

**CITY OF ANNA MARIA
PLANNING & ZONING MEETING
MEETING HELD AT ANNA MARIA COUNCIL CHAMBERS
10005 GULF DRIVE – ANNA MARIA, FL
TUESDAY, JANUARY 19, 2010
6:30 P.M.**

CALL TO ORDER

Vice-Chair Frank Pytel called the Meeting to order at 6:30 p.m.

PLEDGE TO THE FLAG

ROLL CALL: Boardmembers Margaret Jenkins, Sandra Mattick, Mike Yetter, Vice-Chair Frank Pytel, Randall Stover (6:35 P.M.), Bob Barlow, and Jim Conoly.

Staff Present: City Clerk Alice Baird, City Attorney Jim Dye, and City Planner Alan Garrett.

Press: Sun and Islander.

Public Hearings

City Clerk Alice Baird officially swore-in all persons wishing to give testimony.

1. **A Public Hearing to Consider a Variance from the Required 20-foot Westerly Setback to a 5-Foot Westerly Setback in an R-1 Zone District Located at 806 North Bay Boulevard, the Northwesterly Portion of Lots 3 & 4, Wells Subdivision.**

Applicant: Larry & Deborah Berkery

Larry Berkery, applicant, informed he and his wife Deborah purchased the home at 806 N. Bay Blvd and wanted to build a pool. He explained that the lot was created by a variance approximately fifteen years earlier out of two lots. In the process, the setbacks were established as a 20-foot setback in the rear of the house versus the typical 10-foot setback. The home is built up to the existing setback so the 20-feet between the home and lot line is currently unbuildable. He therefore was requesting that the setback be reduced from 20-feet to five-feet in order to build a pool in the 15-feet of remaining space. He noted that the adjacent property owners support his request. *Mr. Berkery* said he was unsure why the 20-foot setback was approved.

Mr. Berkery informed that Lots 12 & 13 at the rear of his property is the parking lot for the hotel. The hotel office is located on the south side of the property. There are two homes located on the north side of the property. The pool would not be seen since he cannot see either of the two homes from his property. There will be no accessory buildings for the pool pump/heating equipment. He informed the heating equipment would need to be placed inside the garage. There may, however, be a pump outside.

Vice-Chair Pytel questioned the building height. Mr. Berkery acknowledged that it was over 27-feet. Vice-Chair Pytel stated that there are specific setback requirements for houses and buildings on a 5,000 sq. ft. lot. Those buildings over 27-feet require a 10-foot side-yard setback as opposed to a 5-ft. setback. He commented that if the Commission were to approve the request, they may have to do so for others.

Boardmember Stover said he was concerned about the setback issue.

In answer to *Boardmember Mattick's* question, Mr. Berkery informed there would be one-foot of pavers in the back and the pool would be approximately 12 to 13-feet with a small amount of decking and some shell. Fencing would be installed to separate the pool from the parking lot of the hotel. Fencing currently exists on the two side yards.

Boardmember Yetter pointed out that a 50-ft X 10-ft lot size was common in Anna Maria. The setback requirements are 10-feet. He was concerned that a precedent would be set if the variance was granted.

Boardmember Barlow questioned Mr. Berkery as to whether or not he was aware of the space he would have available when he purchased the property.

Mr. Berkery stated that after his research, there was an approved permit in the City's file so therefore it was his understanding he could build a pool. However, later he found out that the permit was in the wrong file – it was the same property owner but had been placed in the wrong address file. He asked if an 8-ft setback would be considered by the Board.

Planner Garrett explained that the City had advertised the variance request of 5-ft. Up to 10-ft is normally required. The P&Z Board have the ability in their stipulations to approve a footage amount up to the 10-feet, however, any amount greater than 10-feet would require advertising.

Boardmember Conoly pointed out that Planner Garrett had indicated in the past that P&Z Board approvals do not set precedence.

Boardmember Jenkins felt that Mr. Berkery's case was unique since he had been misled by seeing the wrong information in the City's file. As a result, she felt that issue should be taken into consideration and that it would not set precedence.

Boardmember Barlow stated that the County Appraiser's office shows at one time a permit was shown to be pulled to build a pool on the property. At the time, however, there was no home there.

Mr. Berkery reiterated that he had the support of his neighbors.

Public Comment – None.

Mr. Berkery then asked to amend his request from a 5-foot setback to a 10-foot setback to conform to the City's standard setback requirements.

- MOTION:** Boardmember Conoly moved to approve the Variance request as submitted – Variance from the required 20-foot Westerly Setback to a 5-Foot Westerly Setback in the R-1 District located at 806 N. Bay Blvd.
- ACTION:** Boardmember Jenkins seconded the motion. Motion failed on a Roll Call vote of 2 to 5 with Boardmembers Jenkins and Conoly voting Yes and Boardmembers Mattick, Yetter, Stover, Barlow, and Vice-Chair Pytel voting No.

MOTION: Boardmember Mattick moved to amend the previous 5-foot variance request from the required 20-foot Westerly setback to a 10-foot setback based on the following criteria:

- 1) There are substantial practical difficulties and hardships in carrying out the strict letter of the regulations, and these difficulties and hardships are due to existing special conditions and unique circumstances which are peculiar to the specific property involved and which are not generally applicable to other properties or structures in the same district;
- 2) The condition giving rise to the requested variance is due to unique circumstances not created by the applicant or any person presently having an interest in the property;
- 3) The variance request is not based exclusively upon a desire to reduce the cost of developing the site;
- 4) The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public;
- 5) The proposed variance will not substantially diminish property values in, or alter the essential character of, the area surrounding the site;
- 6) N/A
- 7) The proposed variance is the minimum modification of the regulations at issue that will afford viable relief; and
- 8) The effect of the proposed variance is in harmony with the general intent of the comprehensive plan, this chapter, and the specific intent of the subject area of the provision.

Boardmember Jenkins seconded the motion.
On Roll Call Vote the Motion carried unanimously.

2. A Public Hearing to Consider the Preliminary/Final Site Plan Approval in the ROR Zone District Located at 216 Pine Avenue, Lots 1 & 2, Block 46, Anna Maria Beach Subdivision, Third Addition.

As a result of the action taken at the January 2010 City Commission/P&Z Board Joint Work Session, *Vice-Chair Pytel* asked that discussion be held as to whether or not action should be taken by the P&Z Board on the 216 Pine Ave. Site Plan until the role of the P&Z Board has been officially changed by the City Commission. He pointed out that the P&Z Board will only be serving as an advisory board to the Commission and would not be approving the Site Plans.

Vice-Chair Pytel recommended:

- That the P&Z Board defers the Site Plan request until a later date until the Commission formally revises the P&Z Board's role.
- Determine what the consequences would be if the Site Plan is heard that evening by the P&Z Board under the current regulations.
- What the consequences would be if the P&Z hear the Site Plan review in an advisory role only.

Boardmember Conoly stated that at the City Commission/P&Z Joint Meeting, Micheal Coleman had suggested that after review by the P&Z Board that the Site Plans go before the City Commission on the Consent Agenda. It could be removed from the Consent Agenda if the Commission desired. It was Boardmember Conoly's opinion that the City Commission should have the final decision on Site Plans.

Boardmember Barlow said he would like to hear legal advice before making a decision on the role of the P&Z Board as it reflects to Site Plans. *Boardmember Stover* said he felt the P&Z Board should have the final authority.

Boardmember Yetter felt there would be legal implications if the P&Z Board were to postpone hearing the Site Plan until the City Commission were to change the P&Z's role.

Boardmember Mattick pointed out that the City Commission had agreed to review the Site Plan approval issue and may not pull all authority from the P&Z Board. As the Code currently reads, it is the responsibility of the P&Z Board to review and take action on all Site Plans. She was in favor of the current process, noting that if the applicant chose to appeal the P&Z Board's decision, they had the ability to appeal it to the City Commission.

Vice-Chair Pytel said he recommended the applicant come back and provide the following information in regard to the 216 Pine Ave. Site Plan application:

- How the required side-yard setbacks are relocated as required by Section 114-281.
- Show how the Site Plan is in compliance with the Comp Plan since it shows more than six residential units per acre.
- How the parking in the Site Plan meets both the legal and safety objectives of the Comp Plan and LDR's.

Discussion followed. *City Attorney Dye* advised that the P&Z Board could continue the hearing for the purpose of obtaining additional information; however, they could not continue it for the purpose of seeing if the City Commission will be restructuring the Ordinances. The current application has been submitted under the current Code language and the applicant has the right to a decision on the application.

Vice-Chair Pytel officially opened the *Public Comments* portion of the Hearing.

Public Comment

City Commissioner Harry Stoltzfus discussed the process a Site Plan must go through for approval or denial. He did not feel the 216 Pine Ave. Site Plan application was processed in a timely manner and that the hearing was scheduled prior to the completion of the compliance review.

City Planner Garrett stated that the City had provided the applicant with a completeness letter. On December 10, 2009 a summary on consistencies and inconsistencies was sent. The City received replies from the applicant on December 17, 2009.

City Attorney Dye confirmed that the completeness letter was submitted, the applicant provided follow-up information, and based on the follow-up information an additional letter was written from Planner Garrett showing the short-comings in the application. Once the additional information was submitted, the application was reviewed by Planner Garrett based on all information provided by the applicant.

City Attorney Dye said to his knowledge the Public Hearing that evening was scheduled in the month of December 2009 in time for the noticing to occur. He has been told that the Notice was proper and timely.

Attorney Jeremy Anderson, Lobeck & Hanson Law Firm, addressed the P&Z Board on behalf of his clients Mr. and Mrs. Nally of 110 Spring Ave. Attorney Anderson stated that property owners received notice of the hearing on December 15, 2009. However, on December 17, 2009 the applicant was advised of sixteen issues that needed addressed. He stated that the Code states that the Public Hearing shall be scheduled upon completion of the written analysis by the City.

Tom Turner, N. Shore Dr., said in his review of Chapter 114, it appeared that the side setbacks were not met. Explanation followed.

Robin Wall, Palmetto Ave, felt there was a problem with the Notice process and that the hearing should be continued.

Attorney Ricinda Perry, representing the applicant, quoted the Code language. It was her opinion that the summary on consistencies and inconsistencies sent by the City on December 10, 2009 was exactly what the Code requires. She stated that the intent of the Notice was met, that there was no time issue, and that the Public Hearing should continue that evening.

Noting that the objections seemed to point to the correspondence and questions between the City staff and applicant, **City Attorney Dye** said there was nothing in the Code that states the City staff and applicant could not continue a dialog even up to the date of the Hearing.

City Attorney Dye said he had no indication that the Notice sent to the general public was improper. He advised that if the P&Z Board felt there was a problem with the notice or the procedure then they could continue the hearing.

Vice-Chair Pytel asked for a consensus.

- *Boardmember Conoly* said he would take the City Attorney Dye's advice that the notices were properly sent.
- *Boardmembers Barlow, Yetter, Mattick, and Jenkins* agreed and felt the Public Hearing should be heard.
- *Boardmember Stover* also felt the Public Hearing should proceed and questioned if it was a preliminary or final Site Plan.

Planner Garrett explained that the Hearing had been advertised as both a Preliminary and Final Site Plan by the applicant. He stated there were no other jurisdictions involved, therefore it could proceed as both.

In response to a question by *Commissioner Mattick*, *City Attorney Dye* confirmed that the P&Z Board would have the final authority on the 216 Pine Ave. Site Plan regardless of any Code changes effecting the Site Plan approvals that may be made by the City Commission at a future date.

MOTION: Boardmember Barlow moved that the P&Z Board hold and hear the Public Hearing for 216 Pine Ave. that evening. Boardmember Mattick seconded the motion. On roll call vote the motion carried on a vote of 6 to 1 with Boardmember Jenkins voting No.

Public Comment – Continued

Lynn Townsend-Barnett addressed the P&Z Board as Engineer on the project and in representation of the applicant to answer any concerns.

Ms. Townsend-Barnett addressed the questions relating to the side-yard. She recommended that the P&Z Board approve the Site Plan with the stipulation that the side-yard would be applied to separate the two buildings. Therefore, there would be a 7-foot side-yard with two structures rather than just one.

A letter relating to the density was provided to Planner Garrett. Ms. Townsend-Barnett explained how the 4.6 units per acre was determined and stated that the project did meet the LDR's and was consistent with the Comp Plan.

The parking and safety concerns were then discussed by Ms. Townsend-Barnett. She said in order to meet the intent of the ROR and to provide safe access they recommended that the Site Plan be approved with a stipulation. She recommended both moving the sidewalk forward of the parking spaces and eliminating the sidewalks within the right-of-way which she stated could be reviewed by the administration. Therefore, the issue of backing out over the sidewalks would be eliminated. Explanation followed.

Planner Garrett explained that a third stipulation would be required in order for the Site Plan to be in compliance. He clarified that the two 7-ft. setbacks would need to be relocated. There would be a total 41-ft. setback on the parcel. The Site Plan shows a total of 29-ft. – thus 12-ft. missing. He explained that the buildings could either be split or they could be kept together. However, one building would need to be 12-ft. smaller or both by 6-ft. smaller each.

Building Official Welch informed that the structure itself is one structure. The building code looks at the building as it is on a parcel rather than on two lots. The structure at 216 Pine Ave. would be no more than a two-hour fire rating separation between the two units. If the buildings are separated, there must be 6-ft. between the buildings.

Various alternative options were explained by *Planner Garrett*.

Michael Coleman, applicant, asked that the P&Z Board stipulate the separation of the two buildings at 216 Pine Ave by 6-ft.

Discussion followed. *Planner Garrett* explained that a 6-ft privacy fence and 5-ft of vegetative buffer will be installed. The applicant has indicated they will place the vegetative buffer on the residential side with the fencing on the applicant's side of the property.

Boardmember Yetter's questioned the one parking space per residential unit versus the prior Site Plans requiring two spaces per unit.

Planner Garrett explained that two residential parking spaces are required for a one or two-family residential unit. The applicant has requested two spaces per unit in the past, however, is now asking for one parking space per unit under the apartment regulations. Stating that the apartment is a rental unit will allow compliance with the R-2 Building Code. He pointed out that an apartment was not defined in the Code.

City Attorney Dye reminded that a copy of the aerial photo referred to earlier by Ms. Townsend-Barnett, or any document referred to in the meeting by the public, needs to be placed in the City's record.

Public Comment

Commissioner Harry Stoltzfus said in his opinion the P&Z were being asked to approve something that the administration failed to do – noting they were being asked to approve the Site Plan with stipulations. He commented that there were two lots with

more than one residence on them. He did not believe that moving the sidewalks would satisfy the requirements of the LDR's or the Comp Plan. He stated that the City is required to establish parking on the subject properties solely on the right-of-way and must comply with four issues when assigning parking spaces – insure they are safe, convenient, determine how it works esthetically, and insure it is sufficient. He did not believe any of the four requirements would be met simply by moving the sidewalks.

Robin Wall, Palmetto Ave, was opposed to referring to the structure as an apartment and only requiring one parking space per unit.

Ms. Wall referenced the letter she had e-mailed earlier that day. She did not feel the parking spaces complied with the Code. Discussion followed relating to the current code language and regarding curb cuts. Explanation and suggestions followed by Ms. Wall.

Ms. Wall then discussed the changes proposed on the Site Plan as discussed that evening and suggested that the Site Plan be continued until an updated Site Plan drawing could be presented.

Attorney Jeremy Anderson, presenting the Nally's, 110 Spring Ave, stated that the Comp Plan reflects six units per gross acre. However, the proposed Site Plan shows eight residential units per gross acre. He made reference to the previous justification presented by Ms. Townsend-Barnett and said he did not agree with her logic.

Attorney Anderson pointed out that Comp Plan Policy 1.4.1 states that all new and re-development shall be consistent with the Land Use Category – which limits to six residential units per acre.

Attorney Anderson then commented on all the changes discussed, spoke regarding the discussion relating to the hearing notices, etc, and did not feel the Site Plan could be approved. He asked to be on the record stating that if development begins on the property, his client will challenge it.

Applicant **Attorney Ricinda Perry** asked to address the statements that had been made.

- She said she understood that some of the changes being discussed could make some uncomfortable. However, that is the purpose of a Public Hearing. She said she had never seen a Site Plan approved without some type of changes and last minute stipulations which is just all part of the process. She reminded that the P&Z Board had the authority to make changes to the Site Plan.
- Attorney Perry informed that an apartment is an allowable use in the ROR District. She stated that the P&Z have to allow that use and her client is allowed to utilize that section of the Code.
- In regard to the issue of curb cuts as discussed by Ms. Wall, she stated that the provision discussed by Ms. Wall was not appropriate for the case. She referenced Section 90-3 relating to all off-street parking areas. She explained that the City Planner had applied the standards and the policy of the Code. She said if a particular process had been allowed in the past then that process needs to be continued; otherwise the Code needs to be changed. In that instance, the City has not interrupted "parking spaces" to be the same as "parking areas."
- Addressing the issue of density discussed by Attorney Anderson, Attorney Perry informed that it had been reviewed by the City's staff and City Attorney. She explained that the entire ROR District should be looked at as the gross area and not parcel by parcel as Attorney Anderson calculates. As a result, Attorney Perry informed that the Site Plan application was in compliance.

City Clerk Baird officially swore-in Larry Albert.

Larry Albert, Anna Maria, informed he serves on the new Parking Safety Committee and that the Committee has discussed that angular parking would be much safer than straight-in parking.

City Clerk Baird officially swore-in Cathy Stoltzfus.

Cathy Stoltzfus, 411 Poinsettia, felt it was important that the Board reference Policy 121 – ROR – residential density limited to six units per gross acre.

City Clerk Baird officially swore-in John Quam.

John Quam, Anna Maria, said that the Comp Plan states there can be one or two residential units above the commercial in the ROR District. He felt that it did not matter that the unit would be referred to as an apartment – it would still be residential. Therefore, Mr. Quam felt that two parking spaces per residential unit should be required. He did not feel that Section 90-2 would adhere to this case.

Mr. Quam then addressed the suggestion of sidewalks in front of the parking. He noted that the Comp Plan states that the City shall have sidewalks on a major road – Notig Gulf and Pine Ave. He stated that the City would be required to have the sidewalks on those roads and if they were on private property there may be a liability issue.

Hearing no further Public Comment, Vice-Chair Pytel officially closed the Public Comments portion of the Hearing.

P&Z Board Discussion

Boardmember Conoly said many issues had been discussed that evening – the notice question, the mistake made by the City Planner, Site Plan not being complete, and the questions relating to the parking.

City Attorney Dye asked that the Public Hearing be reopened to allow the applicant's Engineer to make comments. Ms. Townsend-Barnett and City Attorney Dye were in discussion at the time the Public Comments portions was closed.

Vice-Chair Pytel officially re-opened the Public Comments portion of the Hearing.

Additional Public Comment

Engineer **Lynn Townsend-Barnett** said her client was very open to making the revisions to the Site Plan and bringing it back for the P&Z consideration. She said there would be room to provide two parking spaces per unit and that change could also be made. She suggested the P&Z Board also make that a stipulation. She further stated if the setbacks were a concern, they would be willing to provide information back to the Board as to what that setback would look like.

Ms. Townsend-Barnett pointed out that the stipulations would be decreasing the request rather than increasing it so therefore could be approved at the administrative level.

Attorney Jeremy Anderson commented on the issue of gross area. He again stated that Policy 1.2.1 addressed that density is limited to six units per gross acre.

Hearing no further Public Comment, Vice-Chair Pytel officially closed the Public Comments portion of the Hearing.

P&Z Board Discussion – Continued

Boardmember Conoly concurred with the comments made earlier by Commissioner Stoltzfus. He felt the application should be denied and that a new set of plans should be re-submitted.

Boardmember Barlow said his main concern was whether or not the Site Plan complies with the City Codes and Comp Plan. He also wanted to see a completed set of documents and suggested that the Site Plan approval be continued.

Boardmember Stover agreed. He said he wanted to see an exact plan showing the setbacks.

Boardmember Yetter asked what requirements must be met in order to be in compliance.

Planner Garrett explained that either the 41-ft side-yard setback would be required or the 6-ft separation between the buildings. All other items were in compliance.

Boardmember Mattick felt until the sidewalk issue was resolved, she would be opposed to moving the sidewalk forward due to possible liability issues.

Boardmember Mattick suggested that a stipulation be made relating to the 6-ft. distance between the two buildings and also that the one additional parking space per unit be included. She felt new drawings would not be necessary if the stipulations were approved by the Board.

Boardmember Jenkins also felt a complete set of plans should be re-submitted for the P&Z Board's review.

Vice-Chair Pytel indicated the changes were substantial. He asked for legal advice relating to the residential unit/apartment terminology.

City Attorney Dye advised that the Code refers to it as a residential unit.

- MOTION:** **Boardmember Mattick moved to approve the Preliminary/Final Site Plan in the ROR Zone District located at 216 Pine Ave., with the following stipulations:**
- 1) **That the buildings be split with 6-ft between the buildings.**
 - 2) **One additional parking space is added per unit for two spaces per residential unit.**
 - 3) **That the residential units shall be signed for residential use only.**
 - 4) **That the structure shall be limited to 27-feet in height.**

Boardmember Yetter seconded the motion.

ACTION: **Motion failed on a Roll Call vote of 3 to 4 with Boardmembers Barlow, Yetter, and Mattick voting Yes and Boardmembers Conoly, Stover, Jenkins, and Vice-Chair Pytel voting No.**

Attorney Perry stated that the applicant is asking the P&Z Board for a continuance until the next P&Z Board meeting in order to provide a revised Site Plan and visual of the

stipulations relating to the separation of the two buildings and the configuration of the parking lot. She confirmed that the applicant would obtain a copy of the minutes and address all issues discussed.

- Motion:** Boardmember Mattick moved to continue the Public Hearing until Tuesday, February 23, 2010, 6:30 p.m. relating to the Site Plan application in the ROR Zone District located at 216 Pine Ave., to allow time for the applicant to address the concerns of the P&Z Board as follows:
- 1) Showing separation of the two buildings.
 - 2) Number of Parking Spaces for residential units.
 - 3) Determination as to whether the rental units were defined as apartments or residential units.
 - 4) Addressing the Comprehensive Plan's density requirements regarding 216 Pine Ave.
 - 5) Discussion relating to the curb cut issue.
 - 6) Whether angled parking would be more appropriate.
 - 7) Sidewalk placement.
 - 8) Building height.
 - 9) Swimming pool – Intensity issue.
 - 10) And that when the buildings are separated, each building shall be totally on one lot in order to comply with one residential unit per lot.

Action: Boardmember Stover seconded the motion.
On Roll Call Vote the motion carried unanimously.

Boardmember Stover discussed the importance of the City and PAR working together.

Vice-Chair Pytel pointed out that there continues to be more traffic on Pine Ave.

Discussion

1. **Major Majority Regarding the Comprehensive Plan and the Land Development Regulation.**
Continued to the February 23, 2010 meeting.

Additional Discussion

- *Vice-Chair Pytel* asked that New/Old Business be added to the Agendas for each meeting in the event a Boardmember has an item they would like to discuss or add in the future.

Planner Garrett reminded that the election of P&Z Board Officers would be conducted at the next meeting.

Minutes

1. **Consider approval of the December 15, 2009 P&Z Board Meeting Minutes.**

MOTION: Boardmember Conoly moved that the December 15, 2009 P&Z Board Meeting Minutes be approved as written. Boardmember Mattick seconded the motion. Motion carried – All Aye.

Adjournment.

On motion made by Boardmember Mattick and seconded by Boardmember Jenkins, the meeting was adjourned at 8:50 p.m.

The next regular meeting is scheduled for Tuesday, February 23, 2010.

Alice Baird, CMC, City Clerk

MINUTES APPROVED: _____