

**CITY OF ANNA MARIA
PLANNING & ZONING BOARD MEETING
MEETING HELD AT ANNA MARIA COUNCIL CHAMBERS
10005 GULF DRIVE – ANNA MARIA, FL
TUESDAY, APRIL 5, 2011
6:00 P.M.**

CALL TO ORDER

Chair Mattick called the meeting to order at 6:02 p.m.

PLEDGE TO THE FLAG

ROLL CALL: Boardmembers Margaret Jenkins, Nancy Yetter, Mike Pescitelli, Tom Turner, Carl Pearman, and Chair Sandy Mattick.

Absent: Boardmember Lou Ellen Wilson.

Staff Present: City Clerk Alice Baird, Building Official Bob Welch, City Planner Alan Garrett, and Minutes Clerk Stacey Johnston.

Also Present: Mayor Michael Selby (6:30 p.m.).

Press: Sun.

ELECTION OF PLANNING & ZONING BOARD VICE-CHAIR

Chair Mattick noted that former Boardmember Bob Barlow had served as the P&Z Board Vice-Chair and due to his move from Anna Maria he had previously resigned from the Board.

Chair Mattick asked for nominations for the Planning & Zoning Board Vice-Chair.

ACTION: Boardmember Pescitelli nominated Boardmember Tom Turner to serve as the Planning & Zoning Board's Vice-Chair. Boardmember Jenkins seconded the motion. On Roll Call Vote Tom Turner was elected to serve as the Planning & Zoning Board's Vice-Chair for the upcoming year.

PUBLIC HEARING

Minutes Clerk Johnston administered the oath to all persons wishing to speak.

- 1. A Public Hearing to consider a Preliminary/Final Site Plan for a two-lot subdivision located at 109 and 111 Sycamore Avenue, Lots 9, 10, 11, and 12, Anna Maria Beach First Addition as recorded in Plat Book 1, Page 237, in a Residential Zone District.**

Applicants: David A. and Candace Ridley

Applicant Presentation

Attorney *Racinda Perry* addressed the Board on behalf of her clients David and Candace Ridley. Attorney Perry explained that Mr. and Mrs. Ridley owned the four lots on Sycamore Ave. A newer home, built by the Ridley's, sets at that location. Mr. and Mrs. Ridley are requesting to take the four lots and combine them into two lots. Doing so will allow two homes to be built versus four and would create more conforming lots in the City.

Attorney Perry referred to the Site Plan and Preliminary Plat for the new lots – Lots 1 and 2 – for the new "Lilly's Place Subdivision". She noted that the Subdivision had been named after the Ridley's only granddaughter.

Commission Discussion

Planner Garrett confirmed for Boardmember Pescitelli that the line dividing Lots 1 and 2 was not a straight line. The line will make sure that all the structures will meet the

setbacks from the property line and would meet the minimum requirements. There will be no non-conformities.

Boardmember Turner asked if any of the property would be located on or out of the Conservation/Preservation area. *Attorney Perry* confirmed that the property was not located in the Conservation/Preservation area.

Boardmember Turner discussed and expressed his concerns. *Attorney Perry* informed that the permitting had already been received for future Lot 1, and a structure had already been built by meeting all the City's Comp Plan, DEP, and State requirements.

Boardmember Turner explained his concerns. Discussion followed.

Building Official Welch informed that the DEP permitting already issued for the property contains some mitigation measures on Lot 1. He pointed out that the current vacant Lot 8 is an unbuildable lot and was located in the Conservation area on the Future Land Use Plan. He noted that DEP would never allow a structure to be built at that location. Explanation followed relating to the newly constructed dune area.

Discussion followed. *Boardmember Turner* expressed his objection to the combining two lots into one when there was already an approved structure.

Planner Garrett referred to the two renderings – one as currently built and the other Subdivision drawing that would mirror what would be filed with the Manatee County Clerk's Office. He reminded that building across the lot line only requires combining into one taxing parcel – but would still have the two lots of record.

Attorney Perry explained that the total lot area is 11,527 sq. ft. and the City's Code only requires 7,500 sq. ft. The building coverage is 3,561 sq. ft. for a total of 31%. The City's Code allows for 35%. Lot 2 total area is 10,473 sq. ft. and the building coverage is 1,788 sq. ft. for a total of only 19.26%. She stated that the City's requirements for lot coverage, impervious coverage, and setback requirements had been met.

Building Official Welch clarified that Sycamore Ave. does not actually end – as shown on the drawings. The right-of-way still exists and Sycamore has never been vacated. The City has a dedicated right-of-way into the water.

Planner Garrett explained that if the P&Z Board recommends approval of the Preliminary/Final Site Plan it will then be presented to the City Commission at their April 28, 2011 meeting for their consideration. If the City Commission favors approval, the Public Hearing would be continued to allow the Applicant the opportunity to work with the City and to work with the City's Engineer to make sure it meets all the subdivision regulations. Signatures are collected and presented back to the City Commission for the continued Public Hearing. The City Commission would then authorize the Commission Chair to sign the Plan prior to its official recording in Manatee County.

Public Comment

Chair Mattick officially opened the public comments portion of the Hearing.

Hearing no public comment, Chair Mattick officially closed the public comment portion of the Hearing.

MOTION: Boardmember Pescitelli moved to approve the Preliminary Site Plan for a Two-Lot Subdivision located at 109 and 111 Sycamore, Lots 9, 10, 11, and 12, Anna Maria Beach First Addition as recorded in Plat Book 1, Page 237, in a Residential Zone District. Boardmember Yetter seconded the motion.
On Roll Call Vote, the motion carried on a vote of 5 to 1 with Boardmember Turner voting No.

2. **A Public Hearing to Consider a Variance Request for a Residential Boat Dock for 517 Blue Heron Drive, Lot 12, Bay Harbor Subdivision as Recorded in Plat Book 18, Pages 35 and 36 as follows:**

Applicants: Edward and Karen Hasler

- Section 110.95(4) and Section 110.96(2) requires that boats shall be moored parallel to the length of the waterway. The request is to allow the boat mooring to be perpendicular to the waterway;
- Section 110.96(3) limits a walkway to the docking facility to be no more than 10-ft in length. The request is for a 66-ft variance to the maximum of 10-ft for a walkway totaling 76-ft in length.
- Section 110.96(4) requires that mooring pilings be no more than 35-ft from the waterway boundary. The request is for a 27-ft variance so as to locate the mooring pilings a total of 62-ft from the waterway boundary.

Applicant Presentation

Jeff Hostetler addressed the Board representing the Applicants Edward and Karen Hasler. Mr. Hostetler explained that the existing dock for the property was built just prior to the City's legal description being revised. He informed that the mean high water line at the shoreline was the boundary and the City at that time had no jurisdiction on the water-side of the lot. Mr. Hostetler's client purchased the home from the developer who built the dock for sales purposes. The water, however, is too shallow for a boat to be docked at that location and Mr. Hostetler has, after surveying, found a deep hole adjacent to the property owners. He referred to the copy of the survey showing the extension of the dock. The boatlift would be re-placed to allow the boat to be in deeper water. Explanation then followed relating to the allocation of Riparian Rights – property owners rights to access navigable water. He pointed out that the lift would be replaced on the other side of the dock in order to keep back and in close to the mangroves. The proposed dock's square footage with the extension from the mean high waterline out would be 405-sq. ft. The proposed square footage allows the City to approve the request and would not require it go back before the DEP since it is under 500-sq. ft.

Mr. Hostetler informed that the existing dock is proposed to be extended out 35.9-ft. Setbacks proposed at 31-ft from the riparian line. He noted that when first looking at the current dock location at low tide there was grass growing under the boat. It would not be possible to extend the dock the other direction past Lot 12 due to an existing oyster bar.

Commission Discussion

Building Official Welch explained the history behind the existing dock for 517 Blue Heron Dr. Previous owner Mr. Martin's variance request to build the dock was presented before the City Commission. However, City Attorney Dye informed that the City had no jurisdiction. As a result, the City Commission could not continue hearing the variance request and the application fees were refunded to the Applicant. The County was then contacted who stated they did not want to permit the dock. Mr. Martin then went to DEP who ended up permitting the existing dock. The City has since extended the boundaries and the dock is now within the City's jurisdiction.

Planner Garrett provided the requirement details noting that that the dock was not built under the City's requirements. He noted that the Applicant would not be required to get additional approval for the proposed boat lift due to being allowed one boat mooring facility per lot having a residential structure on the lot. The Applicant currently meets the zoning requirements but does not meet the residential docking requirements of the 10-ft walkway to a docking platform. If the City Commission approves the variance, it will then be permitted.

Lengthy discussion and explanation followed relating to the history, existing dock, access walkway, and proposed dock. Mr. Hostetler informed that the Code requires the boat be parked parallel to the property line. As part of the variance request, the Applicant has proposed how the boat will be parked to allow the boat to be easily taken on and off the lift.

Public Comment

Howard Payne, 519 Blue Heron Dr. (Lot 13), said his property adjoins the Hasler lot. Mr. Payne said he had never seen anything that reflected that dock limitations were only geared to canals (as previously indicated by Mr. Hostettler). He felt it was unfair to request consideration of the variance due to limitations being applied to canals only.

Mr. Payne informed that he had originally appeared before the City Commission and spoke in favor of Mr. Martin's original variance request. He said if he knew that the purpose of the dock was to encourage people to purchase the lot, and have known that an extension to the dock would later be requested, he may have taken a different position.

Mr. Payne then presented the P&Z Board with copies of pictures he had taken during low tide prior to the dock being in place. He stated that as owner of a 20-ft sailboat needing a lot of water to manipulate in, he was fully aware of the water depth when purchasing his property. He felt the Hasler's were also aware of the water depth when they purchased the property.

Mr. Payne stated that if the variance is approved, then the City would be faced with considering additional variances on lengths of docks throughout the City. He further stated that the notice he received was confusing due to it stating that boats shall be moored parallel to the length of the waterway. In looking at Mr. Hostettler's diagram, Mr. Payne said he had no idea where parallel to the waterway exists. He was uncertain how the Applicant could dock perpendicular to any waterway that exists and felt they were actually seeking a waterway. Therefore, Mr. Payne did not feel he received a proper notice and that it could be litigated in their favor if they were to take it to court.

Mr. Payne said the variance request, if approved, would not interfere with his boating, but in his opinion would interfere with the value of his property due to it being an eyesore. It would, however, interfere with small boats wishing to fish, etc. in that area.

Jenna Victor, 514 Blue Heron Dr. (Lot 10), stated that the area is 1 to 2 ft. at low tide even where the dock was being proposed. She was unaware of how it would even improve the water navigation for the boat.

Ms. Victor said she kayaks, paddleboats, and swims the waters with her children. She voiced her objection to the variance request. She made reference to the need for "buyer-beware" noting that other property owners around the area do not have boats due to the shallow waters.

Ms. Victor informed that the area proposed for placing the boat dock was the area she and her children swim. If the variance is approved, the swim area would be taken away from them.

In referring to the Applicants response to the Sec. 114-103 Required Findings, Ms. Victor pointed out that a property owner is not guaranteed boating access just because the property is located on the water. She further felt that if approved, it would take away her family's access for kayaking, canoeing, etc.

Ms. Victor stated she had spoken to neighbors about permitting for dredging. She said if really wanting to create a proper waterway for the existing dock, then the neighbors could work together by spending a one-time amount of \$7,000 to \$60,000 to make it a more accessible waterway. Ms. Victor said she and her husband would be more than willing to contribute towards dredging.

Hearing no further public comment, Chair Mattick closed the public comments portion of the Hearing.

Applicant Rebuttal

Mr. Hostettler informed that due to the waters being too shallow, there are properties in Bimini Bay that would not be able to permit a dock. The 517 Blue Heron property would allow for a dock to be placed in the proper location. He stated that each variance must be approved based on its own evidence and that granting a variance does not set a precedence. He reminded that there is already an existing boat dock and that the deeper water area is within his client's riparian rights. The boat dock would be placed in a proper location so as not to further damage the sea grass. He noted that the surveying is to DEP standards and the elevations are based on mean low water as required by DEP. There is adequate water for the proposed location, however, not for the existing location.

Ms. Hostettler noted that the courts have ruled that the riparian rights was more important than a property owners view of the waters.

Continued P&Z Board Discussion

Chair Mattick voiced her concern that Mr. Martin had originally requested a variance and though the City did not grant the variance due to not having jurisdiction over the waters at that time, Mr. Martin then did not end up building the dock to the City's specifications.

Planner Garrett stated that the property owner has the right to accept the existing dock, has the right to go through the variance proceedings, or would be required to comply with the City's regulations that would be more restrictive.

Further explanation followed relating to DEP's mitigating requirements prior to the original dock being built.

- MOTION:** Boardmember Pearman moved and Boardmember Turner seconded the motion that the Variance Request for a Residential Boat Dock for 517 Blue Heron Dr, Lot 12, Bay Harbor Subdivision as Recorded in Plat Book 18, Pages 35 and 36 be Denied based on the following Findings of Fact:
- 1) There are no substantial practical difficulties and hardships in carrying out the strict letter of the regulation, 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 not due to unique circumstances not created by the applicant or any person presently having an interest in the property;
 - 3) The variance request is based exclusively upon a desire to reduce the cost of developing the site;
 - 4) N/A
 - 5) The proposed variance will substantially diminish property values in, or alter the essential character of, the area surrounding the site;
 - 6) The variance request is not based on the presence of nonconformities in the district or adjoining districts;
 - 7) The proposed variance is not the minimum modification of the regulation at issue that will afford viable relief; and
 - 8) The effect of the proposed variance is not in harmony with the general intent of the comprehensive plan, this chapter, and the specific intent of the subject area of the provision.
- ACTION:** On Roll Call Vote, the motion for denial carried unanimously.

The Variance will be heard by the City Commission at their April 28, 2011 meeting. Boardmember Pescitelli asked that prior to the April 28 meeting Ms. Victor meet with the homeowners in the area to discuss the possibility of each contributing towards the dredging of the area. Ms. Victor agreed.

DISCUSSION

1. Discussion of Refundable Fees

Chair Mattick informed that a March 31, 2011 letter had been received from Robert and Nicky Hunt requesting a refund for a portion of the Building Permit fee for 303 Pine Avenue. Mayor Selby had asked that the issue be placed on the P&Z Board agenda for discussion.

Building Official Welch explained that the City Commission, at their recent meeting, approved a policy that Building Permit fees would not be refunded except in the event of staff error. He noted that the 303 Pine Ave. Building Permit was issued prior to the policy being adopted. Building Official Welch informed that he did not have the authority to refund fees – only the City Commission had that authority. He stated that since the Building Permit has expired, the Hunt's would only be able to file an appeal with the FL State Dept of Community Affairs Building Code Board.

Lengthy discussion and explanation followed by Building Official Welch. He informed that:

- The Site Plan expired April 1, 2010 and would only continue as long as the Building Permit was good. There were no circumstances for extending the Site Plan or Building Permit at that time.
- The Hunts requested that a portion of their Building Permit fee be refunded.
- The request was forwarded to the Mayor by Building Official Welch. The City Commission has never brought the request forward for discussion.
- Commissioner Woodland asked the Mayor to have a policy on Refundable Fees prepared for Commission discussion.
- The policy was prepared by Building Official Welch and the only portion adopted was that Building Permit fees would be nonrefundable.
- A Resolution was then adopted relating to Nonrefundable Building Permit Fees.

Boardmember Pearman felt the Hunt's had a legitimate reason to not follow through with the Building Permit. He questioned the amount of time that the Building Official had spent on the Building Permit application as opposed to the time he would have spent if the Permit would have went to completion.

Boardmember Turner stated that the Hunt's Building Permit issue had been going on for years. He informed that the P&Z Board had originally approved the Site Plan, the Commission then denied it, litigation followed, the parking issues then followed, and now a new parking plan is being considered. He felt the issue should be referred to the City Commission for refunding a portion of the total permit amount.

Chair Mattick reminded that the P&Z Board were not hearing an appeal – only to determine if they wanted to recommend that the policy on Nonrefundable Building Permit fees should be readdressed by the Commission. She pointed out that since the Hunt's Site Plan had expired April 2010, a new Site Plan would have to be filed. She reminded that the P&Z Board were addressing a policy issue and not specific individuals.

Public Comment

Nicky Hunt stated she and her husband began asking for a refund over a year ago. She said it was their decision not to build so therefore asked for a portion of their fees to be returned. Explanation followed. She felt that the recent Commission policy was adopted personally towards them.

Ms. Hunt said she contacted other cities who indicated that they do refund fees and of those cities that did not they would address each instance on a case-by-case basis.

Ms. Hunt said she was not sure why their Permit had not been extended. She noted she had called Joel Friedman; an outside consultant employed by the City, and was told that he did not recommend that their Site Plan be approved due to their parking conflicting with the Comprehensive Plan.

Ms. Hunt asked that the P&Z Board be fair and consider their request and that they probably saved the City from a lawsuit being filed against the City if they would have continued to build.

Boyd Hoskins, 203 Fir Ave, said he had a mud hole in front of his house that has devalued his property by \$165,000. Mr. Hoskins felt the issue would be a very simple fix by digging a ditch in the 40-ft easement in front of this property which would take the water away. Stating he had not been served by the City, he felt he should be reimbursed.

Mr. Hoskins stated that the City had collected over \$20,000 from him since he had owned the property - \$10,500 for a Building Permit and \$1,400 per year for taxes. It was his opinion that drainage would fall in the tax category. Mr. Hoskins said he had requested assistance with his concern and since nothing has been accomplished he was now addressing the P&Z Board. Mr. Hoskins further noted he had spoke with SWFWMUD about his concerns.

He had also spoken to the CIP Board who informed there was no money for addressing the situation. He said his next step would be to have the City's records audited.

Micheal Coleman, Pine Ave. questioned why the Nonrefundable Building Permit issue was being discussed by the P&Z Board. He reminded that the City Commission had approved that Building Permits fees would not be refunded.

Mr. Coleman voiced his opposition to refunding the Hunt's Building Permit fees. He noted that the City spent most of their time at the beginning of the Site Plan process.

In presenting the following motion, *Boardmember Pearman* felt that in the instance of the Hunts situation, there had been multiple extenuating circumstances that should be considered. He felt it was unfair to refuse their refund.

MOTION: Boardmember Pearman moved that the P&Z Board recommend to the City Commission that they reconsider their recent action relating to nonrefundable Building Permit fees, and that they evaluate each case on a case-by-case basis rather than the blanket statement that no refunds would be allowed. Boardmember Turner seconded the motion.

Discussion

Boardmember Yetter felt the Board should abide by the City Commission's decision and that clear-cut rules should be adopted. She said she objected to the motion on the floor.

Boardmember Pescitelli disclosed that he recently attended his class reunion where Mr. Joel Friedman had served as Class President. He said he had discussed issues relating to Anna Maria with Mr. Friedman (at the reunion) until realizing there may a concern with the Sunshine Law.

ACTION: Boardmember Pearman withdrew his original motion and then made the following motion:

MOTION: Boardmember Pearman moved that the P&Z Board recommend to the City Commission that they review the request made by Robert and Nicky Hunt for the possibility of a refund of a portion of their Building Permit fee for 303 Pine Avenue. An alternative possibility is that the City consider allowing the Hunt's a credit towards another permit that they may apply for in due course for building a residence on the 303 Pine Avenue lot. Boardmember Turner seconded the motion.
On Roll Call Vote, the motion carried on a vote of 4 to 2 with Boardmember Yetter and Chair Mattick voting No.

OLD BUSINESS

Building Official Welch informed that updates will be forwarded to the P&Z Board as a result of the Citizen's Advisory Commission reviewing the LDR's to make sure they are in compliance with the Comp Plan. The first committee meeting was held earlier that day and included Doug Copeland, Tom Turner, Building Official Welch, and City Planner Garrett. Minutes will be available the following week.

NEW BUSINESS - None.

MINUTES

Consider Planning & Zoning Board Meeting Minutes for March 1, 2011.

MOTION: Boardmember Pescitelli moved that the March 1, 2011 Planning & Zoning Board Meeting Minutes be approved as written. Boardmember Turner seconded the motion.
Motion carried – All Aye.

PUBLIC COMMENT

203 Fir Ave Drainage Concerns

Boyd Hoskins, 203 Fir Ave, said he spoke with Mayor Selby relating to the drainage issue in front of this home and was asking that evening for some guidance from the P&Z Board.

Mayor Selby responded that he and Public Works Director McKay would be reviewing Mr. Hoskins concerns for resolving the issue. Mayor Selby noted he had already contacted SWFWMUD.

Mr. Hoskins questioned why he had Riparian Rights.

Robert & Nicky Hunt Request

Micheal Coleman, Pine Ave. suggested that the decision should be addressed on actual information. It was his opinion that when the Commission made the decision on Nonrefundable Building Permits fees that they knew they were addressing a possible refund request from the Hunts.

ADJOURNMENT

The meeting was adjourned by Chair Mattick at 8:00 p.m.

The next P&Z meeting will be held on Tuesday, May 3, 2011, 6:00 p.m.

Alice Baird, CMC, City Clerk

MINUTES APPROVED: _____