

**CITY OF ANNA MARIA  
CITY COMMISSION  
SPECIAL MEETING  
MARCH 6, 2003  
6:00 P.M.**

**CALL TO ORDER**

**PLEDGE TO THE FLAG**

**ROLL CALL:** Mayor SueLynn, Commissioner Tom Aposporos, Chair John Quam, Commissioner Linda Cramer, Commissioner Duke Miller

**Absent with excuse:** Commissioner Chuck Webb

**Also present:** City Attorney Jim Dye, Minutes Clerk Sylvie Reichmann

**Press:** Sun

**1. PLANNING & ZONING RECOMMENDATION RE: HEIGHT VARIANCE -  
901 NORTH SHORE DRIVE - James & Jeanette Deporre**

Chair John Quam asked, in the absence of the Chair of the Planning & Zoning Board, that the Minutes Clerk read the recommendation from the Planning & Zoning Board. She read from notes of the P&Z Meeting that the recommendation to the Commission is to grant the 5 ft. variance to 42 ft. above the crown of the road; but if the City Attorney's research reported that the base level of the house could be constructed lower, for example, to FEMA regulations, then the applicants would relinquish the variance and build at that height.

Chair Quam noted that it had now been confirmed that the current height regulation for the location at 901 North Shore Drive is 18 ft. 4 in. from the mean sea level, not the crown of road. He said this went into effect January 1<sup>st</sup>, 2002.

Mr. Deporre asked for the same amount of living space, i.e. 27 ft., as everyone else. He said none of the neighbors had an objection to his application for a height variance, and that denial would undermine the State's purpose in having people build hurricane resistant homes.

Brent Whitehead, Engineer, said that up until a year ago, the City's code stated minimum height was 13 ft. above the crown of the road, and maximum height was 37 ft. City had always been very even-handed in enforcing the ordinance. He noted that 95% of Anna Maria residents are not affected, but those within the coastal construction control zone are now only allowed 22.5 ft. of living space.

Chair Quam said the key for the Commission to grant a variance is to show hardship, as defined in the Code. He quoted, "...there are substantial practical difficulties and hardships in carrying out the strict letter of the regulation ... not generally applicable to other properties or structures in the same district." Mr. Whitehead said he addressed the eight criteria in writing and sent this to City Hall. None of the Commissioners reported having received it.

Brent Whitehead said that his clients, the Deporres, shared the same hardship as for setback variances granted by the City in the past, i.e., not being given adequate volume to build the house.

Chair John Quam said that his client's 50 ft. x 125 ft. lot allows a foot print of approximately 2,187 sq. ft. He noted the applicants' request is for 4300 sq. ft. of living space. Chair Quam presented documentation of the heights of six houses on the same street, the most recent, built in 2001, having a base level at 15.11 ft. from crown of the road. He noted the Deporre's would be 14.2 ft. from crown of the road. He said even though the new regulations are 18.4 ft. from the mean sea level, this would exceed the living height allowed some of the Deporres' neighbors. The Commissioner concluded that therefore the applicants' call for even-handed treatment would justify denial of the variance. Chair Quam indicated he could not see the hardship, and quoted the definition of hardship to the property owner offered by City Attorney Dye at a previous meeting. He noted the desire of the applicants was to have a 10 ft. high ceiling as opposed to one 9 ft. high.

Brent Whitehead indicated the issue was the also the esthetics and practicality of a sloping roof vs. a flat roof.

Commissioner Duke Miller asked Mr. Whitehead if his client had applied to Tallahassee for a site specific review, as provided for in the Statute.

Mr. Whitehead said that the specialist in Tallahassee had informed him that if he studied it, the allowable base level might come out higher. He said his clients therefore did not want to apply formally.

Commissioner Duke Miller said it would be unfair to grant a variance in this case, because numerous people had to do things to stay within the 37 ft. allowed. He said in the case of his own house, Eatman & Smith requested copy of the survey, so that they could compute what the height of ceiling should be, and he indicated that the Millers do not have the 10 ft. ceilings they wanted.

Brent Whitehead said that 13 months ago, the City of Anna Maria had the same regulations, but now the State has changed the regulations to increase 1 to 3 feet. The City of Anna Maria now has a double standard because of something the State did to people seaward of the coastal construction line.

Commissioner Duke Miller asked why the house was designed for 42 ft. when his clients knew the code stipulated 37 ft.

Brent Whitehead responded that if the variance were denied, the house would be redesigned with a flat roof.

Commissioner Linda Cramer said that she was present at the P&Z meeting, where it was stressed that the Florida Building Code changed. She noted that the upcoming problems referred to involving an increase in variance applications actually would only affect those seaward of the coastal construction control zone. The Commissioner referred to Emily Smith's comments regarding style and the City's vision statement. She said she understood the problem presented, and did not have a problem with granting the variance. Commissioner Cramer recommended the City of Anna Maria look at how Holmes Beach recently handled a height variance request.

Chair John Quam observed that eventually the City would need to revisit the ordinance, but that the Commissioners must consider the variance application put before them at this evening's meeting. He indicated that without hardship being shown, he could not vote to approve the application.

Commissioner Tom Aposporos asked when the house was purchased? The Deporres responded that it was approximately in Nov. 2000, and that they were not made aware during the purchase that the Florida Building Code would be changed to affect their plans for the property.

Mr. Deporre said he currently has a home, built in Anna Maria, with a 10 ft. ceiling and now, the furniture they own will not fit in less than 10 ft. ceiling, which is a hardship. He said they also have ceiling fans.

Chair John Quam asked for City Attorney's comments. The City Attorney responded that the City's code requires the applicant to show a hardship. He said that one concern is the City is currently in litigation regarding a variance in a setback for a beach front structure that was turned down for lack of evidence of a hardship. City Attorney Dye indicated he would advise the Commission to strive for consistency.

Commissioner Linda Cramer asked, if the Commission granted this variance, if the ordinance could be adjusted to include the coastal construction line so that residents there are addressed even handedly.

City Attorney Jim Dye noted that one of the clues for the need to readdress an ordinance is the receipt of numerous requests for variance of the same rule. It would also be recommended to have the City's height match FEMA and the State's height.

Commissioner Tom Aposporos recommended addressing construction within the coastal construction control zone, and expressed astonishment and dismay that the purchase of the property took place 3 weeks prior to the Florida Building Code change and the purchasers were not made aware of the upcoming change. The Commissioner said it was clear that the change now affects any number of properties within the coastal construction zone. He said the Commission needs to quickly address the zone, as per the recommendation of Commissioner Cramer, and said it thereafter could turn out that the Deporres could build the way they wish. Commissioner Aposporos said it was evident that the Planning & Zoning Board

worked hard on this request and said the Commission needed to look into the basis for their recommendation. The Commissioner said it was news to him that there is already litigation regarding a variance that was denied, and observed that when governments fail to take prudent action on issues like this, they could face litigation for loss of property value. He added that the Commission needed to pursue the larger question of the ordinance quickly and deliberately, out of consideration for the Deporres and upcoming applicants, and generally since the question would not be going away.

Chair John Quam confirmed that reviewing the height ordinance was on the next work session agenda, but that at this evening's meeting, the currently published ordinance would be the one that governs.

**MOTION: Commissioner Linda Cramer moved to approve the height variance request for 901 North Shore Drive. Motion failed for lack of a second.**

Commissioner Duke Miller suggested that in the future, the Commission establish a policy that when a Board or Committee is asked to make a recommendation to the Commission, someone from that Board or Committee shall be at the Commission meeting to present it to the City Commission with the factual backup and describe the rationale behind the decision. He gave as an example, the Charter Review Commission's approach.

Chair John Quam noted that none of the details discussed this evening were presented at the P&Z meeting. He asked those Planning & Zoning Board members present at this meeting to comment.

Dale Woodland said he wrote a letter to the Commission reversing his vote because of the hardship clause in the Code. He said at the Planning & Zoning Board meeting, they discussed at length the possibility of lowering the base height, which was the reason for stipulation based on City Attorney's research. Mr. Woodland reported that at this Monday's most recent Planning & Zoning Board meeting, the Board did feel that a request should be made to the Commission to review the ordinance, because several requests were pending, and several members of the Board felt uncomfortable with their original decision relative to the Deporres.

Commissioner Duke Miller requested that when the Planning & Zoning Board reviews the ordinance, that it be sure to address the coastal construction zone in particular.

Brent Whitehead noted that the Commission would consider a possible remedy in addressing the ordinance and asked for a continuance pending the Commission's study.

...(continued)

**MOTION: Commissioner Tom Aposporos moved to continue the hearing until the May 22, 2003 regular meeting of the Commission, pending the Commission's review of the ordinance and the impact of the Florida Building Code changes on residents within the coastal construction control zone. Commissioner Linda Cramer seconded.**

**Vote: All Ayes. Motion carried.**

City Attorney Jim Dye noted the Deporre's application would now stay active until May 22, 2003.

Mayor SueLynn informed Commissioner Miller that generally, the Chair of the Planning & Zoning Board speaks to the Commission at meetings regarding the Board's recommendations. She noted there was another request coming up before the Planning & Zoning Board for a height variance.

#### **PRESS COMMENT**

A member of press referred to a sheet showing the heights of buildings from the base level beam to the crown of the road, and asked how the mean sea level related to the crown of the road.

#### **ADJOURNMENT**

**MOTION: Commissioner Duke Miller moved to adjourn the meeting, seconded by Commissioner Linda Cramer.**

**Vote: All Ayes. Motion carried.**

The meeting adjourned at 7:01 p.m.

Respectfully submitted,

Alice Baird  
City Clerk

Date approved: 3/27/03