

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING HELD AT 4:30 P.M.
NOVEMBER 17, 2004
CITY COMMISSION CHAMBERS, 210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA

The Hearing of November 17th, 2004 was called to order at 4:30 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, Frank Gummey, City Attorney and Amy Thomas, Administrative Specialist.

APPROVAL OF MINUTES

October 19th, 2004 Hearing

The Board requested the minutes for the hearing held on October 19, 2004, be amended to reflect their concerns regarding Case CE2003044C involving Mark Pernel and the North Causeway Marine, Corp., and brought back to the Board at the January, 2005 Hearing.

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

OLD BUSINESS:

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.

Raymond Lubrani and Sue Perry, Realtor was present and sworn for testimony.

Sue Perry testified that Mr. Lubrani had applied for a zoning reclassification and the Planning and Zoning Board approved the request but the City Commission denied the request.

Conversation ensued between the Board members, Sue Perry and Mr. Lubrani regarding the B-3 and B-4 zoning classifications.

Lynne Kunkle testified that violations B thru F are in compliance but that violation "A" still remains unresolved.

Mr. Lubrani stated he had permits for construction.

Ms. Kunkle testified that the permit Mr. Lubrani pulled was for sliding glass doors and a concrete patio.

Ms. Kunkle gave the Board the pictures previously submitted as evidence for the Board's review.

Elliott Hoffman made a motion giving Mr. Lubrani two (2) weeks to bring the property into compliance or face a fine of \$250.00 per day; seconded by Jay Crocker. Motion passed unanimously on roll call vote 7-0.

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)

Mark Pernell and Kim Hardee were present and sworn for testimony.

Kim Hardee testified that she submitted applications for building permits in April and June 2004 and finally received the permits in November 2004.

The Board members expressed their concerns regarding the fire code violations and asked if any steps had been made to correct them.

Both Ms. Hardee and Mr. Pernell testified that signs and fire extinguishers were being taken care of.

Mr. Pernell explained to the Board that many of the violations, such as the oil tanks, no longer existed as a result of the hurricanes.

Mr. Pernell further testified that if given the four-month compliance schedule as requested in an earlier letter, all of the violations would be corrected.

Ms. Kunkle reminded the Board that this was the letter she referred to when she asked for the four- month compliance schedule at the October hearing.

The Board members expressed their concerns regarding the order in which the violations would be remedied. More specifically the Board agreed the violations should be prioritized and that something like the “NO SMOKING” signs could easily be erected now, where as other violations may take longer.

Michael Slayton made a motion to accept the four-month compliance schedule; seconded by Susan Ellis. Motion passed on roll call vote 6-1, with Elliott Hoffman as the dissenting vote.

CASE NO: C2004-0228
In Compliance
As of 11-4-2004

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.

At the Hearing on the 20th day of July 2004 the Board entered an Order finding John R. & Deborah W. Swiderski in violation of the R-5 Zoning District and gave John R. & Deborah W. Swiderski until the 19th day of October 2004 to bring the subject property into compliance or face a fine of \$50.00 per day for each and every day the subject property remains in violation.

Deborah Swiderski was present and sworn for testimony.

Ms. Bobelak informed the Board that the property had been brought into compliance and that they only had to make a decision regarding the fine of \$750.00.

Jay Crocker made a motion to find this case in compliance and to reduce the fine to zero dollars (\$0.00); seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2004-0330

David Conway
329 Sweet Bay Avenue
New Smyrna Beach, FL 32168

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.

Lynne Kunkle informed the Board that Mr. Conway was issued a demolition permit on November 12th, 2004 and recommended the Board continue the case until the January 2005 meeting.

Michael Slayton made a motion to continue this case until the January meeting; seconded by John Shelby. Motion passed unanimously on roll call 7-0.

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 recommended the Board impose the fine and authorize the City Attorney to record the lien.

Michael Slayton made a motion to impose the fine of \$30.00 per day for each day the subject property is in violation and authorize the City Attorney to record the lien; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

NEW BUSINESS:

CASE NO: C2004-0649 Michael J. Reed
909 Canal Street
New Smyrna Beach, FL 32168

Violation Location: 909 Canal Street

- A. Permitting or causing to be permitted dirt bike activities on the subject property.
- B. Permitting or causing to be permitted the construction of ramps and the creation of a dirt bike track upon the subject property.
- C. Permitting or causing to be permitted ramps in the required side yard.

Michael Reed was present and sworn for testimony.

Mr. Reed stated that what is being referred to, as a “dirt bike track” is his landscaping.

Mr. Reed testified that the motorcycle activity that is being performed is by some child’s toys less than 2 feet tall and under 50cc.

Mr. Reed stated that his attorney Mark Hall was not able to be present and if the case wasn’t resolved to ask for a continuance in order for Mr. Hall to be present.

Michael Slayton asked if it was against zoning to ride a motorcycle in your yard.

Ms. Kunkle testified that the activity is not a customary accessory use to the primary principal use, which is residential.

Ms. Kunkle testified that the City receives calls often regarding the noise from the motorcycle activity.

Ms. Kerrigan stated that she considers this activity a valid violation and it is obvious the landscaping is a berm with tracks through it and it’s not a use that is permitted.

Mr. Reed requested a continuance in order for his attorney to be present.

Mr. Shelby asked Mr. Reed if he’d be willing not to ride his motorcycles during the 60 days for continuance.

Mr. Reed testified that he’d be willing to stop the bike activity during the 60-day period.

Richard Kingdom was sworn for testimony.

Mr. Kingdom testified that the motor on the so-called motorcycles are the same as a lawnmower.

Mr. Kingdom testified that there are 6 to 8 people that have the small motorcycles that have 49 cc’s and are less than 3 horsepower.

Susan Ellis questioned if all 6 or 8 of the people ride on the subject property.

Mr. Reed responded that they do not all ride at the same time.

Jay Crocker made a motion to continue the case until the January 2005 hearing; seconded by Michael Slayton. Motion passed on roll call vote 5-2, with Carol Kerrigan and John Shelby dissenting.

Ms. Kunkle asked Mr. Crocker for clarification of the motion to see if the 60-day non-activity was part of the motion.

Mr. Crocker replied, “No, it’s not part of the motion”.

CASE NO: C2004-0650

Gregg Neill
Our Back Yard
1301 Canal Street
New Smyrna Beach, FL 32168

Violation Location: 1301 Canal Street

- A. Permitting or causing to be permitted the operation of a prohibited business (outdoor vendor) upon the subject property.
- B. Permitting or causing to be permitted the erection of signs without the required permit.
- C. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property.

Gregg Neil and David Crabtree were present and sworn for testimony.

Mr. Neil testified there is no second business that the blue crab sales are part of his existing business.

Ms. Bobelak testified the blue crab business has been operating outside the establishment for quite sometime.

Mr. Crocker asked if the City staff witnessed the operation of the outdoor vending of the blue crabs.

Ms. Bobelak testified that she had witnessed the outdoor vending.

Jay Crocker made a motion to find the subject property in violation of permitting the operation of a prohibited business (outdoor vendor) and stated that if this violation recurs the subject property could face a fine of up to \$ 500.00 per day; seconded by Susan Ellis. Motion passed unanimously on roll call vote 7-0.

Mr. Crocker inquired about the signs installed without proper permits.

Ms. Bobelak testified the sign that is attached to the building and the blue crab sign was not permitted.

Jay Crocker made a motion to find the subject property in violation for the signs that were erected without the required permit and to bring the property into compliance within one (1) month or face a fine of \$50.00 per day; seconded by John Shelby. Motion passed unanimously on roll call vote 7-0.

CASE NO: C2004-0962

R & B LLC
96 Cedar Dune Drive
New Smyrna Beach, Fl 32169

Violation Location: 690 3rd Avenue

- A. Permitting or causing to be permitted discarded and abandoned waste material upon the subject property.
- B. Permitting or causing to be permitted the placement of garbage containers at the roadside for pickup prior to sundown on the day next proceeding the regularly scheduled collection day.
- C. Permitting or causing to be permitted deviation from the approved site plan:
 - 1. The parking lot is not completely paved and striped.
 - 2. A portion of the paved parking lot is covered with dirt.
 - 3. The landscaping has not been completed and a portion of the landscaping that has been installed has not been properly maintained.
 - 4. Provide the revised landscape sheet to Development Services.
 - 5. The bike rack has not been installed.
 - 6. The fence, six feet in height, has not been erected along the north property line.
 - 7. The storage/construction shed must be removed.
 - 8. The bumper stop at parking space number seven (7) is broken and needs replaced.
 - 9. Provide access to the dumpster (blocked by curbing which needs to be removed) and remove the construction debris from the dumpster enclosure so as to free this area for the storage of trash and garbage.
 - 10. Provide ten (10) parking spaces along the south property line or amend the site plan by removing two (2) seats.

Richard Anthony Carlo was present and sworn for testimony.

Mr. Carlo testified that he understands the description of the violations listed and has no problem taking care of them.

Susan Ellis made a motion finding the subject property in violation and to bring the property in compliance by the 15th day of December 2004 or face a fine of \$150.00 per day; seconded by Michael Slayton. Motion passed unanimously on roll call vote 7-0.

DISCUSSION:

ADJOURNMENT:

Maggie Hawk made a motion to adjourn the meeting at 6:35 pm; seconded by Michael Slayton.

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