

**PLANNING AND ZONING BOARD MINUTES
THURSDAY, JUNE 18, 2020 - 1:30 PM
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Vice Chairman, Honey Minuse; Member, Robin Pelensky and Alternate Member, Richard Cahoy **Also Present:** Planning and Development Director, Jason Jeffries; Principal Planner, Cheri Fitzgerald; City Attorney, John Turner and Deputy City Clerk, Sherri Philo

Excused Absences: Steven Lauer, Jose Prieto and Jeb Bittner

Unexcused Absence: John Carroll

I. PRELIMINARY MATTERS

A) Agenda Additions and/or Deletions

None

II. APPROVAL OF MINUTES

A) Regular Meeting – June 4, 2020

Mrs. Pelensky made a motion to approve the minutes of the June 4, 2020 Planning and Zoning Board meeting. Mr. Cahoy seconded the motion and it passed unanimously.

III. PUBLIC COMMENT

None

IV. PUBLIC HEARING

[Quasi-judicial]

A) Variance Application Submitted by AT&T Corporation to Allow Expansion of Existing Chain Link Fencing with Barb Wire for the Property Located at 1865 Old Dixie Highway (#V20-000001)

The Vice Chairman read Variance Application #V20-000001 submitted by AT&T Corporation by title only.

There were no ex parte communications reported.

The Deputy City Clerk swore in staff and all witnesses present for today's hearing en masse.

The Vice Chairman announced that all diagrams, photographs and other exhibits referred to in the testimony in which they would like the Board to consider must be marked for identification and kept by the City Clerk.

At this time, Ms. Colleen Crafton distributed a handout to the Board.

Mr. Jason Jeffries, Planning and Development Director, noted that the Board was already provided with the Code Compliance Certification Application and the Application to the Board of Adjustment from 1996. He said that Ms. Crafton has included some additional information, as well as some photographs.

Mr. John Turner, City Attorney, requested that the information be marked as Citizen Composite Exhibit #1 (on file in the City Clerk's office).

Mr. Jeffries went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). He reported that this is a variance application for an expansion of their existing fence. The variance application was submitted by AT&T to extend their six (6)-foot high chain link fence with barbwire around a vacant lot adjacent to their facility at 1865 Old Dixie Highway. The property is in the Downtown Zoning District (DZD) and chain link fences and barbwire fences are not permitted fence materials in the DZD per Code Section 62.312 (5). He reported that there was a variance granted for this site in 1996, which was to extend the chain link fence with barbwire. In 1992, the City adopted the DZD, which included a provision that prohibited chain link fences. The facility was existing and in 1996, they made some alterations to the site by extending the fence around the parking lot, which was the subject of that variance (1996). In December, 2019 - January, 2020, AT&T submitted a fence permit application (Code Compliance Certification Application) to extend the fence to the north adjacent parcel. He reported that the permit was issued and the fence was constructed. After receiving a complaint by a neighboring property owner that the chain link fence was being constructed within the DZD, he looked into the matter and discovered that the fence permit was issued in error. He said the variance of 1996 was very specific. He referred to the minutes of the July 15, 1996, Board of Adjustment minutes included in their backup material. He said the motion was that a variance was granted based on what was submitted and what was attached is the site plan showing the exact location of the fence. The decision recently made by staff to extend the variance was beyond the scope of the authority of that variance and the fence permit should not have been issued. Under his authority as the Planning and Development Director, he rescinded the permit. Included in the backup information is the letter that he sent to AT&T revoking the permit. He said that AT&T was told that they had two (2) options; they could remove the fence because regardless of staff action they have to comply with the Code, or they could submit a variance application. He explained to the Board that the variance has to follow the criteria in Chapter 66 and the applicant is to make their case that they meet the criteria to be granted a variance.

Ms. Cheri Fitzgerald, Principal Planner, continued with the Power Point presentation. She briefly went over the *Aerial Map, Location Map, Zoning District Map and the Future Land Use Map* with the Board members.

Mr. Rick Myers (spelling may be incorrect), Area Manager for AT&T's Real Estate Operations in Florida and the Caribbean, who has been sworn in, reported that they have had a lot of issues with vagrants on the vacant lot. He does not have the dates or records, but they have had several cases where they have had to call the police because of homeless individuals camping out on the property. They have had complaints from their grounds maintenance company that there are syringes, paraphernalia, etc., on the property. He said this is more of a safety concern for them. He reported that the property was purchased with the intent of future growth. However, they have not had any future growth. The facility they have is a very high security facility. It is their undersea cable stations that feed all international traffic. It is very important that they continue to have the facility secured. He understands that they do have a chain link fence with barbwire, but with as many occasions they have had of individuals camping out on the vacant lot, they are concerned about them getting over the fence and causing damage. He said they are trying to keep the continuity with the rest of the property of having a six (6)-foot fence with barbwire. He said there was a variance before and that is what they are hoping for today so they can leave the fence up. He

said there was an error and he understands the zoning, but the fence is already up. He said that he doesn't know any other options to secure the facility.

Mrs. Minuse asked is the primary purpose of this request for safety of the property and to avoid trespassers. Mr. Myers answered yes.

Mrs. Pelensky asked if there has been any reports of attempted break-ins to the facility. Mr. Myers answered not that he is aware of.

Mrs. Pelensky asked Mr. Myers if there were any attempts to break-in the facility prior to the fence being installed in 1996. Mr. Myers answered no.

Mrs. Pelensky asked is this something that AT&T commonly comes across with these types of facilities. Mr. Myers said what they get more than anything is people trespassing on the property. He said they will have homeless people camping out, which does happen all over the State, not just here. He said that most of their government traffic goes through these sites. He said they have one (1) in Vero Beach, one (1) in Miami, and one (1) in Orlando.

Mrs. Pelensky asked do the other facilities use the same method. Mr. Myers answered yes.

Mrs. Pelensky asked are they in Downtown Districts. Mr. Myers said they are all east of I-95.

Mrs. Pelensky questioned so they are in residential districts with a six (6)-foot chain link fence with barbwire. Mr. Myers said that is correct.

Mr. Cahoy said excluding the fence that was just installed by error, the previously existing security fence protects the parking lot and the building sufficiently. He asked is that correct. Mr. Myers answered yes.

Mr. Cahoy said so the only concern is about the vacant lot. Mr. Myers said the lot is adjacent to them and there have been several accounts of trespassing.

Mr. Cahoy asked what other types of security have they investigated for the lot other than the fence. Mr. Myers asked what else could they put out there.

Mr. Cahoy said lights, cameras, a lower fence, etc.

Mr. Myers said a lower fence without barbwire is not going to stop anyone from going onto the property.

The Vice Chairman opened public comments at 1:47 p.m.

Ms. Colleen Crafton, who has been sworn in, said that she is the property owner of 1889 Old Dixie Highway, which is the Courthouse Lofts apartment building. She said with regards to what Mr. Myers stated, she has owned this building since 2009, and they have never had a break-in. She has received very little complaints about homeless people on this property. She said that she takes a lot of pride in maintaining her property. Unfortunately, she is here today due to the fact that barbwire and a chain link fence was, in her point of view, illegally installed without proper permitting for 1865 Old Dixie Highway. She said AT&T actually completed an application for 1825 Old Dixie Highway, which is on the first page of the documentation she provided to the Board earlier. The application also included reference to a

variance dated back in 1996, which is specifically for that parcel and has very strict guidelines. As Mr. Jeffries stated, it was a staffing error in terms of the fence being installed. Since the fence was installed, she has received numerous complaints from her tenants, as well as from neighboring businesses. From her perspective, it is hindering her from attracting new tenants in that they would question if there is a problem that they need to have a chain link fence with barbwire in the Downtown area. She is also concerned that this will affect her property value, as well as her neighbors throughout the area. She said in February, she stopped by her apartment building and noticed the chain link fence being installed. She said it actually was being installed that day so she immediately contacted Mr. Joe Baird and they immediately called the City and the County to look into permitting. Based on the telephone calls, she was under the assumption that the City was going to send Code Enforcement out to stop the project. The following day she went back and the entire fence was completed. She then contacted Mr. Jeffries and asked what can be done. Mr. Jeffries advised her that she would need to send a letter to revoke the permit. She then sent a letter requesting that the permit be revoked. From her vantage point it was too late because the fence was up and the permit had been approved. She reported that since the fence was installed in February, the property had not been landscaped or mowed for almost three (3) months up until earlier this week. The pictures that she provided the Board were taken late last week. Also, she already has a three (3)-foot fence with shrubbery along the property line of 1889 Old Dixie Highway that meets DZD Code. She now has no access to landscape the property between her wooden fence and the chain link fence. She is baffled why this fence was installed on a vacant lot. She also included in the information provided to the Board, a letter on behalf of Mainstreet Vero Beach opposing any variance surrounding the property at 1865 Old Dixie Highway. She said there was a paperwork error, perhaps on behalf of AT&T and the City because originally the application was for 1825 Old Dixie Highway specifically and somehow the permit was issued for 1865 Old Dixie Highway, as well as the errors of the City that Mr. Jeffries reported earlier in today's meeting. She said this is an unfortunate situation, however she thinks they need to do what is right to rectify the situation. She said a permit should not have been issued for a six (6) foot chain link fence with barbwire at 1865 Old Dixie Highway. She asked that the Board not allow a special exception or variance on this lot and ask that AT&T to remove the fence.

Mrs. Minuse asked what is the distance between the two (2) fences. She asked is it 18 inches or a foot. Ms. Crafton reported that there is a picture included in the information she provided the Board that shows the fence from the street view. She said that she cannot get a lawnmower, a weed wacker, or anything in there.

Mrs. Minuse asked where is the property line. Ms. Crafton said her fence was built on her property line between her property and the vacant lot.

Mrs. Minuse asked is it pretty accurate that the fence is on the property line and AT&T's fence is recessed into their property by about 18 inches. Ms. Crafton said that she does not know that for sure.

Mrs. Pelensky said there is a survey post in one (1) of the pictures that looks fairly recent and it appears that the wooden fence is on the property line or close to the property line.

Mr. Cahoy asked does the fence run east and west. Ms. Crafton answered yes.

Mr. Cahoy asked does it run along Old Dixie. Ms. Crafton answered no.

Mr. Turner noted for the record that the information Ms. Crafton provided should be marked

as Citizen Crafton Exhibit 1 and to make it a compilation.

Ms. Vicky Gould, who has been sworn in, said that she is speaking on behalf of Main Street Vero Beach of which she is a Board member. She read into the record a letter from Ms. Sue Gromis, Executive Director of Main Street (Citizen Exhibit #2), requesting that the Board denies the variance.

Mr. Joe Baird, who has been sworn in, said that he went through the documentation and the Code Compliance Certification Application filled out by AT&T was for 1825 Old Dixie Highway. When the variance was approved in 1996 for the property at 1825 Old Dixie Highway, it was very restrictive. The fence was to be way back on the property, trees and shrubbery were to be around it, and it was to be hidden from Old Dixie Highway. That was part of the issuing of that variance. The fence on 1865 Old Dixie Highway hits every property line, it is annoying to look at, and it doesn't meet the character of the neighborhood. He said if there is a homeless problem that means everyone can have this fence to protect their property. He said they can do other things. They have never posted the property for no trespassing. He said there is nothing on the property except maybe two (2) trees. He said this is a problem and should not have been allowed. AT&T started out by applying for the wrong property. He said this is not an extension of the fence, but a separate fence on an adjacent lot. He said when the original variance was issued for the other property, the City did a great job and issued it only because of the importance and they said AT&T could only surround the gear AT&T wanted to protect, which they did. He said that he also has a problem with staff's report in that it states that the property to the east side of this property is zoned Industrial. He said what is on the east side of this property is the Hazel House, Décor Envy, the Department of Juvenile Justice Office, Wood Fired Pizza, etc. He did not think they were commercial, but mixed use. To the south they have nicely done shops with little decorative fences. He said this kills the character ambiance of Downtown Vero. It hurts Main Street and it hurts attracting people to go there. All they are doing here is giving big Corporate America an opportunity to break the rules after the fact. This is not in the character of Downtown. He said if AT&T is that concerned they can install cameras or do other security things before they ruin the nature of this mixed use area of Downtown. He said there were a lot of errors, but that doesn't make this right. He said that this hurts adjacent property values and makes people not want to relocate there. This fence should not be there. If they want to keep the character of Downtown the Board will not approve this. Also, what Mr. Myers stated is not what was on the application for the variance. They already have a fence protecting the building and equipment. This property has nothing on it. What Mr. Myers said today does not match what is in the report. He has a real problem with this. He said the variance that was granted in 1996 went through severe hearings and they were made to restrict that fence and to hide it from Old Dixie Highway. This fence is not hidden from Old Dixie Highway. It is an eyesore. If AT&T was a good corporate partner in this community they would remove that fence.

The Vice Chairman closed public comments at 2:08 p.m., with no one else wishing to be heard.

Mrs. Minuse referred to the comment made by Mr. Myers that there was some thought about developing this property, but that has been put aside. She asked is that correct. Mr. Myers explained that when the property was purchased they were anticipating growth. As far as he knows, there is no planned growth right now.

Mrs. Minuse asked is there a reason why the property has not been maintained. Mr. Myers said as far as he knows the property is mowed bi-monthly. He said there has been a lot of

rain, which delays ground maintenance. He said it is possible that it got out of control, but their contract is that the property is to be mowed bi-monthly.

Mr. Myers said in looking at the aerial of the property there is a lot of wear on the southern side of the property from either vehicles or people going through.

Mrs. Pelensky suggested that if he sees there is an issue with vehicular traffic, he could put up a solid hedge that would discourage any vehicles from coming onto the property.

Mr. Myers said there were a couple comments made about having cameras. He said if they add cameras to monitor the vacant lot the City would be receiving calls from them every day for trespassing. He said if they put in lighting then the area would just be well lit for whatever traffic there is. He said a fence permit was submitted and it was approved. He said there was an error, but by having a permit in hand they did the work. Now they are being told that the fence was put up illegally. He said it wasn't put up illegally because they had a permit. Unfortunately the way it was written was to have the fence continue with the rest of the property with a six (6)-foot fence, and he understands there is a three (3) foot height limit and chain link fences are not allowed, but this was approved and the work has been done. He said they are at a point of what do they do now. They have already gone through the expense to secure the property. He doesn't see how this lowers property values or how it affects anyone.

Mrs. Minuse asked are there any plans for landscaping. Mr. Myers said if that is their recommendation they will landscape it.

Mr. Jeffries said they did not submit anything in their application. He said some of the City's zoning districts where a fence is put in parallel to the street, the fence has to be set two (2)-feet back with landscaping in front of it. They do not have that provision in the Downtown District. What they have instead is that certain fencing materials are required. He explained that the fence can be installed right up to the property line, but it has to be a masonry wall, a wood picket fence or a rod iron or black aluminum fence.

Mrs. Minuse asked was the landscaping that is currently surrounding the original property voluntary. Mr. Jeffries answered no.

Mrs. Pelensky said AT&T has three (3) or four (4) addresses and the original application in 1996 was for 1825 Old Dixie Highway.

Mr. Myers explained that the building crosses two (2) different property lines and there are five (5) different folios that goes with them.

Mrs. Pelensky said the application that recently went through states that it is for 1825 Old Dixie Highway. They are talking about errors made and to her it seems that the first error made was the applicant putting down the wrong address.

Mr. Jeffries explained that there are two (2) addresses with multiple parcels. The address of the existing AT&T facility is 1825 Old Dixie Highway and the address of the vacant lot is 1865 Old Dixie Highway.

Mrs. Pelensky said then the application that was put through in December, 2019, was for the original lot where the building is so there really is no application. The applicant never did submit an application for a fence on 1865 Old Dixie Highway so it wasn't that the City made

a mistake, it was that the applicant didn't put in an application for the right piece of property.

Mr. Jeffries said there were some errors on the application in that the site address should have been 1865 Old Dixie Highway. What the Board does not have in their backup information is the site plan submitted that shows the fence around that vacant lot. The error on the City's part was not looking back at what the motion was for the variance in 1996, which was very specific. On page two (2) of the July 15, 1996, Board of Adjustment meeting, the motion was to approve the request as submitted and what was submitted is the site plan dated June 5, 1996, which is very specific about the location of that fence.

Mrs. Pelensky said there is a variance application towards the back of the backup information for 1865 Old Dixie Highway that is dated May 7, 2020. She asked was this after the fence was already installed. She asked what was the date the fence was installed.

Mr. Myers showed the Board a copy of the site plan that was reviewed and approved in January of this year (included in their backup material).

Mrs. Pelensky said there was a variance application in May, 2020.

Mr. Jeffries explained that is the variance application for today's proceeding.

Mr. Jeffries noted that AT&T has the right to install a fence and secure their property, but by Code that the fence has to be made of a certain material. He then referred to page two (2) of staff's report noting that staff did say to the east is commercial properties and the testimony given by Mr. Baird gave a lot more detail of all the different types of commercial uses that are there. He said the land use designation in the Comprehensive Plan is MX – Mixed Use, but the zoning classification is M – Industrial, which it has been since probably the 1963 Zoning Code. However, it has been developed commercially, which those are permitted uses in the Industrial Zoning District.

Mrs. Pelensky asked when was Section 66.03 of the Code written. Mr. Jeffries said the Downtown Zoning District was adopted by Ordinance #1993-01 on January 5, 1993. It appears there were some revisions to that Section by Ordinance #2017-07 on August 8, 2017.

At this time, Mr. Joe Baird approached the dais. He said this is not only about the type of material the fence is made of, but the height of the fence. In the 1996 variance that was permitted, they did not allow the fence to be up against Old Dixie Highway, the fence had to be small with landscaping and trees in front of it. He said this fence is an eyesore. He said the reason they allowed the previous variance was that it provides domestic and international long distance telephone service and requires a high level of security. He said AT&T made the application with the City for 1825 Old Dixie Highway and attached something for 1865 Old Dixie Highway.

Mrs. Minuse asked Mr. Turner does that negate it.

Mr. Turner felt that showed consideration for the Board. He then read Section 66.03 of the Land Development Code to the Board members, which states the criteria to approve a variance.

Mrs. Pelensky questioned so it has to meet all the requirements. Mr. Turner said that is correct.

Mrs. Minuse said that she understands the homeless problem and law enforcement responding to it. She does know there are security issues involved in any kind of utility. However, she does not understand why they need a fence now.

Mrs. Pelensky felt that the first variance took care of the issue of security for the building and the use of the building. She said if there was an opening in the north side of the fence and they were going to expand onto this property then maybe that would be a good time for discussion on how to secure additional buildings. At this point she does not see any use for the fence. To say it is a homeless issue really puts this town at risk because there is homeless everywhere. She felt this was opening a huge Pandora's Box to say it is okay you are worried about the homeless so stick up a fence with barbwire. She said this doesn't meet the criteria at all. As Mr. Turner was reading through the criteria, she just kept writing no to each one of them. She does not see that this variance meets any of the criteria. She thinks this was a huge mistake.

Mrs. Minuse said it is not compatible.

Mrs. Pelensky said it is not compatible. She asked how would you explain to the people who go into the businesses about the barbwire. She felt this was a major mistake on someone's part and she would not grant the variance.

Mrs. Minuse said AT&T is a wonderful company and she understands the service they provide and that security is absolutely necessary. She is just having trouble understanding why they need to expand the vacant lot. She said it is certainly not compatible with the Downtown District.

Mr. Cahoy said it is a given that the permit was issued by mistake. In order to correct that the fence will have to come down. Now the Board is considering a new variance. He referred to Section 66.03 – *Specific review criteria for variance applications* of the Code. He said the application of the zoning Ordinance causing exceptional and unique hardship does not exist on this site and that the exceptional and unique hardship is not due solely to the owner's actions. He said it is definitely a no as to the variance granted will be compatible with the physical characteristics of the neighborhood. In his opinion they were not being a good neighbor with this application. He said security measures are available in lieu of the proposed chain link fence with barbwire. He said that he does not see any hardship at all and sees this as the landowner's responsibility to secure the property within the Code. He said fencing, landscaping, and other security measures are available.

Mr. Turner pointed out to the Board that their decision to grant or deny the variance must be based on competent substantial evidence and that has to be in their motion.

Mrs. Pelensky made a motion that the Board denies the petition of AT&T Corporation for a fence variance for the property located at 1865 Old Dixie Highway based on competent substantial evidence presented today.

Mr. Turned said the motion is to deny the variance based upon competent substantial evidence.

Mrs. Minuse asked if they need to itemize the finding. She asked if the five (5) findings should be included in the motion.

Mr. Turner answered yes. He explained that the Board's findings would be that the variance application did not meet the criteria listed in Section 66.03 of the Land Development Code, which applies to each one (1) with the exception of Section 66.03 (a)(2).

Mrs. Minuse noted that all the criteria in this section must be met.

Mrs. Pelensky said her motion is to move that the Board denies the petition of AT&T Corporation for a fence variance for the property located at 1865 Old Dixie Highway based on competent substantial evidence, specifically in reference to Code Section 66.03 for all the criteria with the exception of number two (2). Mr. Cahoy seconded the motion and it passed 3-0 with Mr. Cahoy voting yes, Mrs. Pelensky yes, and Mrs. Minuse yes.

V. DISCUSSION OF PROPOSED ZONING REGULATIONS FOR CULTURAL ARTS VILLAGE

Mr. Jeffries said that he put this item on the agenda in case the Board members had any additional comments.

Mr. Cahoy said that he is very concerned about a potential parking issue, specifically having to do with multi-buildings, bed and breakfasts, room rentals, etc. While he thinks impervious pavers is a good idea and that it is great to have alleyways to enter and exit property, etc., he thinks parking is going to be a big problem. He doesn't think they should rely on "sufficient public parking lots, private lots, and/or street parking" to satisfy the growth that they are going to see Downtown. He thinks this needs to be looked at. He said parking is a sensitive issue in Vero Beach and he does not think they can ignore it.

Mrs. Minuse said that is her concern as well. She said this is a fabulous concept and it will draw people to come here.

Mr. Jeffries noted that the draft Code does require bed and breakfasts to have sufficient parking. He said this is really just the accessory artist use.

Mrs. Pelensky said most of those streets are 24-foot wide. She asked are they on a 100-foot right-of-way or a 60-foot right-of-way. Mr. Jeffries said they are 50 or 60-foot wide.

Mrs. Pelensky asked if they could narrow the streets to eight (8) or nine (9) feet wide so they could allow for on-street parking.

Mr. Jeffries said there is sufficient space for on-street parking and for cars to pass.

Mrs. Pelensky said if they narrowed the streets and line them, it would also slow down the traffic.

Mr. Cahoy asked other than artists, what would not require additional parking.

Mr. Jeffries answered just the accessory use of the artists of their residences.

Mr. Jeffries said that he will go back and make sure the parking requirements are clear.

Mrs. Pelensky asked what is the next step. Mr. Jeffries reported that they are in the process of setting up an Architectural Review Commission meeting for them to review the Architectural Review Guidelines. He expects that meeting to occur in mid-July. He felt that this would come back before

the Planning and Zoning Board in August for a formal public hearing.

VI. PLANNING DEPARTMENT MATTERS

Mr. Jeffries reported that the Steering Committee met this past Tuesday and recommended City Council approval of the draft Three Corners Plan. He reported that the Plan will be coming before the Planning and Zoning Board at their July 9, 2020, meeting for their recommendation to the City Council. He reported that the Steering Committee selected the scenario that involved mixed-use development on the Power Plant site, which would be the hotel/conference center, retail restaurants, etc. He noted that these are all uses that are outside of what is allowed by City Charter because these properties are Charter protected so a referendum will be required.

Mrs. Pelensky referred back to the variance the Board just denied. She asked what happens to the fence. Mr. Jeffries said they will have to remove the fence.

Mr. Turner said it would be a Code violation if they don't remove it.

Mrs. Minuse asked do they have a 30-day time to appeal the Board's decision. Mr. Jeffries said they have 10-days business days to appeal.

Mr. Turner clarified that they go by the definition provided in the Code as to the time period.

Mr. Jeffries reported that there are three (3) or four (4) site plans that will be going before the Board at their July 9, 2020 meeting.

VII. BOARD MEMBERS' MATTERS

None

VIII. ADJOURNMENT

Today's meeting adjourned at 3:18 p.m.

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