

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING AND VARIANCE HEARING
Wednesday, April 15, 2009 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, Ron Foster, Marie Flood and John Curry. Excused: Bob Glassman. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz, and City Clerk Vickie Bollinger. Public: 6
2. Approval of Minutes: Regular Meeting October 15, 2008
Approved as written.
3. Discussion
 - A. Variance Request – 431 2nd Street
Disclosure of Ex Parte Communication - Committee Members – None.
Variance Request – Dock, Lots 19, 23 and 24, Block 2, Key Colony Beach Subdivision, 431 2nd Street, Franco and Mary D’Ascanio, Owners

City Clerk administered the oath to all witnesses in all matters to be heard on this date.

Chair Danaher stated that this was a re-hearing of the variance request heard last October. The applicant has submitted additional information.

Applicant was present and also was represented by Jeff Stuncard. Building Official Edward Borysiewicz stated there is an existing dock at 431 2nd Street where the house is located. The applicant wishes to install additional mooring piles into the canal. The dock configuration will stay the same. At the last meeting there were questions regarding the navigable width of the Key Colony Beach Channel. Applicant hired a professional surveyor and has submitted new documentation for consideration.

Jeff Stuncard stated the committee questioned the width of the channel at the last meeting. The applicant hired Dr. Linn, a professional surveyor who measured the channel to be 157 feet at mean low water from the existing dock. There is more than adequate room.

The committee, Mr. Stuncard and Mr. D’Ascanio discussed:

With the proposed dock there would be 129 feet of navigable room which the Army Corp (ACOE) has determined would be safe. The 129 feet across is at a depth of 4 feet at mean low water.

The boat is 80 feet long and has a beam of 19 feet 6 inches. It has bow and stern thrusters to aid steering and turning the boat.

The usual path of a boat through the channel was discussed.

There is lots of traffic in that channel including all sizes of boats.

Moving the dock to the south or closer to shore would not improve the situation significantly. The water is quite shallow along the seawall. ACOE allows the dock to reach water depth of 4 feet.

ACOE has jurisdiction over navigation and they have approved the dock request.

If the variance is not granted, there will no mooring piles beyond the dock and the boat will only be tied on one side.

ACOE would not approve an extension of the existing dock.

Applicant provided additional pictures and drawings showing the channel.

Terry Fisher, Key Colony Beach Marina, asked about approvals of the docks from the Coco Plum side of the channel. Building Official Borysiewicz stated ACOE has not approved those docks as

originally designed, but will approve a T-dock with boats parking parallel to the shoreline out to 4 feet of water depth. No permits have been issued. Mr. Fisher stated he felt that the channel was not 157 feet wide especially at low tides. The deeper water is closer to the channel marker than the shore. He stated he was not opposed to this request, but hoped there would be another option. Mr. D’Ascanio stated they had submitted a signed survey from a professional stating that the channel was 157 feet wide with a depth of 4 feet and that should take precedent.

Chair Danaher continued with citizen correspondence. It was noted that previous correspondence had also been provided. New correspondence:

Joe French, 4th Street, letter expressing that there was not enough width in the channel.

Peter Hines, 3rd Street, emailed expressing concern about safety and the width. He said this was a blind corner and suggested moving the boat to the south of the property.

Ray Biscuso, 401-411 3rd Street, wrote that he did not object to the variance request.

The committee, applicant and public continued discussion:

Mr. D’Ascanio, 431 2nd Street, stated he never saw any problems from boats moving through the channel at that point, the water does get shallow very close to the marker, large boats navigate in smaller canals during the boat parade, and boats should be on the outside of the channel.

Coco Plum development is not an issue for this hearing.

Large boats docked in the canals do not have mooring piles.

Applicant wants the boat away from the dock for safety reasons during a storm.

Moving the dock will not make much difference. ACOE requires docks to be at a depth of 4 feet.

Water may be wider at the south end of the property, but the channel width is about the same.

Moving the dock to the south was not looked at as an option.

Large boats will have a harder time navigating. The width of the channel as measured was again questioned and the water depth was also.

Clerk swore in Skip Petzold who commented that the difference of the boat with no pilings and the boat with the requested pilings was only 6 feet which is not significant for navigation.

Attorney Wright stated that the ACOE has exclusive jurisdiction over navigation. They have issued a permit. He recommended the committee look at the burden to other property owners, not try to overrule the ACOE regarding navigability. The committee should not challenge or question the permit, but discuss whether granting the variance will unduly impact the other property owners in the city. He then quickly reviewed the standards set forth in the ordinance. He said the committee needs to answer these questions:

1. Is there a good reason that the variance is needed?
2. Will strict adherence to the code put unnecessary hardship on the applicant?
3. What is the impact on other owners or residents?
4. What is unique about this property when compared to others in the zoning district?
5. How does this request compare to other development patterns in the neighborhood?

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

1. The applicant shall demonstrate a showing of good and sufficient cause.

Response: The plans that are proposed by the applicant are the minimum need to safely dock and secure a new boat that is currently under construction. The size of the vessel warrants an increase in the number and height of the pilings. There will still be over 125 feet of Channel

to safely navigate and no detrimental environmental impacts will result. This is proven by the U.S. Army Corp of Engineers and Department of Environmental Protection approvals.

Comment: Applicant provided documentation of width of 129 feet with 4 feet of depth. Without these pilings, the boat will get “beat up pretty good.”

Vote: Curry - yes, Anderson – yes, Foster – yes, Flood – no, Danaher - yes **Vote: Yes**

2. Failure to grant the variance would result in unnecessary hardship to the applicant.

Response: This conceptual plan was reviewed and approved by the City Administrator Mayor Clyde Burnett and the Building Official Ed Borysiewicz on 5/02/06. With that approval, the applicant paid to have plans drawn and submitted them for State of Florida and Federal reviews on 7/05/06. The primary unnecessary hardship would be the extensive expended time and cost of this process with no discernable result. The secondary hardship is that the applicant now would be unable to dock his boat at his house.

Comment: There is some question about the meeting as described. Attorney Wright advised the committee to consider whether strict adherence to the building code would result in unnecessary hardship to the applicant; and that is not just financial hardship. He suggested the committee ask if it is necessary to strictly apply the building code. Committee members stated that without the pilings the boat may get damaged due to prevailing winds that this boat will be subject to that other boats in canals are not.

Vote: Curry - yes, Anderson - yes, Foster – yes, Flood – yes, Danaher - yes **Vote: Yes**

3. Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public.

Response: If this variance were granted, there would be absolutely no increase to public expense. No nuisance or threat to public health or safety would be created and no fraud or victimization of the public would exist. The existing permitted pilings have exceeded 30 feet for years and have not caused any problems for anyone. There will still be approximately 125 feet of channel left to navigate and pass safely, as attested by State and Federal approvals.

Comment: Applicant again changes the width from 125 feet to 129 feet. Attorney Wright stated that it seems clear that we can eliminate fraud, victimization, public expense and nuisance; leaving one thing to consider – a threat to public health and safety. Even though the ACOE approved the permit for navigation, the committee must consider if there is a threat.

Vote: Curry - no, Anderson - yes, Foster – yes, Flood – no, Danaher - yes **Vote: Yes**

4. Property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district.

Response: Section 5-35(4) of the City of Key Colony Beach Land Development Regulations outlines the regulations on dockage in different subdivisions, blocks, and lots. Key Colony Beach, Block 2/Lot19 is the only lot in the block that has a restriction that limits dockage to 30 feet off the shoreline. This was probably done because of the geographic location of the lot and its proximity to the bend in the channel to the north. With this in mind, great care was taken when designing this dock so as not to create a navigational hazard. Given the extensive shoreline of this lot (308 feet), the 3 extra pilings that would be 3.5 feet higher than permitted would not be out of scale or character for the site.

Comment: In response to a question, Building Official Borysiewicz stated all properties along the 1st Street channel are allowed to have a dock 30 feet from the shoreline. City clerk reminded the committee the variance request included number of pilings, height of pilings and distance from shore.

Vote: Curry - no, Anderson - yes, Foster – no, Flood – no, Danaher - no **Vote: No**

5. Granting the variance will not give the applicant any special privilege denied other properties in the immediate neighborhood in terms of established development patterns.

Response: No special privilege is being requested, only a variance. The location and layout of the lot is unique, so it is not prudent to draw comparisons to other lots. Other properties also have the right to apply for similar variances if they so choose.

Comment: Attorney Wright advised the committee to consider whether this request was consistent with other development patterns in the neighborhood; does this request alter the development pattern. He said a variance is a privilege. Committee members said this is a residential neighborhood and the request is for residential use; no charters will be done from this location or for customer use. This may however be a change in the development pattern and be setting a precedent for the future.

Vote: Curry - no, Anderson - no, Foster – no, Flood – no, Danaher - yes **Vote: No**

Attorney Wright reminded the committee that they now have a choice since all 5 criteria were not met: 1) they may recommend the variance be denied, or 2) they can determine that an approval would have minimal effect on the city or citizens and then recommend approval to the city commission. He further stated that approval of a variance when all five of the above criteria are not met requires a four-fifths (4/5) vote by the city commission.

Motion - Moved by Bill Danaher, seconded by Ron Anderson, that granting this variance would have minimal impact on the city and to recommend approval of this variance request. Roll Call Vote: Yes-Curry, Anderson, Foster, Danaher No-Flood. Motion is approved 4-1.

B. Boat Bunkers – In Water Mooring Station

Request for Review from Building Official Borysiewicz

Building Official Borysiewicz stated the boat bunker is a flotation device around a boat with a rubber sheet underneath it. The stern of the bunker is rubber and goes up and down. The idea is to shield the boat bottom from the water so it will remain free from growth. The bunker will stick out from the boat a few feet. He stated one of these had been installed in the city, but later removed as the owner told him it did not work. The city commission did not approve a request for a floating dock for a pontoon boat because of the threat of it breaking away from the seawall. The Building Official stated he was not certain how these were secured to the seawall. He has asked ACOE and DEP for input and he asked if these should be approved for use or if this should be handled using the variance process.

Attorney Wright stated this should be handled as a variance request.

4. Any Other Business

Election of Officers

City Clerk called for nominations for Chair. Committee members nominated Bill Danaher. There were no other nominations. Bill Danaher was elected chair by acclamation.

Chair Danaher called for nominations for Vice-Chair. Marie Flood was nominated. There were no other nominations. Marie Flood was elected Vice-Chair by acclamation.

There being no further business, the meeting adjourned at 10:35 a.m.

Vickie L. Bollinger, City Clerk

Note: A mechanical recording has been made of the meeting of which these minutes are a part, and a copy is on file in the office of the City Clerk, as a public record.