

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
OCTOBER 19, 2004
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA

The Hearing of October 19, 2004 was called to order at 4:35 p.m. Answering to roll call:

Maggie Hawk, Chairperson
John Shelby, Vice Chairperson
Michael E. Slayton
Jay Crocker
Elliott Hoffman
Susan Ellis
Carol Kerrigan

Also present were Code Enforcement Supervisor Lynne Kunkle, Code Enforcement Officer Barbara Bobelak, Mike Dyer, Acting City Attorney, and Amy Thomas, Administrative Specialist.

APPROVAL OF MINUTES

July 20th, 2004 Hearing

Jay Crocker made a motion to approve the minutes; seconded by Elliot Hoffman. Motion carried unanimously on roll call vote 7-0.

Regina Lynne Kunkle, Code Enforcement Supervisor and Barbara Jo Bobelak, Code Enforcement Officer were sworn for testimony.

OLD BUSINESS:

CASE NO: CE-024-94-95C

Wynnelle Bray
718 Canal Street
New Smyrna Beach, FL 32168

Violation Location: 718 Canal Street

- A. Condemnation of 718 Canal Street, New Smyrna Beach, FL 32168

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle stated that the case is in compliance and requested that the Board reduce the lien to \$0.00.

Michael Slayton made a motion to find the case in compliance and recommended the case go to City Commission for approval to reduce the lien to \$0.00; seconded by Susan Ellis. Motion carried unanimously on roll call vote 7- 0.

CASE NO: CE-032-01-020

Raymond Lubrani
803 Oakwood Avenue
New Smyrna Beach, FL 32169

Violation Location: 803 Oakwood

- A. Permitting or causing to be permitted construction without the required permit(s) in violation of §304.00A. of the Land Development Regulations.
- B. Permitting or causing to be permitted the storage of building materials on a residential lot for which a building permit is not in effect in violation of §802.01 of the Land Development Regulations.
- C. Permitting or causing to be permitted the storage of vehicles without current license plates on a residentially zoned lot in violation of §802.02 of the Land Development Regulations.

- D. Permitting or causing to be permitted the storage of two (2) pieces of major recreational equipment in the front yard in violation of §802.05 of the Land Development Regulations.
- E. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property §38-113. of the City Code of Ordinances.
- F. Permitting or causing to be permitted the open storage of inoperable vehicles in violation of §307.4 of the Standard Housing Code, 1997 Edition.

Chairperson Hawk noted for the record that no one was present to represent this case.

The Board requested staff to gather current evidence to bring before the Board at the hearing on the 16th day of November 2004.

Jay Crocker made a motion to continue the case until the 16th day of November 2004: seconded by John Shelby. Motion carried unanimously on roll call vote 7-0.

CASE NO: CE2003033M Sugar & Lena Tillman, Estates
720 Fairmont Road
Ormond Beach, FL 32114

Violation Location: 536 North Myrtle Avenue

- A. Permitting or causing to be permitted a dwelling unit to exist without sanitary facilities all maintained in good working condition and properly connected to an approved water and sewer system, and without every plumbing fixture and water and waste pipe properly installed and maintained in good sanitary working condition free from defects, leaks, and obstructions.
- B. Permitting or causing to be permitted a dwelling unit to exist without a supply of both cold and hot water connected to the kitchen sink, lavatory, and tub or shower.
- C. Permitting or causing to be permitted a dwelling unit to exist without heating facilities which are properly installed and maintained in a safe and good working condition and are capable of heating water to such a temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, lavatory basin, bathtub or shower at a temperature of not less than 120°f (49°c).

- D. Permitting or causing to be permitted a dwelling unit to exist without heating facilities which are properly installed, maintained in safe and good working conditions, and are capable of safely and adequately heating all habitable rooms and bathrooms.
- E. Permitting or causing to be permitted a dwelling unit to exist without a kitchen containing (1) food preparation surfaces impervious to water and free from defects which could trap food or liquid, (2) shelving, cabinets or drawers for the storage of food and cooking and eating utensils, (3) freestanding or permanently installed cook stove, and (4) mechanical refrigeration equipment for the storage of perishable foodstuffs.
- F. Permitting or causing to be permitted a dwelling unit to exist without adequate garbage disposal facilities or garbage storage containers.
- G. Permitting or causing to be permitted a dwelling unit to exist without an approved listed smoke detector.
- H. Permitting or causing to be permitted a dwelling unit to exist without (1) every habitable room or space containing two separate and remote receptacle outlets, (2) bedrooms having, in addition, at least one wall switch controlled lighting outlet, (3) the kitchen, having two separate and remote receptacle outlets and a wall or ceiling lighting outlet controlled by a wall switch, (4) every hall, water closet compartment, bathroom, laundry room or furnace room having at least one ceiling-mounted or wall-mounted lighting outlet and (5) at least one receptacle outlet provided in the bathroom and laundry room.
- I. Permitting or causing to be permitted a dwelling unit to exist without exterior walls being free of holes, breaks, loose or rotting boards or timbers.
- J. Permitting or causing to be permitted a dwelling unit to exist with roofs that are not structurally sound and maintained in a safe manner without defects, which might admit rain or cause dampness in the walls or interior portion of the building.
- K. Permitting or causing to be permitted a dwelling unit to exist without the windows being substantially weather tight, watertight, rodent proof, and in sound working condition and good repair.
- L. Permitting or causing to be permitted a dwelling unit to exist without the window sashes being fully supplied with glass windowpanes or an approved substitute, which are without open cracks or holes.
- M. Permitting or causing to be permitted a dwelling unit to exist without the window sashes being properly fitted and weather tight within the window frame.
- N. Permitting or causing to be permitted a dwelling unit to exist without the windows required for light and ventilation for habitable rooms being capable of being easily opened and secured in position by window hardware.
- O. Permitting or causing to be permitted a dwelling unit to exist without the exterior door(s) being substantially weather tight, watertight, and rodent proof and in sound working condition and good repair.

- P. Permitting or causing to be permitted a dwelling unit to exist without the exterior door(s) being provided with properly installed hardware that is maintained to insure reasonable ease of operation to open, close and secure in an open or closed position.
- Q. Permitting or causing to be permitted a dwelling unit to exist without the exterior door frames being properly maintained and affixed with weatherstripping and thresholds as required to be substantially weather tight, watertight and rodent and insect resistant when the door is in a closed position.
- R. Permitting or causing to be permitted a dwelling unit to exist without exterior door jambs, stops, headers and moldings securely attached to the structure, maintained in good condition without splitting or deterioration that would minimize the strength and security of the door in a closed position.
- S. Permitting or causing to be permitted a dwelling unit to exist without screens on all exterior openable windows and doors used or required for ventilation.
- T. Permitting or causing to be permitted a dwelling unit to exist without the required protective treatment on all exterior wood surfaces.
- U. Permitting or causing to be permitted a dwelling unit to exist with evidence of deterioration of structural elements rendering the structure unsound and incapable of carrying normal loads.

Chairperson Hawk noted for the record that no one was present to represent this case.

Jay Crocker made a motion to take no action on this case and to move onto the next case; seconded by Michael Slayton. Motion passed unanimously on roll call vote 7-0.

CASE NO: CE2003054M Reginald Copeland
C/O Melvin C. & Elizabeth Copeland
10 Raintree Drive
Port Orange, FL 32127

Violation Location: 536 N. Myrtle Avenue

- A. Permitting or causing to be permitted the repair of a residential structure without the required permit.

Chairperson Hawk noted for the record that no one was present to represent this case.

Jay Crocker made a motion to take no action on this case and to move onto the next case; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2004-0032D

Lee's Air Conditioning, Inc.
4700 Maple Lane
Edgewater, FL 32141

In Compliance

Violation Location: 527 Dora Street

- B. Permitting or causing to be permitted a structure to exist, which has not been maintained in a safe and sanitary condition.

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle stated that the case is in compliance.

Michael Slayton made a motion to find the case in compliance; seconded by Jay Crocker. Motion carried unanimously on roll call vote 7-0.

CASE NO: CE2004-0141

Dianne Lynn
536 Faulkner St.
New Smyrna Beach, FL 32168

Violation Location: 536 Faulkner Street

- A. Permitting or causing to be permitted an accessory structure (shed) to be erected within the required side yard setback in violation of the R-4 Zoning District of the Land Development Regulations.

Curtis Dunlap was present and sworn for testimony.

Mr. Dunlap stated he had moved the shed and pulled up the concrete slab.

Ms. Kunkle stated the case was in compliance and requested the lien be reduced to \$0.00

Michael Slayton made a motion to find the case in compliance and recommended the case go to City Commission for approval to reduce the lien to \$0.00; seconded by John Shelby. Motion carried on roll call vote 5- 2, with Jay Crocker and Carol Kerrigan as the dissenting votes.

CASE NO: CE2004-0185D Tony D. & Theresa Kelly
1900 E. Gateway Drive
New Smyrna Beach, FL 32168

Violation Location: 609 Dora Street

- A. Permitting or causing to be permitted a structure to exist that has not been maintained in a safe and sanitary condition in violation of §101.6 of the Standard Housing Code, 1997 Edition.

Tony & Theresa Kelly were present and sworn for testimony.

Mike Dyer recommended the case go before the Building Trades Board.

No action was taken.

CASE NO: C2004-0228 John R. & Deborah W. Swiderski
139 Park Blvd.
New Smyrna Beach, FL 32168

Violation Location: 139 Park Blvd.

- A. Permitting or causing to be permitted storage of a semi trailer in a residential zoned (R5) area.

Deborah Swiderski was present and sworn for testimony, and she asked for a 30-day extension.

Jay Crocker made a motion to continue the case until the 16th day of November 2004: seconded by John Shelby. Motion carried unanimously on roll call vote 7-0.

CASE NO: C2004-0304H Michael Scott Wood
P.O. Box 1465
New Smyrna Beach, FL 32170-1465

Violation Location: 2506 Hill Street

- A. Permitting or causing to be permitted a vacant structure to exist that has deteriorated to the point it is not longer in a safe, secure and sanitary condition.
- B. Permitting or causing to be permitted the exterior property to be overgrown with weeds.
- C. Permitting or causing to be permitted the exterior of the structure to be inadequately maintained, structurally unsound and unsanitary which poses a threat to the public health, safety and welfare.
- D. Permitting or causing to be permitted exterior structural members that have deteriorated to the point they are not longer capable of safely supporting the imposed dead and live loads.
- E. Permitting or causing to be permitted exterior walls that have deteriorated to the point they have holes and breaks.
- F. Permitting or causing to be permitted a roof that has deteriorated to the point it no longer is sound, tight and admits rain to the interior portion of the structure.
- G. Permitting or causing to be permitted an exterior staircase that has deteriorated to the point it is incapable of supporting the imposed loads.
- H. Permitting or causing to be permitted the deterioration of the interior of the structure to the point it is no longer in good repair, structurally sound and in sanitary condition.
- I. Permitting or causing to be permitted the deterioration of interior structural members to the point they are no longer structurally sound and capable of supporting imposed loads.
- J. Permitting or causing to be permitted the deterioration of the interior surfaces that to the point they are not longer clean and sanitary.

Mr. Dyer stated this case would need to go to the Building Trades Board as part of the condemnation process.

The Board took no action.

CASE NO: C2004-0330 Glenn J. & Catherine Milne
1630 N. Atlantic Avenue
New Smyrna Beach, FL 32169

Violation Location: 2604 N. Dixie Freeway

- A. Permitting or causing to be permitted a vacant structure, which has not been maintained in a clean, safe and sanitary condition.

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle informed the Board that the property has a new owner, has Historic Preservation Commission approval for the demolition of the structure and recommended the Board continue the case.

Jay Crocker made a motion to continue the case until the 16th day of November 2004: seconded by Carol Kerrigan. Motion carried unanimously on roll call vote 7-0.

CASE NO: C2004-0354 Tiro Beachwear, Inc.
701 3rd Avenue
New Smyrna Beach, FL 32169

Violation Location: Saxon Drive

- A. Permitting or causing to be permitted the removal of 14 trees without the required tree removal permit.

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle testified that she has a letter from Mark Hall, Attorney, requesting the case be dismissed or continued. Ms. Kunkle recommended the Board continue the case.

Jay Crocker made a motion to continue the case until the 18th day of January 2005: seconded by Susan Ellis. Motion carried unanimously on roll call vote 7-0.

CASE NO: C2004-0355 Neil Chapman
815 Downing St.
New Smyrna Beach, FL 32168

Violation Location: 706 Canal Street

- A. Permitting or causing to be permitted a vacant structure, which has not been maintained in a clean, safe and sanitary condition.

Neil Chapman stated he was in compliance and requested the case be dismissed.

There was a discussion between Ms. Kunkle and the Board regarding the condition of the property.

Michael Slayton made a motion to find the case in compliance; seconded by Jay Crocker. Motion carried unanimously on roll call vote 7-0.

CASE NO: C2004-0359 Win-San Club Condo Association
111 N. Atlantic Avenue
New Smyrna Beach, FL 32169

Violation Location: 111 N. Atlantic Avenue

- A. Permitting or causing to be permitted a swimming pool to exist without the required barrier, which is a minimum of 48 inches.
- B. Permitting or causing to be permitted a swimming pool to exist without access gates that are self-closing and equipped with self-latching locking devices located no less than 54 inches from the bottom of the gate.

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle stated that the case is in compliance.

Susan Ellis made a motion to find the case in compliance; seconded by John Shelby. Motion carried unanimously on roll call vote 7-0.

CASE NO: C2004-0377 Emilio & Luz A. Cirelli
In compliance 354 Pinewoods Rd.
07/30/04 Ormond Beach, FL 32174

Violation Location: 415 Palm Street

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property.

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle stated that the case is in compliance.

Michael Slayton made a motion to find the case in compliance; seconded by Susan Ellis. Motion carried unanimously on roll call vote 7-0.

NEW BUSINESS:

CASE NO: CE2003044C

Mark Pernell
North Causeway Marine Corp.
4 N. Causeway
New Smyrna Beach, FL 32169

Violation Location: 4 N. Causeway

Building Code Violations (Land Development Regulations – Ordinance 1-91):

1. Permitting or causing to be permitted the construction of docks, additional boat (dry) storage, fish-cleaning station, a roof on the fish-cleaning station, and a marine fuel dispensing facility without the required state, federal, and local permits in violation of the following:

§304.00 A. - Permitting or causing to be permitted construction without the required building permit.

§803.04 F. - Permitting or causing to be permitted the construction of docks without securing all state and federal permits prior to construction.

Fire Code Violations (NFPA 303, 2000 Edition):

2. Permitting or causing to be permitted the operation of a marina and boatyard without providing the fire department access to the dock and fueling areas by means of an open fire lane, in violation of the following:

§2.2.3 - Permitting or causing to be permitted the operation of a gated facility without providing an appropriate means of access (including keys, cardkeys, and combinations) to the fire department or secured in a lock box on the premises.

§5.1.2 - Permitting or causing to be permitted the operation of a marina and boatyard without providing ready access to all piers, floats, and wharfs for fire-fighting equipment.

3. Permitting or causing to be permitted the operation of a marina and boatyard without providing fire protection for the dock and fueling areas by means of a standpipe and extinguishers in violation of the following:

§4.2.2.1 - Permitting or causing to be permitted the operation of a marina and boatyard without the required fire extinguishers.

§4.2.3 - Permitting or causing to be permitted a fuel-dispensing area without the required fire extinguishers (for extra (high) hazard type) installed on two (2) sides of the fuel-dispensing area.

§4.3.4 - Permitting or causing to be permitted the operation of a marina and boatyard without providing an approved water supply within 100 feet of the pier / land intersection or fire department connection serving fire protection systems.

§4.4.1 - Permitting or causing to be permitted the operation of a marina and boatyard without the required standpipe system.

§5.2.1.8 - Permitting or causing to be permitted the outdoor storage of boats without providing access to the boats from the fire apparatus by a hose-lay distance not exceeding 150 feet.

§5.2.3.3 - Permitting or causing to be permitted the storage of boats on multilevel racks in a building without an approved automatic extinguishing system

4. Permitting or causing to be permitted the operation of a marina and boatyard without posting the safety requirements and instructions for dock and fueling areas in violation of the following:

§2.1 - Permitting or causing to be permitted the operation of a marina and boatyard without having posted "NO SMOKING SIGNS" in all areas where fuels and other flammable liquids are stored or dispensed.

§2.6 - Permitting or causing to be permitted the operation of a marina without the required signs, posters, or posted instructions reminding the public of basic fire safety practices and to warn of unusual or extreme fire hazards.

§6.1.4 - Permitting or causing to be permitted the operation of a marina/boatyard without posting or providing to boat operators a list of safe operating procedures.

5. Permitting or causing to be permitted the operation of a marina and boatyard without having met the requirements for electrical wiring and equipment in violation of the following:

§3.3.1 - Permitting or causing to be permitted the operation of a marina/boatyard without the required benchmark indicating the electrical datum plane of the land area permanently located on shore.

Fire Code Violations (NFPA 30A, 2000 Edition):

6. Permitting or causing to be permitted improper installation of fuel storage and dispensing equipment in violation of the following:

§4.1 – Permitting or causing to be permitted the storage of liquid fuels without having met the provisions of §11.2 of NFPA 30.

§4.3.2 – Permitting or causing to be permitted the installation of aboveground storage tanks without having met the applicable requirements of Chapters 2 and 3 of NFPA 30, *Flammable and Combustible Liquids Code*.

§4.3.2.8 – Permitting or causing to be permitted the installation of aboveground tanks without providing spill control that meets the requirements of §2.3.2.3 of NFPA 30, *Flammable and Combustible Liquids Code*.

§4.3.3.3 – Permitting or causing to be permitted the installation of aboveground storage tanks without completely enclosing each tank with its own vault.

§5.2.2 – Permitting or causing to be permitted the installation of a piping system that has not been protected from physical damage.

§5.2.3 – Permitting or causing to be permitted the installation of a piping system that is in contact with soil and has not been protected from corrosion.

§6.3.1 – Permitting or causing to be permitted the dispensing of Class I and Class II liquids by means other than by fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.

§6.3.2 – Permitting or causing to be permitted the installation of dispensing devices for Class I liquids that are not listed.

§6.3.4 – Permitting or causing to be permitted the installation of dispensing devices that are not mounted on a concrete island or otherwise protected from collision damage.

§6.3.9 – Permitting or causing to be permitted the installation of dispensing devices without the required listed, rigidly anchored emergency shutoff valve.

§6.5.1 – Permitting or causing to be permitted the installation of dispensing devices with hoses in excess of 18 feet that is not secured so as to protect the hoses from damage.

§6.6.5 – Permitting or causing to be permitted the installation of dispensing devices without the automatic-closing type nozzles and without a latch-open device.

7. Permitting or causing to be permitted the operation of a marina and boatyard without the required telephone or other means of contacting the fire department in case of emergency in violation of the following:

§9.5.5. – Permitting or causing to be permitted the operation of a marina and boatyard without the required telephone or other approved, clearly identified means to notify the fire department.

8. Permitting or causing to be permitted the refueling of vessels or marine craft directly from a tank vehicle in violation of the following:

§11.9 – Permitting or causing to be permitted the dispensing of Class II liquids in the open from a tank vehicle to a marine craft other than that which is used in conjunction with the business operation.

Fire Code Violations (Fire Prevention Code, 2000 Edition)

9. Permitting or causing to be permitted the storage of liquids in a tank vehicle.

§28-4.2.1 - Permitting or causing to be permitted the outdoor storage of liquids which is not stored in tanks under ground as governed by 2-4 of NFPA 30, *Flammable and Combustible Liquids Code* or tanks located

above ground with the approval of the authority having jurisdiction and as approved for in §2-4 of NFPA 30A (30A: 10-2.1.1)

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle informed the Board that she had received a letter including a compliance schedule stating the subject property would be in compliance within four (4) months.

The Board expressed their concerns about the time frame stated in the letter from Mr. Pernell. Fire issues at the site being the main concern.

Mike Bosse, Fire Marshal was sworn for testimony at the request of the Board.

Conversation ensued as Mr. Bosse discussed the fire code violations with the Board members. The Board continued to express their concerns regarding the magnitude of the violations and the compliance schedule that Mr. Pernell was asking for.

Carol Kerrigan made a motion to continue the case until the 16th day of November 2004: seconded by Michael Slayton. Motion carried on roll call vote 6-1, with John Shelby as the dissenting vote.

CASE NO: C2004-0378

Jewel G. Freeman & Fearn M. Parker
P.O. Box 310728
Jamaica, NY 11431-0728

Violation Location: 405 Palm Street

- A. Permitting or causing to be permitted weeds and undergrowth upon the subject property.

Chairperson Hawk noted for the record that no one was present to represent this case.

Ms. Kunkle submitted pictures of the lot that were taken earlier that day and testified to the condition of the property.

Michael Slayton made a motion to find the subject property in violation and to bring the property in compliance by the 16th day of November 2004 or face a fine of \$30.00 per day; seconded by John Shelby. Motion carried unanimously on roll call vote 7- 0.

CASE NO: CE2003033M Sugar & Lena Tillman, Estates
720 Fairmont Road
Ormond Beach, FL 32114

Violation Location: 536 North Myrtle Avenue

CASE NO: CE2003054M Reginald Copeland
C/O Melvin C. & Elizabeth Copeland
10 Raintree Drive
Port Orange, FL 32127

Violation Location: 536 N. Myrtle Avenue

- A. Permitting or causing to be permitted the repair of a residential structure without the required permit.

Reginald Copeland was present and requested to speak on behalf of cases CE2003033M and CE2003054M.

Reginald Copeland was sworn for testimony.

Carol Kerrigan made a motion to re-open the two cases; seconded by Michael Slayton. Motion carried unanimously on roll call vote 7-0.

Mr. Copeland reminded the Board of the history behind the two cases.

Ms. Kunkle testified that the property was still in violation; that permits had not been pulled and no inspections had been conducted, in order to know if the property meets the minimum code.

Acting City Attorney, Mike Dyer, recommended Mr. Copeland appear before the City Commission.

The Board took no further action.

DISCUSSION:

None

ADJOURNMENT:

Michael Slayton made a motion to adjourn the meeting at 7:00 pm; seconded by Jay Crocker.

Pursuant to Florida statute 286.0105, if an individual decides to appeal any decision made by the Citizens Code Enforcement Board with respect to any matter considered at this hearing, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. Such person must provide a method for recording the proceedings.

In accordance with the Americans with Disabilities Act (ADA), persons needing assistance to participate in any of these proceedings should contact the Administrative Specialist of the Citizens Code Enforcement Board listed below prior to the hearing:

Amy Thomas
Administrative Specialist
% City Hall
210 Sams Avenue
New Smyrna Beach, FL 32168-9985
Telephone: 386.424.2265
Fax: 386.424.2143