

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING AND VARIANCE HEARING
Wednesday, May 19, 2010 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, Marie Flood, Ron Anderson, and Bob Glassman. Excused: Ron Foster and John Curry. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz, Assistant to City Clerk Lyn Paterson and City Clerk Vickie Bollinger. Public: 6
2. Approval of Minutes: Regular Meeting April 21, 2009
Approved as written.
3. Discussion
Administration of Oath to all Witnesses on All Matters – City Clerk
Clerk administered the oath to all witnesses for the variances.

Chair Danaher stated that, for the record, he was the insurance agent for the Perry's at 410 10th Street, and that this business relationship would not influence his decisions or vote regarding this variance. He did not recuse himself.

A. Directory Sign for KCB Shopping Center

Building Official Borysiewicz requested assistance of the Planning & Zoning Committee regarding the directory sign at the shopping center. At the last meeting the committee approved a sign that was 12 foot high with a six foot clearance at the bottom. He said the tenants of the shopping center are asking approval to replace the old sign that was knocked down by a driver years ago. He submitted a picture of the old sign that was a legal, non-conforming use and was grandfathered. The sign includes the words "Key Colony Beach Shopping Center" at the top and then the tenants are listed below that on individual signs.

Evelyn Lau, Key Bana owner, said the sign had been there for over 30 years and was lighted. She said that when cars park at the south end of the shopping center the existing sign can't be seen by drivers coming down the Causeway. The tenants are asking that the sign be put back where it was originally and be similar to the grandfathered sign.

Building Official Borysiewicz said the old sign was a combination sign that had the name of the shopping center and the name of each individual business located there. He said that per LDR 101-139(4) the old sign was allowed until removed or destroyed.

Attorney Wright said that the sign lost its grandfathered status and a variance would be required to install a sign similar to the old one.

Building Official Borysiewicz will discuss the variance process with Ms. Lau and other tenants after the meeting.

Chair Danaher stated that since so many members of the public were present to discuss the variance at 541 5th Street that it would be taken next. (No one was present for the Perry variance.)

- B. Variance Request – Side Setback, Lot 57N, Block 10, Key Colony Beach Subdivision
 1st Addition, 410 10th Street, R. Scott & Barbara Perry, Owners (*Taken after Agenda Item 3C. Bishop Variance Hearing*)

Building Official Borysiewicz stated the other half of the duplex, 400 10th Street, was granted a very similar variance a couple years ago. He said when the duplex was built the side setback was seven feet and today the setback is 8.5 feet. Granting this variance will allow the owners to align the screen porch with the existing wall as was done at 400 10th Street.

Attorney Wright said that this type of side setback variance has been routinely approved in the past.

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: To allow improvement to the property and to match and conform to the screen room added at 400 10th in 2005 by variance. (Mareen Kily other ½ of duplex)
Comment: Chair Danaher commented that this type of variance has been granted and it keeps residences from having unsightly jogs in the side wall along the property line. Attorney Wright said that the commission had already approved an identical variance for the other half of this duplex.
Vote: Anderson – yes, Glassman – yes, Flood – yes, Danaher – yes **Vote: Yes**

2. Failure to grant the variance would result in unnecessary hardship to the applicant.
Response: If the variance is not granted applicant, property owner will be deprived of the right to improve and increase the value of its property.
Comment: Attorney Wright stated that the applicant’s answer was not responsive to the criteria. Chair Danaher stated that hardship did not apply; this was an aesthetic issue. Attorney Wright advised the committee to consider if it was necessary to require the owner to meet current code, not just whether it would be a hardship.
Vote: Anderson – yes, Glassman – 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: There will be no increase to public expense as a result of granting this variance, and it will not create a threat to public health and safety or create a nuisance or, cause a fraud or victimization of the public.
Comment: Chair Danaher stated he agreed.
Vote: Anderson – yes, Glassman – yes, Flood – yes, 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: The original (*sic*) set back line has changed and the current roof line of house is within set back. The new screen room roof needs to be in line with current roof line to keep the aesthetics (*sic*) of the property in line.
Comment: Chair Danaher stated there was nothing unique about the property, but the city desires a pleasing look throughout the city.
Vote: Anderson – yes, Glassman – yes, Flood – yes, Danaher – yes **Vote: Yes**

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: The granting of the variance would not confer any special privilege denied to other property owners. The other half of this duplex built an identical screen room by variance in 2005 and the adjacent property owners Bob & Liz Montgomery added a room addition by way of variance at 420 10th St.

Comment: None.

Vote: Anderson – yes, Glassman – yes, Flood – yes, Danaher - yes

Vote: Yes

All five conditions were met per city code 101-171(5)(b)(1) as voted by the Planning & Zoning Committee.

Motion – Moved by Marie Flood, seconded by Ron Anderson, to recommend to the city commission to approve the request for a 1.5-foot variance for a screened porch at 410 10th Street, R. Scott & Barbara Perry, owners; and the request met all five criteria. Roll Call Vote: Unanimous approval.

- C. Variance Request – Seawall, Lot 25, Block 5, Key Colony Beach Subdivision, 541 5th Street, Robert L. Bishop & Charlotte Bishop Hill, Owners (*Taken before Agenda Item 3B. Perry Variance Hearing*)

Building Official Borysiewicz stated that 541 5th Street is at the dead end of the street and has a seawall on the canal and the bay. The seawall is in very bad shape and has been for many years. He said the new owners are improving the grounds and the residence. City Code Section 5-50 states that the vertical face of the seawall cap must be on the property line or must line up with the adjacent seawall caps. Building Official Borysiewicz said the engineered plans call for the new seawall to be built in front of the existing seawall. This will make the new seawall encroach 1 foot further into the canal and would not line up the adjacent existing seawalls.

Attorney Wright stated that the survey shows the new seawall will extend beyond the platted lot line. The file does not include a dedication of that land to the owner and that the city does not own it. He advised the committee, if the variance is approved, to include a condition that the city be held harmless if the owners choose to build the seawall on land they don't own. He said he does not know who owns the land, and it does appear that the seawall encroaches into the bay.

Marie Flood stated that she is a friend of the Bishops and that her husband was doing work for them inside the house unrelated to the seawall project. She stated this relationship would not influence her decisions or vote regarding the variance.

City clerk stated there was no correspondence.

Woody Judson, Coastal Docks, stated he was hired by the Bishops for the seawall project. He said the ACOE and DEP had issued permits for the work as shown on the engineered plans. In discussion with Building Official Borysiewicz he found out a variance was needed. He said the canal side is in very poor shape and lots of repair work is needed to the house and grounds. In response to a question, he said he did not know exactly how much more the job would cost to remove the seawall and then rebuild it to current code. The seawall is degrading exponentially and may fall into the canal. He explained that the new wall will be constructed by driving I-beams to the cap rock, concrete panels will be made on land and hoisted in place between the I-beams, tie-backs will be placed to help secure the wall, and then crushed rock will be used to fill any empty areas behind the new wall.

Dave DeBrule, Upper Keys Marine, stated his company has worked in the area for over 40 years and it is common knowledge that new seawalls must conform to city code and that a new wall must be in-line with existing seawalls. He said that he did not agree with granting this variance and that if it was granted everyone would be asking for one. He suggested if this variance is granted the city should just change the code. He said removing an existing seawall is expensive, building a new seawall is not hard, but removal is difficult.

Randy Culmer, Marathon Seawall and Docks, said that most of the bids submitted for this project included meeting the existing city code. There are lots of people in the city that have complied and spent a lot of money to do so. He stated he does not think the variance should be granted and that the seawall should be built to comply with current code.

George Steinmetz, Coral Marine Construction, stated he agreed with the two previous speakers. He said granting the variance would indicate a change in the code and that others will want the same variance. He agreed approving the variance would save the owner money, but this sets a precedent for encroachment into the canals. The loser would be the city and citizens.

Woody Judson stated that applying for a variance is a right for all citizens. He said with the economy everyone is hurting and looking for ways to save money.

In response to a question, Building Official Borysiewicz stated that anyone can apply for a variance and this is the first application for a variance for a seawall. He confirmed that to date all seawalls were removed and replaced per city code. Granting this variance would set a precedent.

Attorney Wright suggested the owner may want verification from the state to place the seawall in the bay and that the city should protect itself from all liability or responsibility.

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 seawall and dock on this property are in extremely poor condition & in danger of collapsing into the canal. Repairing/replacing them within the existing footprint and lot lines is hazardous because of the danger of collapse. The present seawall would have to be removed first creating unstable conditions in the land behind it. Any collapse would be hazardous & life threatening to the workers, property owner, boating safely & a navigational hazard.

Comment: Chair Danaher suggested the committee look at this in two parts; the first being the seawall on the bay side and the second part being the seawall on the canal side. He said he did not see any hazard to the owner or workers. Contractors can plan and prepare for this hazard.

Building Official Borysiewicz confirmed that work has started on the bay side, but all work complies with city code. He clarified that the bay side seawall will comply with code and be within the property line, but the canal side required the variance. He said the permit was issued based on compliance with city code. Once the project started, then problems were found and this alternate plan was developed. He stated the variance was for the canal side only. He explained there were issues with both the footprint and the wall location. The wall would encroach about one foot into the canal and the seawall face would not line up with the adjacent seawall. In addition, the new seawall on the canal side would be one foot higher than the adjacent seawall, just as it is now. The height of the new seawall on the bay side would match the existing adjacent seawall to the east.

Vote: Anderson – yes, Glassman – yes, Flood – yes, Danaher – no

Vote: Yes

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

Response: Hardships which would result are substantial increase in costs, substantial time delays as drawings & DEP & Corps of Engineer permits would all have to be redone. Additionally, the time delays would put this project well into hurricane season, and any additional stresses on the existing structure, including passage of time could result in seawall collapse creating navigational & boating safety hazards

Comment: Chair Danaher stated he saw no validity to the response given by the applicant as the owner and contractor are responsible to know city codes prior to construction and they should absorb any additional costs. Granting this variance would set a precedent and result in unaligned seawall throughout the city. ACOE and DEP issued permits but they do not know or address any local code issues.

Building Official Borysiewicz confirmed that he was not consulted about city code prior to issuing the permit and that the engineer designed the new seawall and submitted those drawings to ACOE and DEP for their permits.

In response to questions, Woody Judson stated that Mr. Bishop hired the engineer and that he had recommended the engineer to Mr. Bishop.

Vote: Anderson – no, Glassman – no, Flood – no, Danaher - no

Vote: No

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: There will be no increase to public expense should the variance be granted nor cause a threat to public health or safety, no nuisance, fraud or victimization of the public. In fact, not granting the variance could result in a situation causing all of the above, should the seawall collapse or a cave in occur.

Comment: Chair Danaher said that a competent contractor would be able to prevent a collapse into the canal and protect workers. He said he would not want his neighbor’s seawall to extend past the adjacent seawalls. He believes this will create a flood of variance requests and result in unsightly canals. He said there was no validity to the applicant’s response.

Vote: Anderson – no, Glassman – no, Flood – no, Danaher - no

Vote: No

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: This is a corner property fronting busy commercial waterfront on both sides with the boating channel running close to the property line

This property has been in the hands of an elderly couple for many years. The children now own this property and are anxious to repair and improve the entire parcel.

Comment: Chair Danaher stated this lot was no different than other canal lots, except it was across from the marina. Committee Member Flood stated concerns about work on this seawall blocking the canal, disruptions to marina business, and anyone on the canal with a bigger boat.

Vote: Anderson – no, Glassman – no, Flood – yes, 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

Comment: Chair Danaher stated granting this variance would set a new redevelopment pattern in the city.

Vote: Anderson – no, Glassman – no, Flood – no, Danaher - no

Vote: No

Attorney Wright stated that the overall vote on the five criteria was one yes and four no. In order for the committee to recommend approval that granting the variance must have minimal adverse effects on other citizens and on the city.

Motion – Moved by Bill Danaher, seconded by Ron Anderson, to recommend to the city commission to deny this variance request for encroachment into the canal to replace a seawall at 541 5th Street, Robert L. Bishop & Charlotte Bishop Hill, Owners.

Member Marie Flood stated that based on the evidence and discussion presented, she now felt that she should recuse herself from voting.

On the Motion: Roll Call Vote: Unanimous approval.

Attorney Wright stated that the Planning & Zoning recommendation will be forwarded to the city commission. In order to grant the variance the commission would have to approve it by a 4/5 vote since the application did not meet all five criteria. The applicant can withdraw the variance and receive a partial refund of the application fee.

Clerk stated that if the applicant wants to go forward that this will come before the city commission on June 24. However, she needs a decision in the next day or two. If the applicant waits too long, the commission would not hear the matter until the first meeting in July.

Attorney Wright encouraged committee members to think ahead about possible voting conflicts. If any member is uncomfortable about where the evidence is heading, they should recuse themselves.

4. Any Other Business – None

There being no further business, the meeting adjourned at 10:40 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.