



**MINUTES OF THE REGULAR MEETING OF THE
COMMUNITY DEVELOPMENT BOARD
July 16, 2013**

1. CALL TO ORDER – 6:05PM.

Vice Chair Kirk Hansen verified the presence of a quorum with the attendance of Jason Burgess, Kelly Elmore, Kirk Hansen, Harley Parkes, Patrick Stratton and Sylvia Simmons. The meeting was called to order at 6:05pm. Also present were Navy Liaison and Ex-Officio Board member Matt Schellhorn, Principal Planner Erika Hall, and Building and Zoning Director Michael Griffin. Board member Brea Paul was absent.

2. ADOPTION OF MEETING MINUTES – JUNE 18, 2013.

Mr. Hansen called for a motion to approve the minutes of the June 18, 2013 regular meeting. Mr. Burgess moved that minutes be approved as written. Mr. Parkes seconded the motion and it carried by a vote of 6-0.

3. OLD BUSINESS. *None.*

4. NEW BUSINESS.

A. REZ-13-00100057, 1600 Selva Marina Drive (Atlantic Beach Partners LLC)

Public Hearing – Request to amend the Atlantic Beach Country Club Special Planned Area (Ordinance No. 90-13-216), to increase the total number of residential dwelling units permitted from one hundred eighty (180) to two hundred (200), with a maximum of twenty-six allocated to lands within the City of Atlantic Beach. Up to one hundred seventy-four (174) residential dwelling units are proposed on adjacent lands located within the City of Jacksonville. A parallel PUD Amendment requesting approval of the same master site development plan has been filed with the City of Jacksonville.

***Staff
Report***

Ms. Hall reported that Ordinance No. 90-13-216 adopting the Atlantic Beach Country Club Special Planned Area (ABCC SPA) had been approved by the City Commission at their last meeting on July 8, 2013. As approved, a maximum of one hundred eighty (180) residential dwelling units are permitted, though only one hundred sixty-nine (169) lots were shown on the accompanying Master Site Development Plan (MSDP). Of those, all but one lot were completely located within the City of Jacksonville. The current application is an amendment to the approved ABCC SPA, to increase the maximum number of dwelling units to two hundred (200). The additional twenty (20) dwelling units, along with another six (6) not shown on the original MSDP, are proposed to be

located within the City of Atlantic Beach. The remaining one hundred seventy-four (174) will be located within the City of Jacksonville.

***Applicant
Comment***

T R Hainline, Rogers Towers, PA, authorized agent for the applicant, explained that the additional twenty (20) units were being sought by the Country Club to offer to the developer as collateral to secure financing for the renovation of the Club facilities.

He reminded the Board that even with twenty-six (26) units located within the Atlantic Beach portion of the project this development would be considerably less intensive than what had been approved previously as the Selva Marina Residential Planned Unit Development. He noted that the applicant had met all procedural requirements, including submittal of a revised narrative, conceptual site plan and updated traffic study.

***Public
Comment***

Dave Estes (1275 Linkside Drive) stated that he had sent an email to members of the City Commission as well as this Board with recommendations for language he wished to see included in either the SPA narrative or the adopting ordinance. He said he had received positive response in support of this language, with one Commissioner saying that it was "good neighbor, common sense":

1. "The Club shall maintain their backyard (areas that members do not usually see, but neighbors on the perimeter of the club do see) by mowing/trimming grass and weeds, including the banks of ponds/waterways, and not piling up or dumping landscaping debris."
2. "The Club shall take into consideration how their actions will affect the neighbor's view of the golf course when planning landscaping, hedges, nets, fences, etc."

Mr. Estes also asked for clarification regarding the additional units being sought with the current amendment. He asked if these units were built, was there anything in the plan binding them to the location shown on the submitted site plan.

***Board
Discussion***

Mr. Hansen disclosed that he is a member of the Selva Marina Country Club Board, and that he is a participant in the LLC providing bridge financing to the Club. However, he has no personal financial interest that would be affected by action of this Board. Therefore, he declared he had no conflict of interest and stated he would not recuse himself from debate and vote on the

matter.

Mr. Elmore disclosed that he is the landscape architect of record for this project, and having a financial interest, he stated he would recuse himself from debate and vote on this matter. However, he said he would answer any questions the Board might have.

In response to Mr. Estes' inquiry, Mr. Elmore said the average cost of each golf course hole is between \$50,000 and \$100,000. Once the golf course design has been set, it severely limits the areas where houses can be constructed, so it is highly unlikely that, if constructed, these additional units would be located anywhere other than as depicted on the MSDP.

Mr. Hainline added that any changes to the Master Site Development Plan would necessitate an amendment that would require review by this Board and approval by the City Commission.

Motion

Mr. Parkes moved that the Community Development Board recommend approval of the Atlantic Beach Country Club Special Planned Area Amendment (Application REZ-13-00100057) to the City Commission, being an amendment to a previously approved Special Planned Area (SPA) described within said application, approving the Master Site Development Plan and adopting the application and supporting documents, and all terms and conditions set forth therein, subject to conditions enumerated, and provided the following findings of fact: (1) The request for amendment has been fully considered after public hearing with legal notice duly published as required by law; (2) The proposed amendment to the approved Special Planned Area is consistent with the Comprehensive Plan and the Future Land Use Designation of Residential, Low Density; (3) The proposed amendment to the approved Special Planned Area is consistent with the Land Development Regulations, specifically Division 6, establishing standards for Special Planned Areas and Section 24-124, establishing procedures for modifications to previously approved Special Planned Areas and Master Site Development Plans; (4) The proposed amendment, including the Master Site Development Plan, is consistent with the stated definition, intent and purpose of Special Planned Areas; (5) The zoning district classification of Special Planned Area, and the specific uses and special conditions as set forth herein, are consistent and compatible with surrounding development. Mr. Burgess seconded the motion and it passed unanimously, 5-0, with Mr. Elmore abstaining due to his previously stated conflict of interest.

B. ZVAR-13-00100063, 298 Pine Street (Bernstein)

Public Hearing – Request for variance from the provisions of Section 24-157(c)(1), to allow the construction of a fence exceeding four (4) feet in height within ten (10) feet of a property line which abuts a right-of-way that is fifty (50) feet or less in width. Specifically, the applicant seeks to construct a six (6) foot high fence on the property line abutting Seaspray Avenue, which is a fifty (50) foot wide right-of-way.

***Staff
Report***

Ms. Hall provided an overview of application, stating that the property owners had applied for a building permit for a six (6) foot high fence to be located on the property line abutting Seaspray Avenue in mid-February. Upon review, Planning & Zoning staff denied the permit, finding that the proposed location was in conflict with the provisions of Section 24-157(c)(1), which states “For corner lots located on rights-of-way that are fifty (50) feet or less in width, no fence, wall or landscaping exceeding four (4) feet in height, shall be allowed within ten (10) feet of any lot line which abuts a street.” Ms. Hall explained as is customary whenever staff disapproves an application, comments are entered into the permit tracking system and a “correction report” with instructions to revise plans is created, and forwarded to the applicant. In this case, the applicant was the fence contractor.

Ms. Hall said her correction report was faxed to the fence contractor, who in turn notified the property owner. Property owner Karen Bernstein then came to City Hall and met with Ms. Hall regarding the denial. She explained that Seaspray was heavily travelled by school children, who often stopped off to play in her yard. She said she had been told that there had previously been a six (6) foot high fence on the property line, and she noted that her neighbor directly to the west had a fence in the same location.

Ms. Hall said that she explained to Ms. Bernstein that it was not within her authority to approve anything in conflict with the Code, and that either the permit application would have to be amended to set the proposed six (6) foot high fence back ten (10) feet from the property line, or the height would have to be reduced to four (4) feet. Ms. Hall said it was her understanding when Ms. Bernstein said she had to have a six (6) foot high fence, that she was making the choice to move the fence in the required ten (10) feet from the property line abutting Seaspray Avenue, and thus, Ms. Hall approved the permit application based upon that statement.

***Applicant
Comment***

Jeremiah Mulligan, Mulligan & Kauttu (24 Cathedral Place, Saint Augustine) introduced himself as attorney for the applicants. He said he wished to address discrepancies in the staff report. While

the applicants agree the building permit was originally denied, they state that after meeting with Ms. Hall and explaining the exceptional circumstances giving rise to their need for a six (6) foot high fence, that she agreed and approved the request. Mr. Mulligan asserted that the approval was not conditioned on an amended application or an amended site plan.

Mr. Mulligan took issue with staff's assessment of the applicants' stated grounds for variance. Particularly, he said staff minimized the applicants' concerns for the welfare of school children who routinely play in the applicants' yard, and their concerns for privacy and protection of their private property, by stating knowledge of surrounding conditions were a matter of due diligence to be borne by the applicants' prior to purchasing the house. Further, he argued that properties along the Seaspray Avenue corridor do suffer exceptional circumstances preventing reasonable use of the property. Beyond staff's assertion that the property is zoned for single-family use, and that is what is currently used for, he asserted that reasonable use includes the right to privacy.

Mr. Mulligan noted that staff cited Section 24-157, regarding fences on corner lots, and stated that staff had applied the incorrect law, explaining that the fence in question was nowhere near the corner of the lot, but commenced some forty-nine (49) feet away from the corner. He also pointed out that the fence meets up with the fence belonging to the neighbor to the west.

Mr. Mulligan concluded, stating that allowance of this variance would not offend anyone, that the applicants had a need, and that their circumstances met the requirements of grounds for approval. Specifically, this is a safety issue for kids and a privacy issue for property owners, and absence of the fence does not allow complete and reasonable use of the property.

Mr. Mulligan also presented Board members with a petition in support of the application, signed by thirty-two (32) property owners within three hundred (300) feet of the subject property, as well as photos of their property and fourteen (14) other properties throughout the city having six (6) foot high fences constructed on or near street-side property lines.

***Public
Comment***

Karen Bernstein (298 Pine Street), introduced herself as the property owner. She said since purchase, the house has undergone major construction to rectify numerous issues. For a number of weeks she was not residing at the location and was unaware of the impacts of school traffic on the property. As she

came to the house to check work progress, she often found children playing on their skateboards on the paver patio and planter boxes, and even parents sitting on the planter box waiting for their children.

Ms. Bernstein said she has since purchased a yellow lab puppy, and with the existing two (2) foot high planter, a four (4) foot high fence would not be sufficient to contain the dog and assure safety of children walking by on the adjacent sidewalk.

Ms. Bernstein said the dates in the staff report were incorrect, agreeing that the original application was made on February 19th, and that Ms. Hall's denial was dated February 19th also, but stating that it was actually February 26th – one week later – when she went to City Hall to discuss the denial with Ms. Hall.

Ms. Bernstein said Ms. Hall had told her that she understood the circumstances to be exceptional, and that she approved the six (6) foot fence to be located on the property line, but warned if there was a complaint, it would be taken to Code Enforcement.

Ms. Bernstein said her contractor picked up the permit on March 5th, and there were no conditions or disclosures on the permit, so the fence was constructed as originally submitted. The next thing she knew, there was a Code Enforcement complaint, apparently from a man living some two miles away.

Denise Rubin (229 Pine Street) said she was a neighbor. She said she has lived in the area for fifteen years and she appreciates all the improvements the Bernsteins have done to the property, because it affects all the homeowners in the area. She also said at one time, there was a six (6) foot high fence in that same location, but a previous owner had removed it.

Anne McConnell (297 Magnolia Street) said she was the neighbor immediately to the west. She verified that prior to the construction of the fence, children were constantly in the Bernsteins' yard.

Stacey Frank (273 Pine Street) said the Bernsteins had greatly improved the property, and this side yard was the only space they could enjoy an outdoor area. She added she did not understand how someone living two miles away on Beach Boulevard could have a problem with this.

Ernie Voisin (289 Pine Street) said he did not have an issue with the fence, and there were many other such fences throughout Atlantic Beach.

Daniel Pence (Pence Property Management) said that he was the fence contractor. He said there was clear explanation provided with the fence was originally denied, but there were no conditions provided on the permit when he picked it up.

***Board
Discussion***

Mr. Parkes stated that his son and daughter-in-law live across the street from the subject property, and they experience the same impact from the school traffic, whether it is children playing in their yards, or parents parking in their driveway while waiting to pick up their kids. He also noted that there are numerous such fences all over town that seemingly do not comply with the letter of the law. He said he felt this case presented a similar scenario to the property located between Beach and Ocean that was granted a variance just a few months ago. He added that he felt the City Commission should remove this requirement altogether, noting that a fence set back ten (10) feet from the property line on a fifty (50) foot wide lot effectively reduces the useable space by twenty (20) percent.

Mr. Burgess responded that while members of this Board may not agree with a particular provision, it is not up to this Board to amend the Code.

Ms. Simmons, disagreed with Mr. Parkes, stating that the basis of approval of the Beach Avenue variance was irregular topography of the rear portion of the lot, which effectively reduced the height of the fence when looking at the lot from 7th Street. She concurred with Mr. Burgess, stating that if there is a recurring issue, it needs to be brought to the City Commission's attention for direction, but this Board must act within existing laws. Further, she encouraged the Board to not be swayed by emotional appeals, noting that there are many beach access streets with hardly any right-of-way setback, and those property owners suffer constant beach traffic, similar in nature to the school traffic.

Mr. Parkes argued that the situation described by the applicant is unique to Seaspray Avenue, and it can result in a hostile situation between homeowners and children and/or their parents.

Mr. Burgess asked why, other than the dog issue, could a four (4) foot high fence not work, to which Mr. Parkes replied that the

property owners had no privacy.

Ms. Simmons reiterated that all of the beach accesses are heavily traveled. She said she does not see this as a unique situation and there is nothing in the application or the staff report to justify this request.

Mr. Stratton said that while he would like to find a way to support the applicants' request, he agreed with everything Ms. Simmons said. He continued, explaining if this variance were to be approved, there would be a long line of applicants requesting to do the same thing. The only solution would be for the City Commission to address by means of the amendment process.

Mr. Elmore stated that the subject property is indeed a corner lot, and the side yard is being treated as the front yard. Regarding the Beach Avenue property which extended to Ocean Boulevard, the primary difference there is that the Ocean Boulevard right-of-way is wider than fifty (50) feet, and therefore a different provision applies. He said that he lives next to a beach access so he knows about disrespect of private property, but he does not believe proximity to the school and impact of children and parents traveling along the adjacent sidewalk is justification to approve this variance, nor does he want to set such a precedent. He concluded by saying that staff is not above making mistakes; however, this Board must fall back on the Code – what the current law is.

Mr. Hansen said that while he is sympathetic to the applicants' circumstances, he cannot open the City up to anarchy, and thus cannot take into account the petition submitted. He reiterated that this Board's commission is not to rewrite the Code each time it is found to be unfavorable to someone, but to decide each case based upon the written code.

Mr. Elmore added that the planter cannot be considered a hardship decreasing the effectiveness of a four (4) foot fence because it is not something installed or required by the City.

Motion

Mr. Burgess moved that the Community Development Board deny ZVAR-13-00100063, a request for variance from Section 24-157(c)(1), to allow the construction of a fence exceeding four (4) feet in height within ten (10) feet of a property line which abuts a right-of-way that is fifty (50) feet or less in width, finding that there are no exceptional topographic conditions of or near the property; finding that there are no surrounding conditions or circumstances impacting the property disparately from nearby properties, but

that similar conditions are present throughout the City; finding that there are no exceptional circumstances preventing the reasonable use of the property as compared to other properties in the area; finding that there is no onerous effect of regulations enacted after construction of improvements upon the property, because said fence regulations have been in effect for nearly ten (10) years, and prior to that, were even more restrictive; and finding that the subject property has neither irregular shape nor substandard size warranting special consideration. Ms. Simmons seconded the motion and it passed by a vote of 5-1, with Mr. Parkes dissenting.

C. ZVAR-13-00100064, 2069 Beach Avenue (Dunlap)
Public Hearing – Request for variance from the provisions of Section 24-106(e)(2), to reduce the required rear yard setback for the principal structure from twenty (20) feet to sixteen feet, nine (9) inches, to allow a first floor addition to a single-family dwelling located on a property within the Residential Single-Family (RS-2) zoning district at 2069 Beach Avenue.

Staff Report

Ms. Hall explained that a nearly identical variance was requested and granted in January 2007. However, the previous request was specifically addressed to a second story addition which overhangs the space subject to the current request. Because the 2007 variance order specifically addressed only a second-story addition, staff determined, and confirmed with the City Attorney, that a new variance would be required.

Ms. Hall clarified that, even though the previous addition was to the second story, there is a rather large rectangular support already occupying a portion of the first story space subject to this variance request.

Applicant Comment

Michael Dunlap (1120 North Second Avenue, Jacksonville Beach) introduced himself as the architect for the project and explained that the original encroachment reduced the rear yard setback for one corner of the structure from twenty (20) feet to sixteen (16) feet, nine (9) inches. He said the current project would not result in any additional encroachment, and that overall, only twenty-one (21) square feet of lot area was impacted, due to the irregular western property line.

Public Comment

There was no public comment made.

Board Discussion

Ms. Simmons asked why first story was not addressed in 2007. Mr. Dunlap replied that previous addition was for a specific use and the current request arises out of the need for more space.

Mr. Elmore said he really did not see a problem with this particular request since the space is already occupied, but he can foresee future applicants using a similar approach to chip away at required yards.

Mr. Hansen noted that irregular shape of a lot is a condition for approval, and this is one of the grounds upon which the previous Board based their decision. He said the only difference now is that the area is already occupied.

Mr. Parkes said he cannot remember granting a single rear yard variance since serving on this Board, and had the original (2007) variance come before the Board, it probably would have been denied. However, he noted this to be a unique situation in that a previous Board did find grounds to approve the variance for the second story addition.

Mr. Stratton agreed that there was little substantively changing, since the encroachment was already occupied by the supporting column. However, he too said that he would not have approved the 2007 variance, had he been on that Board.

Motion

Mr. Elmore moved that the Community Development Board approve ZVAR-13-00100064, a request for variance from Section 24-106(e)(2), to reduce the required rear yard setback for the principal structure from twenty (20) feet to sixteen (16) feet, nine (9) inches, to allow for a first floor addition to a single-family dwelling located on a property within the Residential Single-Family (RS-2) zoning district at 2069 Beach Avenue, finding that as determined by a previous Board, the subject property does have topographic variation typical to most oceanfront lots in the vicinity, and the preservation of the primary dune system has constrained construction to the western portion of the parcel; and finding that the western (rear) property line which abuts the Beach Avenue right-of-way is angled and therefore not perpendicular to the structure. Mr. Parkes seconded the motion and it passed unanimously, 6-0.

5. ADJOURNMENT – 7:18PM.

Brea Paul, Chair

Attest