder that didn't do their job. That was his problem with this issue. He said this really was negligence on the part of the foundation contractor. He did not know that it was the City's issue to solve a problem between the property owner and the builder.

Mr. Bergstresser said one of the criteria for the variance was that it was no fault of the owner and that it was a unique hardship. He said they are requesting this variance as a unique hardship.

Mr. Bittner said that he knows that they are to be consistent with others in the neighborhood. He asked if they were saying that 10-foot side yard setbacks were acceptable.

Mr. Pelensky said her question was precedence.

Mr. Turner explained that the Board needed to focus on the requirements for a variance under the City's Code.

Mr. Jeffries said the question is does it meet the criteria for variance approval.

Mrs. Alicia Lehota-Bruno, property owner, who has been sworn in, said they originally had a smaller house designed to go on the lot, however there was a 2,000 square foot minimum to be in the neighborhood. She said they would have rather have had a smaller home. She noted that she did not find out about this issue until about two (2) weeks ago. She said if they don't receive the variance they would be demolishing a \$1 million house and she did not think that was in the best interest of the community or of her as the homeowner.

Mr. Bergstresser said there were residents present today to speak on this.

Mr. Turner explained that this is a quasi-judicial hearing and is not open for public comment. However, if someone is an affected party and they want to address the Board they have to establish that they are an affected party. They would have to have a special interest in this application, which generally means someone in the immediate vicinity.

The Deputy City Clerk swore in Mr. Ted Kucinsky.

Mr. Ted Kucinsky, who has been sworn in, stated that he lives on McKee Lane. He said they do not have a Homeowner's Association, however they do have deed restrictions and architectural review. He said visually this does not hurt the neighborhood and he did not have any objections.

Mr. Robert Grice, who has been sworn in, said that he lives directly across the street from this property and he did not have any objections.

Mr. Barth Satuloff, who has been sworn in, said that he lives directly behind this property. His issue was not what the Board was discussing, but that the builder of the home ignored their property boundary line and planted bushes and put in a sprinkler system on their side of the property line.

Mr. Turner asked Mr. Satuloff if his house abuts this property.

Mr. Satuloff answered yes.

Mr. Jeffries said that would be an issue between the two (2) property owners.

Mr. Bittner asked if a variance is denied, how long does it preclude them from returning for a variance or an amended variance.

Mr. Jeffries said there is no limitation on variance submittals.

Mr. Prieto asked does all five (5) criteria have to be met to grant a variance.

Mr. Jeffries answered yes.

Mr. Prieto felt that the fourth criteria was the only one (1) of the five (5) that has not been met, which was, *“That the variance granted will be in harmony with the intent and purpose of the Code.”* He said that he did not know how to get over this criteria.

Mr. Velde felt it was more of the “spirit” of the Code, not the “letter” of the Code. He said this does not conform to the “letter” of the Code, but it does conform with the “spirit” of the Code.

Mrs. Pelensky said that she keeps thinking about her house and how she would feel if someone moved next door to her that was five (5) feet closer. She felt this really had to do with the neighbors, however at the same time that neighbor could sell their house or this property owner could sell her house. She said this is really tough one.

Mr. Prieto agreed. He said that he was not sure how to define “harmony and intent” of the Code. He said they certainly meet the other four (4) criteria.

Mr. Velde said that his heart breaks for the homeowner. He said what would make him feel better about this was if he knew there was a ramification for the builder. Someone should be held accountable for this. If they grant this variance, they could possibly be letting the builder off scot free where the builder could do it again and tell the property owner that they could ask for a variance.

**Mr. Bittner made a motion that the variance application submitted by Blaine Bergstresser to reduce the required front yard setback from 25-feet to 22-feet and the required side yard setback from 15-feet to 10-feet located at 130 McKee Lane, #V23-000005 be denied. The motion died for lack of a second.**

Mr. Turner noted that if no motions are made the variance would be denied as no action is taken.

**Mr. Prieto made a motion that the variance application submitted by Blaine Bergstresser to reduce the required front yard setback from 25-feet to 22.5 feet and the required side yard setback from 15-feet to 10-feet, Section 61.06, located at 130 McKee Lane, #V23-000005, be approved based on competent and substantial evidence. Mr. Ground seconded the motion.**

Mr. Jeffries said the Board could add conditions to the variance and asked that the Board include in the motion that this only applies to this structure.

Mr. Turner said if the building is damaged or demolished over 50% it would have to come into compliance.

**Mr. Prieto added to the motion that the variance is attached to this structure in particular and if it is ever damaged, rebuilt, or remodeled over 50% that the variance terminates. Mr. Ground seconded the addition to the motion and it passed 4-1 with Mr. Ground voting yes, Mrs. Pelensky yes, Mr. Velde yes, Mr. Prieto yes, and Mr. Bittner no.**

The Board took a break at 2:38 p.m. and the meeting reconvened at 2:45 p.m.

**[Quasi-Judicial]**

**C. Variance Application Submitted by Robert A. Grice to Reduce the Required Rear Yard Accessory Equipment Setback from 21.5 Feet to 18 Feet [Section 61.08] Located at 125 McKee Lane (#V23-000006)**

The Chairman read Variance Application #V23-000006 submitted by Robert A. Grice by title only.

Mr. Velde reported that he has been on this site and he did talk to the property owner about this.

Mr. Turner asked Mr. Velde if he understood the property owner's concern and if he agreed with him. Mr. Velde said that he wanted to go through this process before he agreed or disagreed. He said that he knew what the variance was going to be for.

Mr. Turner asked how he knew about it. Mr. Velde said that he recommended a gentleman to do some landscaping services for Mr. Grice.

Mr. Turner asked if he was sympathetic to his position or if he had an opinion on this. Mr. Velde answered no.

Mr. Turner asked if what he was doing was fact finding. Mr. Velde explained that it came up in a conversation that they were having. That was not the reason for the landscaping work, but it was part of their conversation.

Mr. Turner asked if he was serving on the Board at that time. Mr. Velde answered no.

Mr. Turner asked if there were any objections. There were none.

Mr. Turner said they could proceed.

There were no ex parte communication reported.

The Deputy City Clerk swore in staff and the audience present for this hearing en masse.

Ms. Lafferty went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes).

Mr. Jeffries noted that staff does not take a position or make any recommendations on variances. It is up to the applicant to demonstrate that the variance meets the five (5) criteria for the Board to grant the variance.

Mr. Robert Grice, property owner, who has been sworn in, said that he purchased a diesel generator after the hurricanes of 2004. The problem is that he has to keep it in storage and he is getting too old to go and get it whenever there is a threat of a hurricane. He said that last November he and some of his neighbors contacted Florida City Gas and had natural gas put down their street. So now he could have a natural gas generator, but found out that he is three (3) feet short on the setback. He said without a variance he could not put in the generator. There is not another area where he could put the generator.

Mr. Bittner asked if he was correct that he could put a shed there, but not a generator. Mr. Jeffries said that is correct.

Mr. Bittner felt that they needed to look at the Code.

Mr. Jeffries noted that this Code dated back to 1978 when generators were not thought about.

**Mr. Bittner moved that based on competent substantial evidence presented and the applicable Code provisions that the Board approves Variance #V23-000006. Mr. Prieto seconded the motion and it passed 5-0 with Mr. Brown voting yes, Mrs. Pelensky yes, Mr. Velde yes, Mr. Prieto yes, and Mr. Bittner yes.**

**V. DISCUSSIONS**

**A. Permitted Uses In Commercial Districts**

Mr. Jeffries briefly went over the draft Ordinance on permitted uses in commercial districts with the Board members (attached to the original minutes).

**VI. PLANNING DEPARTMENT MATTERS**

Mr. Jeffries reported that the July 6<sup>th</sup> meeting would be cancelled.

**VII. BOARD MEMBERS' MATTERS**

None

**VIII. ADJOURNMENT**

Today's meeting adjourned at 3:08 p.m.

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