

LPA / PLANNING AND ZONING BOARD  
MINUTES  
MAY 2, 2016

The Local Planning Agency / Planning and Zoning Board held a regular meeting on Monday, May 2, 2016 in the City Commission Chambers, 210 Sams Avenue, New Smyrna Beach, Florida. Chairperson Steven Casserly called the meeting to order at 6:30p.m.

ROLL CALL

The following members were present:

Steven Casserly  
Ian Ratliff  
Kelly Azzinaro  
Jamie Calkins  
Pat Arvidson  
Stephen Sather  
Travous Dever

Also present were Planning and Zoning Manager Amye King; Chief Planner Jeff Gove; Planner Steven Bapp; Planner Robert Mathen; Assistant City Attorney Greg McDole; Board Secretary Tammy Dickerson and members of the public.

**APPROVAL OF MINUTES**

**Motion by Ms. Arvidson, seconded by Mr. Ratliff, to approve the minutes of the regular meeting on April 4, 2016. Motion passed on a roll call vote, 5-0 with Ms. Azzinaro abstaining due to she was absent for the meeting.**

**NO PUBLIC PARTICIPATION**

**OLD BUSINESS**

- A. V-13-15: SOUTH ATLANTIC AVENUE/OVERCHUCK  
John and Natacha Overchuck, 641 Manor Road, Maitland, Florida 32751, applicants and property owners, requests approval of a variance to reduce the required front yard setback on a corner lot from 10' to 5'. The subject property consists of approximately 0.4 acres, is currently zoned R-6, Multi-Family Residential, and is located southeast of the intersection of East 16th Avenue and Hill Street. (VCPA PID # 7422-01-17-0010) (This case was posted on previously scheduled meetings of October 5, 2015; November 11, 2015; December 7, 2015; and January 4, 2016, and again posted after being withdrawn).

Mr. Gove reviewed staffs' findings and stated that staff recommends the Board deny the requests because the variance requests do not strictly meet the five required criteria.

However, should the Board determine that the required criteria have been satisfied, and subsequently vote for approval of the requested variances, staff would recommend the following conditions be attached to that approval:

1. If the 16<sup>th</sup> Avenue right-of-way is ever redeveloped and improved with an actual two-lane public roadway as it previously contained, and if the currently proposed building is then after destroyed by more than 50% of its appraised value, this variance shall be null and void for any future construction, which must then adhere to the minimum setback requirement or require a second/subsequent variance application and approval.
2. The variance applies only to the proposed building location shown on Exhibit D, and all future site construction must comply with code requirements in place at the time of construction.

Ms. Azzinaro asked what the plans were the county's plans for the road.

Mr. Gove stated that the city wasn't aware of any plans the county had for the road that is was chained down.

Mr. Sather stated that about a year and half ago the county looked in to making 16<sup>th</sup> Avenue another beach approach.

Mr. Gove stated that he had heard that also but the county is having problem coming up with funding for the lots they have already purchased and they would have to get approval for beach driving in that area and wasn't sure the neighbors would be in favor of that either.

Ms. Arvidson asked what would happen to their house if the road was developed.

Mr. Gove stated that was one of the recommended conditions of approval if the Board chose to approve the variance.

Mr. Dever stated that the road is already there if they built the house they would be just closer to the road. He asked if a hurricane destroyed the house will they be able to rebuild in the same footprint.

Mr. Gove stated that if the road had been developed at that time then staff would want to go back to the 10 foot setback.

Mr. Ratliff stated that would be due to the visibility triangle.

Mr. Dever stated that he didn't feel the house affected the corner it is set back from the corner.

John Overchuck, 641 Manor Road, Maitland, was sworn in to testify then addressed the Board.

Mr. Gove was sworn in to testify.

Mr. Ratliff asked the applicant how he met the criteria of not getting something everyone else has.

Mr. Overchuck stated that they were told by the county that they didn't need a variance and to design the house which they paid \$35,000 for and they would just give the county a non-drivable easement. He stated that they were lied to and now if the variance doesn't go through they will have to redesign the house and won't be able to afford to build the house.

Mr. Calkins asked Mr. Gove to speak about what the county told the Overchuck's about a non-drivable easement.

Mr. Gove stated that he spoke to the Planning department with the county about the non-drivable easement and they were opposed to it and were disturbed that anyone in the Public Works department would disseminate that information. He stated that he then discussed with the Overchuck's that the variance request that was withdrawn would have to go through the process again.

Ms. Arvidson asked if they do improve 16<sup>th</sup> Avenue will the property owner be able to put a fence up.

Mr. Gove stated that they would be able to put a 4 foot fence up.

**Motion by Mr. Dever, seconded by Mr. Calkins, to approve the requested variance with the following conditions:**

- 1. If the 16<sup>th</sup> Avenue right-of-way is ever redeveloped and improved with an actual two-lane public roadway as it previously contained, and if the currently proposed building is then after destroyed by more than 50% of its appraised value, this variance shall be null and void for any future construction, which must then adhere to the minimum setback requirement or require a second/subsequent variance application and approval.**
- 2. The variance applies only to the proposed building location shown on Exhibit D, and all future site construction must comply with code requirements in place at the time of construction.**

**Motion passed on roll call vote, 4-3 with Mr. Casserly, Mr. Ratliff and Ms. Arvidson dissenting.**

Mr. Gove left at 6:55pm.

**B. V-6-16: 313 JESSAMINE AVE / FERNANDEZ**

David Fernandez, 317 Flagler Ave, New Smyrna Beach, FL 32169, requests approval of a variance to increase the maximum permitted driveway width from 30 feet to 69 feet. The subject property is zoned R-3A Single-Family and Two-Family (Zero Lot Line) Residential. The subject property consists of approximately 0.17 acres, and is generally located south of Jessamine Avenue

and East of Pine Street, and is addressed as 313 Jessamine Ave. (VCPA # 7409-06-02-0130)

Mr. Bapp stated his name and was sworn in to testify. He reviewed staffs' findings and stated that staff recommends the Board deny the request due to the request doesn't meet any of the 5 criteria for this variance.

Mr. Ratliff asked if they needed the license agreement because the pavers were in the city right of way.

Mr. Bapp stated that was correct the pavers are 8 foot in to the city right of way and the applicant would be also taking on a liability for that reason.

Mr. Dever asked if the driveway was 30 foot and the rest of the area was picnic area would there still need to be a variance request. He asked if all the pavers were being considered as driveway.

Mr. Bapp stated that was correct it was all be considered driveway and there would be a setback requirement of 5 foot for a patio.

Mr. Sather asked if they were two separate lots would they each be allowed a 30 foot driveway.

Mr. Bapp stated that the lot would be too narrow but they would each be allowed a 30 foot driveway if they were separate lots.

Adam Barringer, 4658 Saxon Drive and David Fernandez, 317 Flagler Avenue, stated their name and were sworn in to testify.

Mr. Barringer stated that Mr. Fernandez paid a paver company to get permit and install the pavers. He stated that the paver permit was denied but he was never told that by the paver contractor. He stated that they met with former Planning Director Gail Henrikson and she stated that they would need a license agreement from the city to keep pavers in the right of way, a variance and also to meet with the City Engineer Kyle Fegley to see if they had to remove any of the pavers for drainage. He stated that they then met with Mr. Fegley and he suggested they remove 3 foot of pavers on both sides and another 3 foot by 7 foot section in the middle by the palm tree on the property for stormwater runoff.

Mr. Sather asked if any of the other properties in the area that have paved up to the street had license agreements with the city.

Mr. Mathen stated his name and was sworn in to testify. He stated that Mr. Fernandez is the first of probably 3 to 4 properties that will have to come before the Planning and Zoning Board for a variance and the City Commission for a license agreement. He stated that staff was waiting to see the results of this case before Code Enforcement took any further action on the other properties.

Mr. Calkins asked if there were other unpermitted jobs on the road.

Mr. Mathen stated that was correct.

Mr. Barringer stated that the city doesn't need to create less parking in this area.

Mr. Ratliff stated that it is going to be more of a public detriment to stick the cars in the road then in this driveway.

Debra Dugas, 200 North Pine Street, stated her name and was sworn in to testify. She stated that the staff report states that the applicant doesn't meet the 5 criteria and the Board continues to go against staff's recommendations for denial of variance requests.

Sue Perry, 1729 Running Creek Way, stated her name and was sworn in to testify. She stated that the city needs to consider changing some of the rules that the parking issue is a problem in this area on the beachside.

The Board felt that most of the criteria for the variance could be met.

**Motion by Mr. Ratliff, seconded by Mr. Calkins, to approve the requested variance. Motion passed unanimously on roll call vote, 7-0.**

#### NEW BUSINESS

C. A-10-16: 1059 TURNBULL CREEK ROAD / 2072 BURMA ROAD / 2569 SELLECK AVENUE

- Robert Werner, 1059 Turnbull Creek Road, New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation, Comprehensive Plan amendment from Volusia County Rural and ESC, Environmental System Corridor , to City Rural and Conservation, and rezoning from Volusia County MH-8, Rural Mobile Home Estate and RC, Resource Corridor to City RA, Rural Agriculture and Conservation. The subject property consists of approximately 1.5 acres, and is generally located north of Pioneer Trail, west of Williams Road addressed as 1059 Turnbull Creek Road, (VCPA# 7311-00-00-144)
- Joseph Teehan, 2072 Burma Road, New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation, Comprehensive Plan amendment from Volusia County UMI, Urban Medium Intensity, to City Medium Density Residential, and rezoning from Volusia County R-4, Urban Single-Family to City R-2, Single-Family Residential. The subject property consists of approximately 0.26 acres, and is generally located south of SR 44, west of South Walker Drive addressed as 2072 Burma Road, (VCPA# 7343-06-00-0764)
- Walter E. Vogt, 2569 Selleck Avenue, New Smyrna Beach, Florida 32168, applicant and property owner, request voluntary annexation,

Comprehensive Plan amendment from Volusia County ULI, Urban Low Intensity, to City LDR, Low Density Residential, and rezoning from Volusia County R-4, Urban Single-Family to City R-2, Single-Family Residential. The subject property consists of approximately 1 acre, and is generally located north of SR 44, west of North Glencoe Road addressed as 2569 Selleck Avenue, (VCPA# 7323-01-00-0166)

Mr. Mathen reviewed staffs' findings and stated that staff recommended approval of the requested annexations, Comprehensive Plan amendments and rezonings.

**Motion by Mr. Ratliff, seconded by Ms. Azzinaro, to recommend the City Commission approve the requested annexations, *Comprehensive Plan* amendments, and rezonings. Motion passed unanimously on a roll call vote, 7-0.**

D. CPA-2-16: FUTURE LAND USE ELEMENT AMENDMENT

The City of New Smyrna Beach, applicant, requests approval of Future Land Use Element amendments to City of New Smyrna Beach Comprehensive Plan, to change the Floor Area Ration (FAR) for the Hospitality Land Use designation on the beachside to a 2.0.

Mr. Bapp reviewed staffs' findings and stated that staff recommended approval of the Comprehensive Plan amendment. He presented a power point presentation to the Board.

Linda Mays, 836 Evergreen Street, stated her name then addressed the Board. She stated that she was in support of this request for the following reasons: traffic, safety and parking. She stated that she encourages the Board to approve the request.

Steve Provost, 1805 Beacon Street, stated his name then addressed the Board. He stated that he was in favor of the request and staff did a really good job on this report and it doesn't make any sense to not approve this request.

Sally Gillespie, 610 North Peninsula Avenue, stated her name then addressed the Board. She stated that she urges the Board to approve the request it just makes common sense.

**Motion by Mr. Calkins, seconded by Mr. Ratliff, to recommend the City Commission approve the requested *Comprehensive Plan* amendment. Motion passed unanimously on a roll call vote, 7-0.**

E. PUD-2-16: VENETIAN BAY VILLIAGE 1<sup>ST</sup> AMENDMENT

James Stowers, Esquire, 424 Luna Bella Lane, New Smyrna Beach, Florida 32168, legal representative of the property owner, Geosam Capital US LP, 424 Luna Bella Lane, New Smyrna Beach, Florida 32168, requests a first amendment to the Venetian Bay Village, Village Planned Development – Planned Unit Development (VDP-PUD) Amended and Restated Master Development Agreement (MDA) with the City of New Smyrna Beach, Florida to delete (indicated by strikethrough) and add (indicated by underline) as follows: **Lots 55'**

**or Wider:** May have garages located to the front of the house under the following conditions:

- The garage has a side entry court (oriented toward the side yard) and covers not more than 48 percent of the front façade providing the architectural treatment of the garage is at the same level of detail and quality as the primary façade.
- The garage, may face the front, provided it is set back fifteen (15) feet from the front façade, not including porches and bays. Provided that the architectural treatment of the garage is at the same level of detail and quality as the primary façade and one of the following two conditions is met: (1) front facing garages are set back the lesser of ten (10') feet from the porch's front edge, or fifteen (15') feet from the front façade; or (2) the garage has a side entry court (oriented toward the side yard) and covers not more than 48 percent of the front façade.

The subject property consists of approximately 1410 acres and is generally located north of State Road 44, south of Pioneer Trail, west of Interstate 95, and on both east and west sides of Airport Road.

Ms. King reviewed staffs' findings and stated that staff recommended approval of the Plan Unit Development.

**Motion by Mr. Dever, seconded by Mr. Sather, to recommend the City Commission approve the requested *Planned Unit Development*. Motion passed unanimously on a roll call vote, 7-0.**

#### COMMENTS OR STATEMENTS BY MEMBERS OF THE BOARD

Mr. Dever stated that I-1 zoning doesn't have recreational vehicle parking but all the other I-2 thru I-4 include recreational vehicle parking. He stated that he didn't understand why that was the only one that did not.

Ms. King stated that I-2 thru I-4 zoning were applicant driven changes to the LDR and did not include I-1.

Mr. Dever stated that he thought it should be looked in to by staff.

Ms. King stated that staff would be happy to look at it with the Board's consensus.

The Board consensus was to look at the I-1 zoning for recreational vehicle parking.

Mr. Sather stated that he would like to city be more proactive when we see is going to affect other property owners such as on Jessamine Avenue.

#### REPORTS AND COMMUNICATIONS BY THE STAFF

- May 2016 Development Activity Report

No discussion

ADJOURNMENT

With there being no further business, the meeting was adjourned at 7:52pm.