

**PLANNING AND ZONING BOARD MINUTES
THURSDAY, JULY 9, 2020 - 1:30 PM
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Chairman, Steven Lauer; Vice Chairman, Honey Minuse; Members: Robin Pelensky and Jose Prieto **Also Present:** Planning and Development Director, Jason Jeffries; Principal Planner, Cheri Fitzgerald; City Attorney, John Turner and Deputy City Clerk, Sherri Philo

Excused Absences: Jeb Bittner and Richard Cahoy

Unexcused Absence: John Carroll

The Chairman called the meeting to order at 1:30 p.m., and the Deputy City Clerk performed the roll call.

I. PRELIMINARY MATTERS

A) Agenda Additions and/or Deletions

None

II. APPROVAL OF MINUTES

A) Regular Meeting – June 18, 2020

Mrs. Minuse made a motion to approve the minutes of the June 18, 2020 Planning and Zoning Board meeting. Mrs. Pelensky seconded the motion and it passed unanimously.

III. PUBLIC COMMENT

None

IV. PUBLIC HEARINGS

[Quasi-judicial]

A. Site Plan Application Submitted by Verotown, LLC, for the Construction of a 38,569 Square Foot Indoor Training Facility Located at 3951 26th Street (#SP20-000001)

The Chairman read the Site Plan Application #SP20-000001 submitted by Verotown, LLC, by title only.

There were no ex parte communications reported.

The 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.

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

Mr. Jason Jeffries, Planning and Development Director, 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). The staff recommends approval of the site plan subject to the conditions listed in staff's

report.

Mrs. Minuse asked if there are any restrictions by the Federal Aviation Administration (FAA) or the Federal Emergency Management Agency (FEMA) as to what can be done on this property. She asked if their approval is needed.

Mr. Jeffries said this has been approved by Airport staff and this site is not in the flight pattern.

Ms. Rachelle Madrigal, Applicant, who has been sworn in, said that she is the Managing Director of the Jackie Robinson Training Complex. She thanked the Board for their participation and partnership in this project. She reported that this training complex is meant to add another facet to what they are doing for youth programming across the globe. This will allow them to combat a lot of the weather elements and will give the kids another space to be able to get in their practice time and their workouts.

The Chairman opened and closed the public hearing at 1:47 p.m., with no one wishing to be heard.

Mrs. Minuse made a motion to accept staff's recommendation and move this forward. Mr. Prieto seconded the motion.

Mr. Lauer added to the motion, based on competent substantial evidence.

Mrs. Minuse agreed. The motion passed 4-0 with Mr. Prieto voting yes, Mrs. Pelensky yes, Mrs. Minuse yes, and Mr. Lauer yes.

[Quasi-judicial]

B. Site Plan Application Submitted by Kevin Hawkins for the Construction of a Two-unit and a Four-unit Residential Buildings Located at 944 19th Street (#SP20-000003)

The Chairman read the Site Plan Application #SP20-000003 submitted by Mr. Kevin Hawkins by title only.

There were no ex parte communications reported.

The 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.

Mr. Jeffries went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). The staff recommends approval of the site plan application subject to the conditions listed in staff's report.

Mr. Todd Smith, who has been sworn in, said that he is the Design Engineer for this project. He reported that the buildings they are designing are under the Fair Housing Act. There will be a handicap unit in each one (1) of the four (4) and the other units will be handicapped adaptable.

The Chairman opened and closed the public hearing at 1:58 p.m., with no one wishing to be heard.

Mrs. Minuse made a motion that based upon competent substantial evidence, that the Board approves staff's recommendation for the six (6) unit multi-family residential dwelling at 944 19th Street. Mrs. Pelensky seconded the motion and it passed 4-0 with Mr. Prieto voting yes,

Mrs. Pelensky yes, Mrs. Minuse yes, and Mr. Lauer yes.

[Quasi-judicial]

C. Site Plan Application Submitted by Kevin Hawkins for the Construction of Three Four-unit Residential Buildings Located at 939-959 19th Street (#SP20-000004)

The Chairman read the Site Plan Application #SP20-000004 submitted by Mr. Kevin Hawkins by title only.

There were no ex parte communications reported.

Mrs. Cheri Fitzgerald, Principal Planner, continued with the Power Point presentation under Item #IV-C. Staff is recommending approval of the site plan based on the details and the conditions listed in staff's report (attached to the original minutes).

Mr. Todd Smith, who has been sworn in, said that he is the Design Engineer for this project. He said that he does not have a formal presentation, but he is available for questions.

The Chairman opened and closed the public hearing at 2:09 p.m., with no one wishing to be heard.

Mrs. Minuse made a motion that based on competent substantial evidence, that the Board accept staff's recommendation for the multi-family residential apartments located at 934, 949, 953, and 959 19th Street. Mr. Prieto seconded the motion and it passed 4-0 with Mr. Prieto voting yes, Mrs. Pelensky yes, Mrs. Minuse yes, and Mr. Lauer yes.

At 2:11 p.m., the Board took a break and reconvened at 2:14 p.m.

[Quasi-judicial]

D. Variance Application Submitted by Colin Kitchell Requesting a 15 Foot Setback from Riparian Rights Lines for a New Dock Located at 724 Shore Drive (#V20-000002)

The Chairman read Variance Application #SP20-000002 submitted by Colin Kitchell by title only.

Mrs. Minuse said that she doesn't have bias and she doesn't have familiarity with this particular situation. However, she does have some background with Riparian Rights, boat docks, and homeowner communities in that she was President of her Homeowner's Association for 10 years.

There were no ex parte communications reported.

Mr. Jeffries went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). He noted that all the criteria listed under Code Section 66.03 listed in staff's report must be met in order for the Board to grant a variance.

Mr. Blaine Bergstresser, who has been sworn in, of Kimley-Horn, said that he is present on behalf of the applicant. He reported that that the existing dock does not meet the 15-foot setback requirement. If they set it back 15-feet on both sides there would not be any water for a dock, which part of the reason is because they only have about 40-feet of shoreline and because of the irregular shape of the lot, it makes it very difficult to meet the Code. He said the property owner is proposing a finger dock so they can have a small boat at the end of the canal. He reported that the dock they are proposing allows for easy access for them to pull a boat straight in without affecting either of their neighbors.

Mrs. Minuse asked for a better description of the seawall that is failing.

Mr. Bergstresser said currently the seawall is made of wood that is probably 20 or 30 years old that is failing and the property owners are proposing to replace it with a new sheet pile on concrete seawall.

Mr. Lauer asked is there a residence on the lot now.

Mr. Bergstresser answered yes.

Mr. Lauer questioned so when they purchased the property were they unaware of the fact that the dock was not in compliance.

Mr. Bergstresser said that is correct.

Mrs. Minuse said the existing dock is also failing.

Mr. Bergstresser said that is correct.

Mrs. Minuse asked does the current dock accommodate a boat.

Mr. Bergstresser said they could fit a small boat on the side of it.

Mr. Lauer asked were the adjoining property owners given notice of this hearing.

Mr. Jeffries reported that property owners within 500 feet of the property were notified.

The Chairman opened the public hearing at 2:23 p.m.

Ms. Cheryl Connell, who has been sworn in, said that she lives on the east side of this property. She submitted three (3) photographs into the record (attached to the original minutes). She said that she would not be able to get a small 14-foot boat in or out if that dock was to be from property line to property line. She said that she objects to this because it is going to devalue her home because she would not be able to use a boat or enjoy her property. At this time, she showed on the doc cam the photograph showing the docs at 722, 724, and 726 Shore Drive. She said that her dock is the one with the two (2) white posts that is marked 726 and the dock marked 724 is the applicant's dock. She said that her dock and property faces northwest and is at an angle and it does not go straight on into the canal. She said approval of this variance would close off her water rights.

Mrs. Pelensky referred to the aerial view of the property. She said it does not look like it would be an obstruction if they have a boat on the east side of the new dock.

Ms. Connell said that aerial is very old. She said that aerial shows a lift on her dock, which she had removed prior to the applicant moving in.

Mrs. Pelensky asked where does she park her boat.

Ms. Connell said that she doesn't have a boat at this time.

The Deputy City Clerk swore in Mrs. Adeline Clemons.

Mrs. Clemons said that she lives one (1) block north of this property, which is in the same

subdivision. She said what the property owner is asking for is a finger pier. She said not only does the property owner want to extend the dock, he wants to put up a finger pier. She said that a finger pier will completely prevent Ms. Connell from getting a boat in and out from her property.

Mr. Lauer asked when you state a finger pier, what do you mean.

Mrs. Clemons referred to the aerial submitted by the applicant. She explained that the dock goes parallel to the property and what is coming out is the finger pier.

Mr. Lauer said those dimensions are 20 x 4 feet, so it would be sticking out into the canal 20-feet.

Mrs. Clemons said that 20-feet completely cuts Ms. Connell off.

Mr. Lauer closed the public hearing at 2:32 p.m., with no one else wishing to be heard.

Mr. Bergstresser said they are not trying to block access to Ms. Connell's dock. The neighbor to the left had a finger pier with a boat lift to allow easy access. He noted that what they are showing are conceptual plans. They are not asking the Board to approve these specific plans. All they are asking for is a variance on those rights so they can work with City staff in getting a new footprint on the dock for the permits.

Mrs. Minuse asked what is the purpose behind expanding the dock and not just rebuilding what they currently have.

Mr. Bergstresser said the main reason is if they kept the existing footprint they would have to park a boat parallel with the dock. He said it would be very difficult for them to come in with a boat, make a turn, and be parallel. Therefore, they thought it would be easier for everyone if they could pull the boat in straight to the lift. They thought this would have the least negative impact on both their neighbors.

Mrs. Pelensky asked is there a reason why they used the old aerial view.

Mr. Bergstresser thought the contractor got the information from Google Earth. He said this wasn't done on purpose.

Mrs. Pelensky said in looking at the aerial provided, if Ms. Connell did have a boat and pulled it into the right side of her dock and backed it up and turned around it seems like that could be done. However, she does not know based on the aerial provided.

Mr. Prieto said that he doesn't have any objection to allowing the property owner to repair his dock because it is existing. He asked if the Board approves this, does the property owner have to go to the Planning and Development Department with a plan that doesn't have a finger pier.

Mr. Bergstresser said it is his understanding that they still need to get staff approval for the dock.

Mr. Prieto said that he does not have a problem with the dock being repaired. He does have a problem with blocking their neighbor.

Mr. Bergstresser said they are not trying to block their neighbor. He said they need the variance because the existing dock doesn't meet Code. He felt the property owner would be fine with working with Ms. Connell and could show her the plans so that they could guarantee that they would not be blocking her view. He noted that staff still has to approve the plans before they can go into

construction.

Mr. Jeffries said no matter what, the property owner is going to have to show their dock is within Riparian Rights and that has not been submitted yet. He noted that they have the right to extend into the river, such as building a finger dock. He explained that by Code they can extend into the waterway a maximum of 20% of the width of the waterway, which their surveyor will need to provide this information to the City. Their request is to reduce the side yard setback requirement of 15-feet to zero. He then showed on the screen an updated aerial view of the property from the Property Appraiser's website. He noted that this is a variance hearing and they are to deal with the Code as written and the applicant is asking for a variance to the side yard setback. This will either allow reconstruction of the dock as it is or they can reconfigure it as long as they meet all the other criteria.

Mrs. Minuse asked does the other criteria have to have approval of the neighbors that it is not infringing on their Riparian Rights.

Mr. Jeffries said that is a Riparian Right issue. He noted that the variance requested has nothing to do with Riparian Rights. This variance is only dealing with the side property line. He said if they strictly enforce the 15-foot setback, the applicant would not be able to build a dock because of how narrow the property line is.

Mrs. Minuse said then the variance would allow them to build a dock, but the actual site plan for the dock would come back later.

Mr. Jeffries said that is correct. He suggested that if the Board does approve the variance that they make sure it is reiterated with the applicant that they are only approving the side yard setback. That they still have to comply with all other dock criteria.

Mrs. Adeline Clemons asked when they come back with a site plan and they want to put in a finger pier, will the neighbors be notified. She said if the damage is done then what happens.

Mr. Jeffries explained that the Code as it is written states that docks are allowed to extend into the canal by 20%. He felt this was an issue to be brought before the City Council. He said this is not a matter for today's hearing.

Mrs. Clemons said that she respectfully requests that the City goes back and takes a look at this and sees what a mess they have created by allowing people to go 20-feet into the canal. She said it is a mess and it is getting worse.

Mr. Lauer said that he does not understand what the applicant is requesting because the Variance Application states under item 10 – Variance Requested, *“15’ setback from Riparian Rights lines for construction of a new dock.”*

Mr. Jeffries said it does state that on the application, but what they are requesting is under Code Section 31.05 (a)(5), which requires the dock to be setback 15-feet from the side property line. He said what happens at the end of these canals is the properties were developed to give several properties water access so they ended up with narrow rear lot areas so if they applied 15-feet from each side, they could not put in a dock because the width is about 31-feet so they could only build a one (1) foot wide dock.

Mrs. Minuse asked what is the water frontage.

Mr. Jeffries thought it was 31-feet.

Mrs. Minuse said so they can't go 15-feet each way and that is why they want the variance.

Mr. Jeffries said that is correct. He said they also will have to show that the entire dock is within their Riparian Rights.

Mrs. Minuse said then the variance only grants them the right to build, but what they build will have to go through City staff.

Mr. Jeffries said that is correct.

Mrs. Pelensky asked if the Board grants the variance and the applicant goes to the Engineering Department with their plan and it does fit within their Riparian Rights, would staff give them any recommendations as to how to accommodate their neighbors.

Mr. Richard Mutterback, City Civil Engineer, who has been sworn in, answered no.

Mr. Jeffries noted that as long as they comply with every aspect of the Code, the City is under obligation to issue the permit.

Mrs. Pelensky asked if their neighbor decided to build a finger pier, she could go as long as allowable within her Riparian Rights.

Mr. Mutterback said that is correct.

Mr. Jeffries read into the record Code Section 31.05 – Private Docks, item (a), *“Forty percent (20 percent either side of the centerline) of the width of the waterway shall remain unobstructed by docks, mooring or dolphin poles, or moored boats”* and item (b), *“Application of paragraph subsection (1) above shall not result in an unobstructed waterway less than 20-feet in width (ten feet either side of centerline).”* He explained that no matter what there cannot be anything less than 20-feet unobstructed.

Mr. Prieto asked can the Board table this item until they find out what the Riparian Rights are and have a site plan of the dock.

Mrs. Minuse questioned when staff is working on the permitting for the dock, they will take into account the ability to navigate that water with the neighbors, so the neighbors will have protection.

Mr. Mutterback said that is correct. He explained that part of the process is to anticipate any impacts to the neighbors or their access.

Mrs. Pelensky said it doesn't seem to her that this is not so much as to the space, but the way to have access the docks. She said the applicant's access would be straight in and straight out, but the neighbors to the right, because they don't have a finger pier, would have to go in parallel to their existing dock, which creates the issue.

Mrs. Minuse said this is quasi-judicial and they have specific rules and laws that they have to follow and Section 66.02 gives them very clear instructions that they are to deny an application if they find that approval of a variance would do any of the conditions listed under items (a) through (g) and Section 66.03 gives them very clear instructions that they are to grant an application if they find that all the conditions listed under items (1) through (5). She said her concern is about it not negatively

impacting the neighbors, which has been explained that they are to follow Code so that doesn't happen. She said that she does not have a problem with this as long as there are protections when they actually build the dock.

Mr. Lauer respectfully disagreed. He said the variance requested in the application states that it is for a 15-foot setback from the Riparian Rights line for construction of a new dock and that is obviously not what the Board is considering today. He said they do not have to approve an application that is incorrect and that is not what the applicant was asking for. He also thinks that when the applicant purchased the property, he had every opportunity to walk out to the back and see they did not have room for a dock. He felt if they wanted a variance, they should have requested it prior to purchasing the property. He believes that the evidence shows that the applicant did not apply properly and the Board should deny the application.

Mrs. Minuse said they are not applying to build a dock. She asked what if they just wanted to replace the failing dock that is there.

Mr. Jeffries said they would still have to apply for a variance. He explained that once you improve something over 50% of the value, you have to comply with the current regulations.

Mr. Prieto questioned if they should table this until they get a complete package.

Mrs. Minuse questioned the purpose to table this.

Mr. Prieto said that the applicant would have to give the Board an updated survey that shows their Riparian Rights, as well as a site plan.

Mr. Turner said the Board is only to approve or deny the application. The application is supposed to speak for itself and the Board's obligation is to rule on the application.

Mr. Lauer said the application does not speak to the setback lines, it speaks to the Riparian Rights lines.

Mr. Turner said that he cannot recommend, unless there is an agreement of the parties, that the Board tables this. He recommended that the Board rules on this and the City Council can address that question. He said that he is not comfortable recommending that the Board table this, but if they are serious then he would need to take a few minutes to research the Ordinances. If the Board doesn't feel they have the necessary information to make a decision, to him that would be a basis for denial. He asked the Board if they wanted to take a break, he will research the Ordinances to see if tabling this item would be appropriate.

Mrs. Pelensky asked if the Board approves this variance, would the City Council bring up questions and would public comment be allowed at that time.

Mr. Turner answered yes. He said the problem is when you supplement a record at a later time with additional information that is not before them now then that creates a due process problem. That is why he said they are better off addressing the application as it stands.

Mr. Jeffries explained that the Board is the final decision maker on variances. Anyone who is aggrieved by the Board's decision can appeal to the City Council.

Mrs. Pelensky made a motion that the Board denies the variance request for the property located at 724 Shore Drive. Mr. Prieto seconded the motion and it passed 4-0 with Mr. Prieto

voting yes, Mrs. Pelensky yes, Mrs. Minuse yes, and Mr. Lauer yes.

[Quasi-judicial]

E. Application Submitted by McLaughlin Properties, LLC for the 1st Amendment to Affordable Housing Development Plan for the Construction of 20 Dwelling Unit Multi-Family Residential Development with Five (5) Affordable Housing Dwelling Units Located at 1055 Royal Palm Boulevard (#AH19-000001)

The Chairman read Affordable Housing Development Application #AH19-000001 submitted by McLaughlin Properties, LLC, by title only.

The Board took a break at 3:16 p.m., and the meeting was reconvened at 3:24 p.m.

Mr. Lauer reported that during the break he did hear the applicant state that they were reducing this from a two (2) story project to a one (1) story project.

There were no other ex parte communications reported.

Mr. Jeffries briefly went over staff's report with the Board members (attached to the original minutes).

Mr. Todd Smith, who has been sworn in, said that he is the Engineer of Record for the project. He said the main change is reducing the building from two (2) stories to one (1) story. They did not change any landscaping design, parking, drainage, etc. All of that has remained as was approved by the Board in November. He said this is strictly a budgetary consideration in that the project as a two (2) story building came in significantly higher than what was budgeted. He said originally it was going to be two (2) stories with 20, two (2) bedroom units and now it will be one (1) story with 20, one (1) bedroom units. He noted that the building did get three (3) feet deeper than it originally was as a two (2) story building.

The Chairman opened the public hearing at 3:31 p.m.

The Deputy City Clerk swore in Ms. Judy Blankenship.

Ms. Blankenship, President of the Homeowner's Association of Royal Park Condominiums, said they are immediately south of this property. She said that her concern is how close the building will come to their fence. She said they are very concerned about how this will impact their property. She asked if there will still be 15-feet between their fence and the new building.

Mr. Smith said the rear setback is exactly what it was when previously approved, which is 15-feet. He explained that moved the front face of the building three (3) feet closer to Royal Palm Boulevard.

Mr. Jeffries noted that now that it is a one (1) story building they are only required to have a 10-foot setback so they are exceeding what is required by Code.

The Chairman closed the public hearing at 3:35 p.m., with no one else wishing to be heard.

Mrs. Minuse made a motion that the Board approves staff's recommendation based on competent and substantial evidence. Mrs. Pelensky seconded the motion and it passed 4-0 with Mr. Prieto voting yes, Mrs. Pelensky yes, Mrs. Minuse yes, and Mr. Lauer yes.

[Legislative]

F. A Resolution of the City Council of Vero Beach, Florida, Adopting the “Three Corners, Vero Beach Report” and Directing the City Staff to Prepare a Charter Amendment Ordinance and Take Steps to Implement the Plan; and Providing for an Effective Date

The Chairman read the Resolution by title only.

Mr. Jeffries went over staff’s report accompanied by a Power Point presentation with the Board members (attached to the original minutes).

Mrs. Minuse said so basically staff is requesting that the Board makes a recommendation to accept the draft Three (3) Corners Report as a master plan.

Mr. Jeffries suggested that the Board accepts the Steering Committee’s recommendation and that they also find that it is consistent with the Comprehensive Plan.

The Chairman opened public hearing at 4:03 p.m.

Mr. Ken Daige said that he wanted to bring to the Board’s attention that these two (2) properties are protected by the City Charter. He asked are both properties going to be on the ballot.

Mr. Jeffries said that would be discussed by the City Council at their meeting on July 21st. His analysis is that everything proposed in the Steering Committee plan is all public use so there would not be a reason to revise the Charter as it relates to the Waste Water Treatment Plant site.

Mr. Daige said there are other questions that he will be asking going forward. He will be asking in the future how many Charter questions will be on the ballot. Another question will be, and he will be making a public records request on this, is what is staff working on and what language will they be putting forth to the City Council as to what is going to be on the ballot. Also on both pieces of the property, when they put it on the ballot, how much acreage on each property are they going to take out of the Charter.

Mr. Jeffries felt that all those details will be discussed at the July 21, 2020, City Council meeting. He explained that the question on the ballot has a maximum of 75 words and it will have to be clear on what is being requested.

Mr. Daige questioned the number of questions to be on the ballot.

Mr. Jeffries thought there would only be one (1) question and it would only be for the Power Plant site.

Mr. Daige said we have a serious situation with this virus and our open spaces have come in handy. We, as a community, would need to pay attention to their open space and watch how much development they will allow in the future.

Mrs. Minuse made a motion that the Board accepts the draft (Three (3) Corners Report), that it is compatible with the land use element, the coastal management element and recreation and open space management element and all their objectives, that it is consistent with all these policies and objectives, and it is the Board’s recommendation to forward this to the City Council. Mr. Prieto seconded the motion and it passed 4-0 with Mr. Prieto voting yes, Mrs. Pelensky yes, Mrs. Minuse yes, and Mr. Lauer yes.

V. PLANNING DEPARTMENT MATTERS

Mr. Jeffries reported that their next meeting will be held on July 23, 2020.

Mr. Lauer and Mrs. Pelensky reported that they will be out of town.

VI. BOARD MEMBERS' MATTERS

None

VII. ADJOURNMENT

Today's meeting adjourned at 4:18 p.m.

/sp