

Minutes

PLANNING & ZONING COMMITTEE PUBLIC HEARING

Proposed Amendments to Land Development Regulations

Article XII. Other Development Review Procedures, Section 101-171 Variances

Wednesday, April 18, 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, Bob Glassman, and Marie Flood. Excused: Ron Foster. Also present: City Attorney Thomas Wright, Building Official Edward Borysiewicz, and City Clerk Vickie Bollinger. Commissioners present: Vice-Mayor Ron Sutton and Commissioner Rusty Stevens. Public: 0
2. Proof of Publication Entered Into Record
City clerk stated notice of this public hearing was published in the Florida Keys Keynoter on April 7, 2007.
3. Review of Proposed Amendments to LDR Article XII. Other Development Review Procedures, Section 101-171 Variances
Revising the general and specific criteria to be used to grant a variance and adding that notices be mailed to property owners within 300 feet prior to the Planning & Zoning Committee public hearing.

Chair Danaher stated that under the current procedures, the public does not receive notice of the variance until it goes to the city commission. The Planning & Zoning Committee has asked that the public be noticed prior to the committee hearing. The Committee would like to have public input prior to making a recommendation to the city commission. He stated this change would result in a longer process to the applicant to allow for this additional notice. Chair Danaher also stated that the general and specific criteria had been revised by City Attorney Tom Wright.

Attorney Wright suggested amending section (3)(b) to add “If the applicant desires to present evidence not presented to the Planning & Zoning Committee, the matter shall be returned to the Planning & Zoning Committee for further deliberation and recommendation.” The attorney and committee discussed use of the word “shall” instead of “may” and agreed that the word “shall” should be used. This would impress upon the applicant that they should be fully prepared for the Planning & Zoning hearing and not wait until the city commission hearing to submit a complete application package. Adding evidence at the time of the commission hearing may make the Planning & Zoning Committee recommendation less meaningful and useful to the city commission.

Attorney Wright read and commented on the five specific criteria and then the general criteria to be applied if all five specific criteria are not met. Attorney Wright provided examples of variance requests that would and/or would not meet the specific criteria. The committee agreed that the revised criteria make more sense and would be easier to work with than the current criteria. Attorney Wright stated that the variance procedure is to provide relief from the building codes when needed for specific situations. For variance requests seeking relief from the same building code, the commission could amend the code. He stated the Planning & Zoning recommendation to approve or not approve the variance does not determine whether or not the city commission reviews the variance request. The applicant is in control and determines whether to proceed to the city commission or withdraw the variance request.

The committee discussed whether to include in the code a time frame for public notice prior to the committee hearing and then agreed to leave that as an administrative matter. The city clerk stated the commission would review the fee schedule related to variances prior to the effective date of

these changes. However, it was agreed that the same time frame that the commission uses (30 days) should be used.

The committee and attorney discussed after-the-fact variances and the changing development patterns in our city, especially on the west side of the island where the lots are larger. In response to a question, Building Official Borysiewicz stated he tells people with illegal downstairs enclosures that variances will not be granted because those enclosures are also against FEMA regulations. All city property owners enjoy a 10% discount due to our compliance with FEMA regulations and enclosures below the flood plain would jeopardize that discount.

4. Recommendation to City Commission

Motion – Moved by Ron Anderson, seconded by Bob Glassman, to recommend the amendments to Land Development Regulations, Section 101-171 as presented with the addition to section (3)(b) stating “If the applicant desires to present evidence not presented to the Planning & Zoning Committee, the matter shall be returned to the Planning & Zoning Committee for further deliberation and recommendation.” Roll Call Vote: Unanimous approval.

5. Adjourn

The public hearing was adjourned at 10:10 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.

LAND DEVELOPMENT REGULATIONS – Revised after April 18, 2007 Public Hearing – This document is the recommendation of Planning & Zoning Committee

Proposed revisions to current code: Additions to the code are underlined, Deletions are crossed out.

Section 101-171. Variances.

- (1) Initiation. Any owner, agent, lessee or occupant of land or a structure may apply in writing to the city clerk for a variance, on that land, from the requirements of this chapter, except that no request for a use variance will be considered. Details must be included with the request and be filed with the city clerk together with the established fee for a variance. If the applicant is other than the owner of the property, the written consent of the owner for the variance requested must be submitted with the application. When the petitioner is a public agency, the city commission may authorize the waiver or reduction of the fee.
- (2) Planning and zoning committee procedure.
 - (a) Upon receipt of a written request, the city clerk will deliver the request to the planning and zoning committee.
 - (b) The planning and zoning committee shall make an investigation of the conditions pertaining to the requested variance in advance of the public hearing by the city commission. This investigation shall be at a duly noticed meeting. Mailing of notice of the meeting shall be made by the city to all property owners within three hundred (300) feet of the boundaries of the property which is the subject of the variance request.
 - (c) The planning and zoning committee, shall make their recommendation to the city commission in writing, based upon the standards in (5) below. They may recommend approval or disapproval of the variance or may recommend approval of the same subject to such specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of this chapter. Reasons for the recommendation shall be stated.
- (3) City commission procedure.
 - (a) After receipt of the planning and zoning committee report, the city commission shall give notice in a newspaper stating the date, time and place of a city commission public hearing as provided for in section 101-173.
 - (b) After their public hearing the city commission may approve or disapprove the requested variance or may approve the same subject to specified conditions as it may deem to be necessary or advisable in furtherance of the provisions of the zoning ordinance. If the applicant desires to present evidence not presented to the planning and zoning committee, the matter shall be returned to the planning and zoning committee for further deliberation and recommendation.
 - (c) The commission shall state reasons for their decision, based on the standards detailed in (5) below.
 - (c) The decision of the city commission shall be final. No new request for similar action concerning the same property may be made to the city commission or planning and zoning committee for a period of not less than six (6) months after the date of said decision by the city commission.

Proposed Land Development Regulations, Section 101-171 – continued – after April 18, 2007 Public Hearing

(4) Effective period.

A building permit application must be submitted within twelve (12) months of variance approval otherwise the approval expires. Any extension of up to twelve (12) months may be granted by the city commission for good cause.

(5) Standards for granting variances.

(a) Specific criteria:

1. The applicant shall demonstrate a showing of good and sufficient cause;
2. Failure to grant the variance would result in unnecessary hardship to the applicant;
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;
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;
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.

(b) Recommendations to the city commission.

(1) If all 5 specific criteria are met, then the planning & zoning committee shall recommend approval to the city commission. Approval by the city commission would be by majority vote of the city commission.

If the planning & zoning committee finds the five (5) specific criteria are not met, they shall recommend disapproval of the variance unless they specifically find that the granting of the variance will have minimal adverse effect on other citizens of the city or on the city. Approval of a variance where all five (5) specific criteria are not met shall require a favorable vote of four-fifths (4/5) of the city commission.

(2) Conditions: ~~In granting any variance;~~ The planning and zoning committee may recommend, and the city commission may prescribe, appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(3) Use variance: Under no circumstances shall the city commission grant a variance to permit a use not generally permitted in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

All of the code below will be deleted.

- (5) (a) General standards: Variances from the terms of this chapter shall be approved only if they will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary and undue hardship. In order to recommend or authorize any variance from the terms of this chapter, all of the specific standards listed in (b) below must be met. However, when all of the six (6) conditions do not exist, the planning and zoning committee may recommend and the city commission may make an exception and grant a variance when they believe that special and unnecessary conditions do exist in the request and that literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship on the applicant and that the granting of the variance will have minimum adverse effect on other citizens of Key Colony Beach or on the city. Approval of a variance under these conditions would require a favorable vote of four-fifths (4/5) of the city commission.
- (5) (b) Specific standards:
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.
 2. That the special conditions and circumstances do not result from the actions of the applicant.
 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.
 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.
 5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
 6. That the granting of 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.