

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING AND VARIANCE HEARING
Wednesday, October 15, 2008 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, Bob Glassman, Ron Foster, Marie Flood and John Curry. Excused: Ron Anderson. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz, and City Clerk Vickie Bollinger. Public: 5
2. Approval of Minutes: Regular Meeting December 12, 2007
Approved as written.
3. Discussion
City Clerk administered the oath to all witnesses in all matters to be heard on this date.

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

Applicant was represented by Jeff Stuncard. Building Official Edward Borysiewicz stated there is an existing dock on Lot 19 where the house is located. The dock is L-shaped and is 28.5 feet from shore. City code allows a dock 30 feet from shore. There are permitted mooring piles 15-20 feet out from the dock to accommodate a boat. He stated the applicant was asking to remove 3 mooring piles and install 7 new ones, 4 of which will be 9 feet further out from the dock than the 3 to be removed.

Building Official Borysiewicz stated the variance request included three things: one, 7 mooring piles are requested where only 4 are allowed in city code; two, 4 of the mooring piles extend 27 feet beyond the 30 feet permitted by code; and three, the mooring piles are to be 13.5 feet high where code permits a maximum of 10 feet above mean sea level. In short the variance is for the number of mooring piles, their height, and their distance from shore.

Building Official Borysiewicz stated that in May 2006, he and then Mayor Burnett met with Mr. D’Ascanio and told him they personally did not see any problems, but the fact that a variance was required was not discussed. There was a miscommunication regarding the dock, but no approvals were given. There were no objections stated at that meeting, but it was clear that ACOE and DEP permits were required.

Jeff Stuncard stated that the D’Ascanios believed they had a verbal approval at that meeting and based on that proceeded to obtain permits from ACOE and DEP. He stated that the channel is wide; there would be no navigation issues; it was safe; and the variance merits approval. He stated he believed there would be about 125 feet across the channel for navigation after installation of the mooring piles as requested.

Amedeo D’Ascanio stated that navigation was not an issue since the ACOE did not have a problem with it. The original plan was to enlarge the dock, but that dock extension was denied by DEP. He stated the mooring piles are needed to secure the boat; the boat would be for the private use of the family, but may be chartered in the Bahamas or Mexico not here in KCB; the boat will be titled to the company.

Mr. Stuncard, in response to a question, stated the ACOE permit allows for time extensions up to 12 months as long as progress is being made on the project.

Terry Fisher, Key Colony Beach Marina owner, stated concerns over navigation of the channel, especially by large boats. He stated the channel was only 30 feet wide during low tide. He said planned development on Coco Plum would make the channel even smaller. He recommended more information be requested and reviewed before making any decisions about the variance.

Mr. Stuncard reported the engineer for the Coco Plum project said there were no engineered plans or applications for permits for that project. If the project is submitted to ACOE for permits, the Coco Plum project would have to react to any existing conditions, including the proposed mooring piles.

Mr. D'Ascanio stated the ACOE rules are very stringent and their charter includes navigation. The proposed mooring piles would not have been approved if there was a navigation issue.

There was a discussion about the Coco Plum project and its location relative to the proposed mooring piles and the depth of the channel.

Mr. Fisher again recommended more information be sought and that his business relies on a navigable channel.

Morris Lewis, charter boat captain since 1990, stated the D'Ascanios have been customers and he does not like to speak against anyone's property rights. However, he said the ACOE makes mistakes, such as problems created at Hawk's Cay where a hazard to navigation was created with ACOE approval. He stated there is only 30-40 feet of navigable channel and that the channel turns near the proposed mooring piles creating a blind spot which will only lead to problems.

Options to move the dock and water depth at the dock were discussed, but Mr. D'Ascanio said it would be too costly to move the dock. He stated the boat could be tied to the existing dock, but the proposed piles were for added safety and to keep the boat from hitting the dock due to wind and waves.

Building Official Borysiewicz stated that he had contacted Glen Boe's office, the engineers for the Coco Plum project. He reported the engineer said there were no plans or permit applications for docks for that project, although sales brochures pictured docks at the project site.

Mr. Lewis stated there was a problem now when turning that corner when other boats are in the channel. He suggested changing the location a little to try to make it safer.

In response to a question, Building Official Borysiewicz stated that he and then Mayor Burnett stated they had no problem with the conceptual plan, but that the project would have to go through all permitting processes. He said there was apparently a miscommunication at the meeting in May 2006.

Mr. Stuncard said he followed Mr. Borysiewicz directions for the approval and relied on that to proceed with this project. In response to a question, he stated he had nothing in writing from the city.

Mr. D'Ascanio stated the May 2006 meeting was a courtesy and when there was no objection, they proceeded with the project. The need for a variance was not mentioned. In response to a question he stated that no other options were considered for this project since they believed they had city approval.

Chair Danaher stated there was input from three citizens received by the city clerk:

Mary McFadden, 6 Clara Boulevard, wrote that she was employed by individuals in a legal dispute with the applicant and his firm, D'Assign Source, and that her property would not be adversely affected by the variance. However, this variance is not minimal and that advertising brochures indicate this is a commercial vessel which does not belong in a residential neighborhood. The letter asks the committee to consider noise level, aesthetics, the nuisance of "gawkers," and establishing a precedent. She stated that the boat is larger than many lots.

Attorney Wright stated that the topic of the variance is the dock, not the boat or whether or not it will be a charter vessel. He advised that all discussion be confined to the dock issues.

Chair Danaher continued with citizen correspondence:

Muriel Beaumont, 2nd Street, spoke with the city clerk and expressed concerns over navigation and setting a precedent by granting the variance.

Joe French, 4th Street, emailed expressing concern for navigation and suggested tearing out the existing dock and then complying with current codes.

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: Attorney Wright advised that variances are for granting some privilege not allowed by city code. The committee must consider the fairness to the applicant and to other citizens. The dock will remain regardless of what boat is there or who owns the property.

Discussion - There would be more concern with the number and height of the pilings in a canal where a view may be blocked, but that is not applicable here. There are few lots where pilings can be placed that far from the shoreline and not interfere with navigation. The ACOE has no issue with navigation.

The proposed pilings will be 57 feet from the shoreline. The distance is measured from the centerline of the dolphin piles, therefore the piles will extend for another foot to 58 feet.

Attorney Wright, responding to a question, stated city code is silent on the use of dolphin (or cluster) piles or single piles. They are not prohibited; they are not addressed at all. He advised cluster piles be treated as a single pile.

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

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: Although the May 2006 meeting occurred, compliance with codes is required.

Boat can be docked without the mooring piles, but the piles are desirable for safety of the boat and to keep the boat from banging against the dock from wind and waves.

Prior discussion resulted in a miscommunication regarding any approvals from the city.

There may be other options for docking, but the applicant acted in good faith based on the prior discussion. Higher pilings and more pilings are important for the safety and security of the boat, especially during a storm.

At the existing dock there is a boat lift on the inside.

Vote: Curry - no, Glassman - yes, Foster – no, 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: The outermost pilings are the biggest concern. The possibility of removing the cluster pilings and beefing-up the remaining two pilings could be researched.

Attorney Wright advised the committee to consider the variance as requested and later consider any conditions or recommended changes.

Discussion - If any changes are made, the permits will have to be revised.

It was suggested that the existing boat lift be removed and the dock and piles moved closer to the shore. If the variance is granted there may be a financial hardship to businesses at the Key Colony Beach marina because of navigation problems. The channel does get narrow and shallow especially during low tides. More information is needed to make a decision about this request.

Attorney Wright advised the committee that a “yes” vote on this criterion indicates the issues have been answered and the variance may be granted. A “no” vote on this criterion means there are concerns and the variance should not be granted.

Vote: Curry - no, Glassman - no, Foster – no, Flood – no, Danaher - yes **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: 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: Attorney Wright advised the committee should consider whether this property is unique compared to the other lots in the zoning district.

In response to a question, Building Official Borysiewicz stated all properties along the channel are allowed to have a dock 30 feet from the shoreline. There are 15 lots along the channel with the same dock regulations. Dock regulations are different for different parts of the city.

Vote: Curry - yes, Glassman - no, Foster – no, Flood – no, Danaher - yes **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 granting the variance will cause this property to look different than other lots in the immediate neighborhood; that this would not change the established development pattern. A “yes” vote on this criterion indicates that this criterion has been met. A “no” vote means that the criterion has not been met and the variance should not be granted.

Vote: Curry - no, Glassman - 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. If option 2 is chosen, the committee may place restrictions or conditions as part of the approval for granting this variance. 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 Ron Foster, seconded by Marie Flood, to recommend denial of this variance request. Roll Call Vote: Yes-Curry, Glassman, Foster, Flood No-Danaher. Motion is approved 4-1.

If the applicant chooses, the city commission will hear this matter on November 24, 2008 at 9:30 a.m.

4. Any Other Business - None

There being no further business, the meeting adjourned at 10:50 a.m.

Vickie L. Bollinger, City Clerk