

**CITY OF ANNA MARIA
PLANNING & ZONING BOARD
REGULAR MEETING HELD AT ANNA MARIA COMMISSION CHAMBERS
1005 GULF DRIVE – ANNA MARIA, FL
MONDAY, AUGUST 6, 2007
7:00 P.M.**

CALL TO ORDER

Planning and Zoning Chair Doug Copeland called the meeting to order at 7:00 p.m.

PLEDGE TO THE FLAG

ROLL CALL: Boardmembers Jim Conoly, Randall Stover, Frank Pytel, Chair Doug Copeland, Douglas Winton, and Margaret Jenkins.

Absent w/excuse: Boardmember Sandra Mattick.

Staff present: City Commission Chair John Quam, City Clerk Alice Baird, Building Clerk Diane Sacca, City Planner Alan Garrett, and Minutes Clerk Stacey Johnston.

Press present: Sun News and Islander.

1. WITHDRAWN ON JULY 19, 2007 BY LETTER FROM MAX POWERS.

Hearing for Application for Variance – 410 Pine Avenue –

Previous Hearing Date – July 9 - Property sign was not posted within the time frame required by Ordinance:

Owners: Max & Susan Powers

Variance Request – Relief of 5 feet from the required Rear Setback of 15 feet required by the City of Anna Maria Code of Ordinances – Section 114-282(4) to Install a Swimming Pool

Chair Copeland announced that the applicant had withdrawn the variance request; therefore, no further action would be required of the Planning & Zoning Board.

**2. Memo from Alan Garrett, AICP City Planner -
Proposed Amendment to Site Plan Procedures.**

Chair Copland explained that the City Commission met and eliminated the deviation language from the Site Plan procedure. The City Commission then discussed that there should be a procedure to allow for a variation or the now new term of modification. That item was now before the P&Z Board for discussion.

City Planner Alan Garrett explained that the City Commission had reviewed the new Site Plan procedure at their July 27, 2007 and felt there was a need for some type of modifications that could be applied for through the Site Plan process.

Planner Garrett pointed out that through the Site Plan procedure there is generally a technique for an applicant to ask for some type of a variance or modification, however, there should always be perimeters and criteria. He informed he had researched six ordinances within Anna Maria's jurisdiction to serve as starting points.

Planner Garrett pointed out that Anna Maria allows for the P&Z Board to review the Site Plans. He stated that in order to determine if they should be approved, denied, or approved with conditions, there may be an application that requires conditions to be placed on it. Examples would be hours of operation, additional setbacks, lighting, parking, etc. He stated it was extremely important to have things entered into the record that is substantial competent evidence.

Detailed examples of capability criteria allowing for flexibility and types of applicant, public, or P&Z Board on-site inspection testimony that may be heard at the Public Hearings followed by Planner Garrett relating to all six criteria items listed on his memo to the Board.

Planner Garrett pointed out that the City Commission passed the Site Plan procedure without any type of variance procedure. If an applicant wanted to make any type of modification, their only option at this time would be through the standard variance process.

Based on the City's lot sizes and varying types of developments, etc. in Anna Maria, the Commission has suggested that a type of modification process should be established. Planner Garrett noted that when applying for a modification it would be necessary to explain that the applicant must go through the criteria and explain how the application was consistent with each of the six criteria. However, no modification would be considered based on height and that language would be stated on the application.

Chair Copeland felt if the P&Z Board agreed to move ahead with the modification language, he would like to see wording in the Ordinance that allows both the P&Z Board and the City Commission to impose conditions similar to current code Section 114.104 relating to variances.

Boardmember Pytel said he had significant concerns stating that changing the wording from superior design to deviation to modifications still creates a subjective loophole in the Site Plan regulations that get around well-defined LDR Codes. He felt the suggested six criterion was very subjective.

Stating that the variance procedure had different sets of modifications, he asked what language was in the Site Plan procedure that determined how to choose whether the regulations for the variance procedure are applicable to a case or whether the Site Plan procedures were applicable.

Planner Garrett explained that as currently adopted there is only one procedure - that being the variance procedure. The City Commission was wanting to see if by modifying the Site Plan procedure to allow for modifications that same criteria may then be imposed in the variance criteria.

Planner Garrett disagreed with there being a loophole stating the code could be so rigid that he and the Building Official could review the application and there would then be no further need for review by the P&Z Board.

Lengthy discussion followed between Boardmember Pytel and Planner Garrett relating to Boardmember Pytel's concerns. Examples of situations were discussed. Planner Garrett informed that anytime there is a request for any type of variance, modification, or change to any code requirement or rezoning, the law in Florida places the burden of proof on the applicant and not on the Commission.

Boardmember Pytel suggested that the Board look at the language in the current variance procedures and modify it rather than coming up with language he felt would create a significant number of new non-conformities. He further stated that more variances had been approved in the past then declined.

Planner Garrett informed that once a variance or modification deviation is approved, there is no non-conformity.

Boardmember Stover felt the modification was a much lesser degree of change and may have to determine if it is a modification criteria or a variance criteria. He gave examples of what he felt was the difference between a modification request versus a variance request and agreed that criteria was needed to make that determination. He said he saw the modifications as much more simple and where hopefully attorneys would not be required.

Boardmember Pytel responded that with the proposed subjective language Attorneys would be debating the issues.

Boardmember Winton agreed with Boardmember Stover that it was a matter of degree and felt the City Commission wanted to lighten up the Code and make it easier. He did, however, agree with Boardmember Pytel that the variance procedure should not be removed.

Boardmember Jenkins referenced a memo received from resident Tom Turner and agreed that the wording of "modification changes" should be re-worded to only state "changes".

Planner Garrett clarified that the City Commission should determine criteria. He agreed with Boardmember Stover's comments that through the Site Plan process a modification is a different type of situation that should be looked at differently than someone coming in with a variance request. He felt maintaining the two separately could be accomplished. The modification criteria could be part of the Site Plan process and addressing the findings for the variance procedure could be pursued. However, he encouraged review of the criteria under the variance procedure so the criterion was not so strict.

Boardmember Pytel agreed there was a need to modify the variance procedures but they should not be removed altogether nor should there be two sets of conflicting procedures.

Planner Garrett explained that the Site Plan procedure allows for the variance and suggested the variance findings under Section 114.103 be reviewed in a P&Z Board Work Session.

Public Comment

Tom Turner, 850 N. Shore Ave., stated that the Site Plan procedure was for re-development and not for individual lots that someone builds on. He felt modifications and variances go hand-in-hand and that if a modification was required, it should go before the Building Official with no need to go before the P&Z Board or the City Commission.

Mr. Turner said a superior design meant that a structure was being built far above the Codes. He voiced opposition to the entire Site Plan procedure.

Michael Coleman, 311 Pine Ave., said he was concerned to hear that more variances had been approved that was denied. He stated he would like to see the City have more flexibility and either enforces what is currently in the Code or change it.

Chair Copeland said the City may find that over the past ten years more variances were actually denied than were approved.

ACTION

After discussion, the P&Z unanimously agreed that rather than approving the six criteria as presented into the Site Plan procedures, that the P&Z Board re-visit the variance criteria to develop a procedure that allows for reasonable modification, deviation, or change yet not excessively restrictive. This item would be discussed at a future meeting.

It was pointed out that a Site Plan process was required for development on two or more lots. Planner Garrett, with him pointing out that there would never be any variance or modification decisions at the administrative level of the three-tier system, reviewed the three-tiered system established in the new Site Plan procedure. Examples followed relating to the types of applications that would come before the P&Z Board.

Boardmember Stover asked if a legal precedence was set whenever the P&Z Board approved a variance.

Planner Garrett answered no precedence was set, that a variance was sight specific, parcel specific, and lot specific.

Planner Garrett informed that the P&Z Board would be reviewing two Site Plan applications for consideration under the new procedures at the September meeting. Since that meeting agenda will be full, the P&Z could consider the revisions to the variance criteria at the next scheduled meeting.

Chair Copeland asked that each Boardmember review the Site Plan procedures and consider the reasonable alternatives to Sections 114.103 and 114.104 of the City's code.

3. Approve Minutes of July 9, 2007.

Boardmember Conoly pointed out that "habitable" had been spelled incorrectly in the minutes.

**MOTION: On motion made by Boardmember Conoly and seconded by Boardmember Winton, the July 9, 2007 Minutes, to include the correct spelling for "habitable", were approved.
Motion carried – All Aye.**

4. Old/New Business.

Meeting Dates

Chair Copeland pointed out that at the last meeting the P&Z Board had agreed to begin meeting two times per month for the purpose of reviewing the LDR's at one of the meetings. However, after meeting with Mayor Barford it was determined that due to budget constraints including the additional expenses required for having the City's employees and contract employees available at the meetings, there was not sufficient budget to allow for an additional meeting each month.

Chair Copeland stated that the P&Z will try to review the LDR's within the framework of their regularly scheduled meetings each month. There is a one-year time period to comply with the Comprehensive Plan.

Site Inspections

Boardmember Conoly stated City Attorney Dye had indicated in a memo provided to the P&Z Boardmembers that they were not to make site inspections.

Chair Copeland confirmed that City Attorney Dye's memo stated that the P&Z Board's determinations were to be based on the quasi-judicial arena solely on the testimony presented at the meeting.

Planner Garrett stated he would address the memo's content with City Attorney Dye. The Board agreed on how important it was to visit the application site prior to the meeting.

5. ADJOURNMENT

On motion made by Boardmember Conoly and seconded by Boardmember Winton, the meeting was adjourned at 8:15 p.m. Motion carried – All Aye.

The next meeting is scheduled for Tuesday, September 4, 2007, 7:00 p.m.

Alice Baird, CMC, City Clerk

MINUTES APPROVED: _____