

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING AND VARIANCE HEARING
Wednesday, January 24, 2007 9:30 a.m. – City Hall Conference Room

1. Call to Order, Roll Call – Chair Bill Danaher called the meeting to order at 9:30 a.m. Present were: Bill Danaher, Ron Anderson, Kathryn McCullough Rea. Excused: Frank Catchpole. Also present: City Clerk Vickie Bollinger and prospective members: Ron Foster, Bob Glassman and Marie Flood. Commissioners present: Commissioner Sutton, Commissioner DeGraw. Public: 6
2. Approval of Minutes: Regular Meeting and Variance Hearing September 20, 2006
Approved as written.
3. Discussion
City Clerk administered the oath to all witnesses in all matters to be heard on this date.
 - A. Variance Request – 900-910 Shelter Bay Drive
Disclosure of Ex Parte Communication – Committee Members – None
Variance Request – Dock, Lot 33, Block 8, Key Colony Beach Subdivision 1st Addition, 900-910 Shelter Bay Drive, E. Wayne & Darleen Cropper
Mr. Cropper stated he wants to install a lift for his 42-foot boat, but there is a water depth problem. He investigated dredging the boat slip to a 5 foot depth, but was told that dredging may weaken the concrete bulkheads. Therefore, he would like to build a dock into Shelter Bay that would end approximately 215 feet from Marker 7. He stated he had received consent from his neighbors and presented photos of the area to the committee.
In response to questions from the committee, Mr. Cropper stated he has a small boat that he would like to keep at the new dock, that he had not researched rebuilding the bulkhead or dredging, and his big boat would not be able to get on the lift except at high tide. He stated that there is a cut-in in the seawall for 3 boats and he owns 2 of the cut-ins. He said installation of the boat lift will not allow for a second boat to be parked in the cut-in and therefore he is requesting the additional dock for his second boat. Mr. Cropper confirmed that the new dock would extend into Shelter Bay 25 feet by 4 feet wide and have a platform at the end that would measure 32 feet long by 4 feet wide.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
Response: Require variance in order to allow small boat access to your property because water depth is not sufficient otherwise.
Comment: Applicant has not pursued all means available before coming for this variance; applicant should research shoring up the seawall and dredging. Permits for dredging can be very difficult to get.
Vote: Rea - no, Anderson - yes, Danaher - no **Vote: No**

Variance Request – 900-910 Shelter Bay Drive - continued

2. That the special conditions and circumstances do not result from the actions of the applicant.
Response: The applicant took no action to cause the insufficient water depth.
Comment: Applicant can't control water depth. As in criteria 1, applicant should try to get a permit for dredging and shore-up the bulkhead.
Vote: Rea - yes, Anderson - yes, Danaher - no **Vote: Yes**

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.
Response: No.
Comment: What applicant is asking for is not out-of-line. There are no other docks like this out into Shelter Bay. No variances have been granted for docks in this zoning district. This variance would better accommodate the applicant's desire to have both boats. Applicant has not exhausted all other possibilities to resolve the problem.
Vote: Rea - no, Anderson - yes, Danaher - no **Vote: No**

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
Response: Yes
Comment: There are not other docks out into Shelter Bay. Applicant currently has a cut out in his seawall for two boats. There is reasonable use of the property without a variance.
Vote: Rea - no, Anderson - no, Danaher - no **Vote: No**

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
Response: Yes
Comment: Applicant has reasonable use of the property without this variance.
Vote: Rea - no, Anderson - no, Danaher - no **Vote: No**

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
Response: Yes
Comment: There are no docks out into Shelter Bay and if this one is granted, others will want one as well, which would detract from the appearance of the shoreline.
Vote: Rea - no, Anderson - no, Danaher - no **Vote: No**

Motion - Moved by Ron Anderson, to recommend approval of this variance request at 900-910 Shelter Bay Drive, E. Wayne & Darleen Cropper, Owners. Motion died for lack of a second.

Motion - Moved by Bill Danaher, seconded by Kathryn Rea, to recommend disapproval of this variance request at 900-910 Shelter Bay Drive, E. Wayne & Darleen Cropper, Owners since all six criteria were not met and applicant did not exhaust all other means to resolve the water depth problem. Roll Call Vote: Rea - yes, Anderson - yes, Danaher – yes. Unanimous approval.

Chair Danaher explained to the applicant that he might withdraw the variance request or proceed to the city commission.

B. Variance Request – 421 9th Street

Disclosure of Ex Parte Communication – Committee Members – None

Variance Request – Side Setback, South ½ of Lot 17, Block 10, Key Colony Beach Subdivision 1st Addition, 421 9th Street, Luis Alonso, Owner

Ray Rodriguez, agent for the owner, stated that Mr. Alonso bought 421 9th Street and 391 9th Street. Each property included one-half of the vacant lot between them, resulting in Mr. Alonso owning three adjoining lots. Mr. Alonso would like to build on the vacant lot, but the property at 421 9th Street has structures too close to the property line. Mr. Alonso would like to have a side setback variance on the residence at 421 9th Street that would allow him to build a new residence on the vacant lot. Mr. Rodriguez stated the city had increased the side setbacks after the original residence was built to 8 feet. He stated Mr. Alonso is requesting a three foot six inch variance.

Chair Danaher stated that Mr. Rodriguez would be the contractor for the new residence to be built on the vacant lot. Without the variance, the applicant would have to cut about two and one half feet off the existing structure, which is not feasible structurally.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Response: This ½ duplex was built in 1970 and enlarged over the years with the purchase of the southern additional ½ vacant lot. The applicant desires to separate the ½ duplex and ½ vacant lot with demolition and save the ½ duplex 5’0” from the P/L.

Comment: None

Vote: Rea - yes, Anderson - yes, Danaher - yes

Vote: Yes

2. That the special conditions and circumstances do not result from the actions of the applicant.

Response: These conditions are the result of city setback changes over the years, the previous owners additions and the applicants desire to separate the properties back to original conditions.

Comment: None

Vote: Rea - yes, Anderson - yes, Danaher - no

Vote: Yes

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

Response: Numerous other applicants have been granted up to 3’6” side setback variances in the same zoning district over recent years. (Please see attachment “A” w/4 examples)

Comment: The previous owner built the additions that are now encroaching into the side setback. The committee has previously recommended approval for variances to maintain an existing wall or roofline.

Vote: Rea - yes, Anderson - yes, Danaher - yes

Vote: Yes

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

Response: Applicant desires a variance which has been approved for others and would create an unnecessary and undue financial hardship if not granted.

Variance Request – 421 9th Street - continued

Comment: The committee has not recommended approval of variances exactly like this before; this involves a vacant lot that was previously attached to the adjoining lot that has an existing residence. There are ownership issues regarding the residence and vacant lot that have not applied in other variance requests.

Vote: Rea - yes, Anderson - yes, Danaher - no

Vote: Yes

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Response: This variance request is the minimum variance possible to save the existing den fireplace and carport structural integrity whose foundation is 5'0" from the side property line.

Comment: There would be reasonable use of the land if the applicant were required to meet current setbacks.

Vote: Rea - yes, Anderson - yes, Danaher - no

Vote: Yes

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Response: The granting of this variance, as well as numerous others in the past, will create a pleasing structure not injurious or detrimental to the public welfare.

Comment: None

Vote: Rea - yes, Anderson - yes, Danaher - yes

Vote: Yes

Motion – Moved by Ron Anderson, seconded by Kathryn Rea, to recommend approval of the variance request at 421 9th Street, Luis Alonso, Owner. Roll Call Vote: Unanimous approval.

The city clerk stated this variance request will be heard by the city commission at a public hearing on March 8, 2007.

C. Variance Request – 401 2nd Street

Disclosure of Ex Parte Communication – Committee Members – None

Variance Request – Dock, Lot 18, Block 2, Key Colony Beach Subdivision, 401 2nd Street, Jeff Stuncard, agent for D'Assign Source stated that this dock issue had been discussed with the Mayor and Building Official. He stated the code was not clear on this issue, but the owner believes zoning district R-2A allows the boat dock and pier as proposed. Mr. Stuncard stated the Building Official was not comfortable and so the applicant is coming to the committee for an interpretation. He stated all units would access the docks by using walkways, all on private property. He stated there were two issues, one – Is a variance required, and two – If a variance is required, he would ask the committee to do so today.

Amedeo D'Ascanio, D'Assign Source Vice President, stated he had spoken with Building Official Borysiewicz, Mayor Burnett and City Attorney Tom Wright about this issue. All four lots involved with the project are zoned duplex and they wish to have a total of 7 residences. They would like for each residence to have water access by use of docks along the entrance to Shelter Bay. Mr. D'Ascanio stated the city attorney had no issues with this proposal. In response to a question, Mr. D'Ascanio stated that DEP had approved the dock and they were awaiting a permit from Army Corps. He stated the existing dock would hold 5 boats, but they wanted to extend the dock to accommodate two more boats.

Variance Request – 401 2nd Street - continued

In response to a question, Mr. D’Ascanio stated that re-zoning this area to multi-family would reduce the number of units that could be built to five. The project proposes to keep the existing single-family home and build duplexes on each of the other three lots for a total of seven residences.

The committee and owner representatives discussed that owners would not cross public right-of-way, there would be only pedestrian traffic, the road ended before walkways to dock, possible increase of traffic on the street, there would be five boats across the face of the dock and two along the side.

Chair Danaher asked the committee if a variance was required. Two members said yes, one member was not sure, but agreed to proceed. Chair Danaher stated that surrounding property owners are generally not notified until the matter goes to the city commission, but some had heard of this variance and were in attendance. City Clerk swore in all those who wished to address the committee on this matter.

The Committee considered the following standards and responses, making comments and asking questions.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Response: The property is a contiguous 5-Lot parcel, located between 2nd and 3rd street in the City of Key Colony Beach and consists of lots 17, 25, 26 which are vacant 6,600 sq. ft. lots; lot 18 which is improved with a 1,030 sq. ft. single family residence combined with a 2,010 sq. ft. triangular portion of lot 19 with water frontage and an existing T-dock. The properties are located in the R-2A zoning district which allow for (1) one unit detached residences or (2) two dwelling unit residences. Accessory structures and uses are also permitted as of right. Per Section 101-12(3), this includes private docks and piers.

Comment: Citizen questioned the intensity of use at the end of 2nd Street and the ownership of the docks, especially when owners wanted to load their boat with fishing gear, chum, bait, ice, coolers, electronics; they would not want to walk. Mr. D’Asconio stated that each dock would be owned by a property owner and that a single parking space existed on the property and would be kept. He stated this lot would not be a marina; there would be no trailers, boat ramp, launching of boats; just a pedestrian walkway; but one owner at a time could use the parking space to load or unload boat gear. Chair Danaher stated there were no special circumstances, but this was a creative effort to change non-waterfront property into waterfront property. Ownership of the residences, common areas and boat docks was discussed: residence owners own the ground under their unit only and the homeowner’s association owns the common areas and boat docks. Mr. D’Ascanio stated Attorney Wright had no problem with the ownership issue.

Vote: Rea - no, Anderson - yes, Danaher - no

Vote: No

2. That the special conditions and circumstances do not result from the actions of the applicant.

Response: The property is contiguous and located in the R-2A Zoning District of the City. Development standards currently allow for 2 family dwelling unit residences with a private boat dock or pier as an accessory use. The original platting of the lots involved and the existing zoning regulations are not the result of the applicant’s actions. The applicant feels that the existing R-2A Zoning District clearly allows for private docks and piers.

Variance Request – 401 2nd Street - continued

Comment: Committee discussed that the district zoning regulations did not envision seven boat slips for one lot and allowing neighbors with an easement to use the slip; this will create a small marina. Although the district allows for boat docks, it is hard to understand how can a dry lot have a boat dock. Mr. D’Ascanio stated that the proposed project gives access to docks that will allow for a more upscale development.

Vote: Rea - no, Anderson - yes, Danaher - no

Vote: No

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

Response: Docks and piers as an accessory use are allowed in the zoning district, and the granting of this variance will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district. Granting of the variance in the context of this proposed project will simply permit an allowable use that compliments the development and the surrounding community.

Comment: If the project is going ahead anyway, the addition of the dockage will be a real asset to the city; less expensive housing will not be as big an asset. The code does not envision dock ownership separate from the residential unit; a marina was not an intended use for this zoning district. Mr. D’Ascanio stated he does not believe a variance is required; that they are coming to the committee and community as a courtesy. Committee members acknowledged the positive working relationship with D’Assign Source and their valuable services to this city, but this is an unusual use in this zoning district.

Vote: Rea - no, Anderson - no, Danaher - no

Vote: No

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

Response: The site has water frontage and an existing T-dock. Other properties in the same zoning that are on the water are permitted dockage, which will be an integral part of any proposed site plan and may ultimately affect overall project feasibility. The only hardship that could be incurred would be if the concept were not approved.

Comment: None

Vote: Rea - no, Anderson - no, Danaher - no

Vote: No

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Response: The request is the minimum that will make possible the reasonable use of dockage associated with any development. The minimum we request is to have only (1) one private boat dock per lot.

Comment: The developers wish to maximize their profits by creating waterfront lots from non-waterfront lots. This is a more intense use than envisioned in the R-2A zoning district.

Vote: Rea - yes, Anderson - yes, Danaher - no

Vote: Yes

6. That granting the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Response: Granting of the variance will be in harmony with the general intent and purpose of the land development regulations. The purpose of the land development regulations is to allow (1) one or (2) two unit structures and docks as accessory structures. We would like to propose a plan that utilizes interior pathways in order to access the docks from each unit, which would

Variance Request – 401 2nd Street - continued

negate any impact to the area involved. Only the proposed units would have access to the docks. The pedestrian paths would provide the access, so there would be no concerns with additional parking since all parking would be provided on the lots as part of any development approval. No detrimental impact whatsoever to the public welfare is anticipated.

Comment: The City Attorney and City Commission will need to consider this project, especially the ownership issues and as it relates to the intended use in this zoning district. Unit owners will not walk all their boating gear over to their boat. This looks like a marina. Mr. D’Ascanio stated: that the current code allows the dock to be extended without a variance; the city allows multiple boats to be at one dock as long as they are all contained within the property boundaries; parking on the city right-of-way is not allowed so additional vehicles will not be there, only one vehicle at a time for loading/unloading; and that Army Corps defines a marina as nine slips or more, this only has seven. Chair Danaher stated that DEP and Army Corps are more interested in seagrass and environmental issues, not city code or ownership issues.

Vote: Rea - yes, Anderson - no, Danaher - no

Vote: No

Motion – Moved by Kathryn Rea, seconded by Ron Anderson, to recommend approval of the variance request, if one is required, for 401 2nd Street, D’Asign Source, Owner.

D’Asign Source does thoughtful projects and they want a development that would benefit property owners and the community. The docks can be extended under current city code. This project would enhance the city and the opportunity to address the issues is appreciated. The committee further discussed the ownership issue and the access to waterfront for the dry lots; and they all agreed that D’Asign Source and family are good residents and they develop good-looking projects. It is not easy to say no, but this is too intense a use for this zoning district.

On the Motion: Roll Call Vote: Rea - yes, Anderson - yes, Danaher – no. Motion passed.

Chair Danaher stated that since the six criteria were not met, the committee must consider the general criteria.

1. That special and unnecessary conditions do exist in the request; and
Comment: Applicant asked and received information about the process and these criteria. Committee commented that this variance request should be heard by the city commission.
Vote: Rea - yes, Anderson - yes, Danaher - no **Vote:** Yes

2. That literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship on the applicant; and
Comment: None
Vote: Rea - yes, Anderson - yes, Danaher - no **Vote:** Yes

3. That the granting of the variance will have minimum adverse effect on other citizens of Key Colony Beach or on the city.
Comment: None
Vote: Rea - yes, Anderson - yes, Danaher - no **Vote:** Yes

Motion – Moved by Ron Anderson, seconded by Kathryn Rea, to forward this variance request with a recommendation of approval to the city commission for docks at 401 2nd Street, D’Asign Source, owner. Roll Call Vote: Rea - yes, Anderson - yes, Danaher – no. Motion passed.

Variance Request – 401 2nd Street - continued

City Clerk stated that this matter will be heard by the city commission at a public hearing on March 8, 2007 and that before the hearing, a signed, notarized document must be filed in her office stating the owner of the property (Coastal Properties) and naming the agent who is authorized to speak for them.

4. Any Other Business

Revised Variance Application, Evaluation Forms and Process

Chair Danaher stated that surrounding property owners are not notified of the variance request until after the Planning & Zoning Committee hears the matter. Most variances are easy and clean, but others are more difficult and he would like to have public input before making a decision. Currently, all documents must be to the city clerk on Friday at noon to be on the agenda for the meeting on the following Wednesday. This does not allow time for public notification. Including public notice and input will lengthen the variance process and add costs. Committee members agreed that on the more complex requests, they would like public input and discussion. Chair Danaher stated he would make a recommendation to the city commission to change the process to include public notice and input at the Planning & Zoning Committee variance hearings.

The city clerk stated she had reviewed various other cities' variance codes and processes. Most cities have the same or a similar set of criteria; however, some have worded some of the criteria as questions or as a more easily understood statement. New application and criteria evaluation forms were reviewed. The application includes a new section for comments from the Building Official. Chair Danaher suggested that individual votes be taken on the six criteria, but the three general criteria are not necessary since they are mostly repeats of some of the first six. The committee discussed the criteria and the guidance the City Attorney had provided at previous meetings. The committee would like Attorney Wright to review the criteria, especially for all the new members. The committee agreed to make a recommendation to the city commission to revise the criteria to make them easier to understand and easier to evaluate each variance request.

New Members

Chair Danaher stated that three citizens have volunteered to be on the committee. They are Robert Glassman, Ron Foster and Marie Flood. Ms. Flood and Mr. Glassman were present and introduced themselves to the committee members who welcomed them and thanked them for volunteering. Their names will be given to the city commission to be appointed to the committee.

There being no further business, the meeting adjourned at 11:45 a.m.

Vickie L. Bollinger, City Clerk