

**PLANNING AND ZONING BOARD MINUTES
THURSDAY, MAY 6, 2021 - 1:30 PM
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Chairman, Steven Lauer; Vice Chairman, Robin Pelensky (arrived at 1:35 p.m.); Members: Jeb Bittner, Jose Prieto, Theodore Perry and Alternate Member #1, Richard Cahoy **Also Present:** Planning and Development Director, Jason Jeffries; City Attorney, John Turner and Deputy City Clerk, Sherri Philo

Excused Absence: Elliese Shaghnessy

The Chairman called today's meeting to order at 1:33 p.m.

I. PRELIMINARY MATTERS

A) Agenda Additions and/or Deletions

Mr. Jason Jeffries, Planning and Development Director, reported that staff received a request from the applicant to continue item 4-B) on today's agenda and that it be heard on June 3, 2021.

II. APPROVAL OF MINUTES

A) Regular Meeting – April 1, 2021

Mr. Prieto made a motion to approve the minutes of the April 1, 2021 Planning and Zoning Board meeting. Mr. Perry seconded the motion and it passed unanimously.

III. PUBLIC COMMENT

None

Mr. John Turner, City Attorney, called for a point of order. He asked if anyone in the audience is present today regarding item 4-B) - Minor Subdivision Application submitted by Katherine M. McConvey.

No one from the audience wished to speak on this matter.

Mr. Turner explained to the Board that a motion needs to be made in order to continue the hearing.

Mr. Lauer said they would wait until they get to that item on the agenda in case someone comes in late for the hearing.

IV. PUBLIC HEARING

[Quasi-Judicial]

- A) Minor Subdivision Application Submitted by Victoria L Gould for a Proposed Subdivision of Existing Residential Lots 6 and 7, Block 4, Osceola Park Home Sites Subdivision, which are Considered a Single Residential Lot Under Unity of Title, to be Subdivided Back into Two Residential Lots Located at 1901 23rd Avenue (#SD21-000002)**

The Chairman read Minor Subdivision Application #SD21-000002 submitted by Victoria L. Gould by title only.

There were no ex parte communications reported.

The Deputy City Clerk swore in staff.

Mr. Jason Jeffries, Planning and Development Director, went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). Staff recommends approval of subdivision Plat at 1901 23rd Avenue, subject to submittal of quit claim or warranty deed matching the approved lot split.

Ms. Vicky Gould, Applicant, said that she is present to see if the application is approved.

The Chairman opened and closed the public hearing at 1:46 p.m., with no one wishing to be heard.

Mr. Prieto referred to an email that was placed on the dais for the Board members.

Mr. Jeffries explained that the email would fall under public comment.

Mr. Jose Prieto, read into the record an email from Ms. Linda DuBois stating that she approves the proposed subdivision (attached to the original minutes).

Mr. Turner asked if there were any ex parte communication or site visits from any of the Board members.

Mr. Lauer answered no.

Mr. Turner explained to Mrs. Pelensky that because she was late for today's meeting, she cannot vote or make motions.

Mr. Prieto made a motion to approve the Minor Subdivision Application submitted by Victoria L. Gould for a proposed subdivision of existing residential Lots 6 and 7, Block 4, Osceola Park Home Sites Subdivision, which are considered a single residential lot under unity of title, to be subdivided back into two (2) residential lots located at 1901 23rd Avenue. Mr. Perry seconded the motion.

Mr. Lauer questioned based on competent substantial evidence.

Mr. Prieto amended his motion to include that the Board approves the Minor Subdivision Application based on competent substantial evidence. Mr. Perry seconded the amended motion and it passed 5-0 with Mr. Cahoy voting yes, Mr. Perry yes, Mr. Bittner yes, Mr. Prieto yes and Mr. Lauer yes.

[Quasi-Judicial]

- B) Minor Subdivision Application Submitted by Katherine M. McConvey, on Behalf of 786 Date Palm, LLC, for a Proposed Subdivision of Existing Residential Lots 7,8,9, and 10, Block 6, Veromar Plat 3, which are Considered a Single Residential Lot Under Unity of Title, to be Subdivided into Two Residential Parcels Located at 786 Date Palm Road (#SD20-000005)**

The Chairman asked if anyone was present for this application.

There was no one in the audience regarding this item.

Mr. Bittner made a motion to continue the Minor Subdivision Application submitted by Katherine M. McConvey.

Mr. Jeffries stated that the application would be continued to the June 3, 2021, Planning and Zoning Board meeting. Mr. Bittner agreed.

Mr. Prieto seconded the motion and it passed unanimously.

[Legislative]

- C) An Ordinance of the City of Vero Beach, Florida, Amending the Land Development Regulations by Amending Chapter 62, Article IV, Industrial District, to Add Microbreweries to the List of Permitted Uses in the M Zoning District; Amending Chapter 62, Article III, Commercial Districts, and Article X, Downtown District, to Add Use Conditions for Microbreweries; Amending Chapter 60 (Appendix. Definitions) to Revise the Definition of Microbreweries; Providing for Codification; Providing for Conflict and Severability; Providing for Correction of Scrivener's Errors; and providing for an Effective Date (#Z21-00006-TXT)**

The Chairman read the proposed Ordinance by title only.

Mr. Jeffries went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). Staff recommends approval of the text amendment.

Mr. Lauer referred to page four (4), line 26, of the draft Ordinance, where it states, "*A restaurant in the C-1A zoning district shall not have drive-in, drive-through service, or carry-out service to provide meals intended for off-premises consumption and enclosed or wrapped or packaged in any form.*" He asked what does that mean.

Mr. Jeffries said that is an existing provision in the Code. He explained that for formatting purposes, he is changing it in the Commercial Zoning District so that it follows within this new use specific standards. He said essentially fast food and drive-in type restaurants are not allowed in the C-1A Zoning District and the C-1A Zoning District is primarily on Ocean Drive. He said it is a common provision in codes to restrict those types of restaurants in certain areas and they are trying to achieve a more walkable pedestrian commercial environment.

Mr. Lauer read in part the strike through language on page four (4) of the draft Ordinance, "*Excluding drive-ins, drive-throughs and food service establishments primarily providing meals intended for off premises consumption...*" He said the word "primarily" is not used in the language used on line 26.

Mr. Jeffries thought that he took "primarily" out in order to be more specific on what they were trying to achieve. He said that he had recently been to Casey's Restaurant when he was drafting the Ordinance and someone could interpret that Casey's provides meals that are wrapped. He said that he didn't want to provide that type of a conflict.

Mr. Lauer said any restaurant that allows people to buy food and take it off the premises would be

prohibited in this definition.

Mr. Jeffries said they would not be allowed to have drive-in, drive-through, or carry-out service. He explained that “carry-out” is, as an example, where they have a walk-up window on a sidewalk.

Mr. Lauer asked is carry-out services defined somewhere.

Mr. Jeffries said that he didn’t think the Code defines it, but it is defined in the Planner’s Dictionary, which the City’s Code references.

Mr. Lauer referred to Bobby’s Restaurant on Ocean Drive where someone could order something to go.

Mr. Jeffries said that is not the intent.

Mr. Lauer felt that they should put the word “primarily” back in.

Mr. Jeffries said they can look at it. He said full service restaurants could still have that type of service. Generally carry-out service is defined as having a walk-up window.

Mr. Cahoy said that he has the same concern. He suggested perhaps amending the wording because over this past year curbside service was the primary business of some restaurants and he thinks the verbiage conflicts.

Mr. Lauer agreed. He said that he has read this about a dozen times and every time he reads it, it means the same thing. The verbiage “*to provide meals intended for off-premises consumption and enclosed or wrapped or packaged in any form*” to him would mean that a restaurant could not offer that and be allowed in this zoning. He didn’t think that carry-out services was adequate to preclude that type of prohibition. He felt the word “primarily” needed to be in there.

Mrs. Pelensky asked the City Attorney if she can be involved in the discussion.

Mr. Turner explained that generally if you are late for the meeting then you are not to participate. That is the way the Ordinance reads.

The Chairman opened and closed the public hearing at 2:04 p.m., with no one wishing to be heard.

Mr. Perry said that he was fine with microbreweries being in the industrial area. He was not sure about the amendment just discussed.

Mr. Bittner asked Mr. Jeffries if he is comfortable amending the language.

Mr. Turner asked Mr. Jeffries if he was going to move to correct the Ordinance at this point or how does he want to address the question.

Mr. Jeffries suggested that the Board makes their recommendations and staff would look at them and if they have to revise it they will revise the Ordinance as it goes to the City Council.

Mr. Turner said they have a recommendation to make it more of a detailed explanation that it is not to apply to what would be a carry-out service as part of normal restaurant activity and it should exclude the primary business model of “take-out.”

Mr. Bittner asked then procedurally if you make the recommendation to approve it, but staff determines something different at a later date, does it kick this back to the Board.

Mr. Turner answered yes. He explained that they have to have a recommendation one way or another.

Mr. Prieto said there is no problem with the concept of adding microbreweries to the industrial use, it is just the language.

Mr. Lauer asked the Board members if they have the same concern that he has.

Mr. Prieto answered yes. Mr. Bittner said that he recognizes now that Mr. Lauer brought it up.

Mr. Turner said staff will put that in the report when they bring this before the City Council.

Mr. Jeffries said that he understands the Board's intent. He thinks it is a matter of the definition of what is carry-out and what is take-out.

Mr. Prieto said the word "primarily" is the key word.

Mr. Lauer did not think any of the Board members had a problem with the microbreweries being in the Industrial Zone, it is just the wording.

Mr. Prieto made a motion to approve the Ordinance amending the Land Development Regulations by amending Chapter 62, Industrial District, to add microbreweries to the list of permitted uses in the M Zoning District based on correcting the language as discussed.

Mr. Lauer suggested adding something more specific as it relates to carry-out.

Mr. Turner explained what staff will be doing in their report to the City Council based on the actions today is expressing that this Board had a concern regarding that definition and application, which needs to be addressed by the City Council.

Mr. Bittner seconded the motion and it passed 5-0 with Mr. Cahoy voting yes, Mr. Perry yes, Mr. Bittner yes, Mr. Prieto yes and Mr. Lauer yes.

[Legislative]

- D) An Ordinance of the City of Vero Beach, Florida, Amending the Land Development Regulations by Adding Sustainable Development Incentives by Creating Chapter 79, Development Incentives, Article II, Sustainable Development Incentives; Providing for Codification; Providing for Conflict and Severability; Providing for Correction of Scrivener's Errors; and Providing for an Effective Date (#Z21-00005-TXT)**

The Chairman read the proposed Ordinance by title only.

Mr. Jeffries went over staff's report accompanied by a Power Point presentation with the Board members (attached to the original minutes). Staff recommends approval of the text amendment.

Mr. Bittner asked has the matrix been established on the value of the different incentives.

Mr. Jeffries reported that the research was done based on existing Ordinances and the recommendations from the United States Green Building Council (USGBC) and the Leadership in Energy and Environmental Design (LEED) rating system.

Mr. Bittner said that he is not a fan of these matrixes. He is a fan of market driven energy efficiency. He felt that if they were going to do this there needed to be some ongoing maintenance requirements. He does not have a problem with the landscape provisions. He is mainly talking about the Building Code issues and he thinks it should be an adoption of the Building Code.

Mr. Jeffries said if there are certain provisions that the Board thinks should be looked at or removed, that could be part of their recommendation.

Mr. Bittner said that he perceives Planning and Zoning as land use and they were walking into what kind of windows are used, water heaters, etc., which are really Building Code issues.

Mr. Jeffries said they do get into design, such as what they did with the Cultural Arts Village where they have architectural design standards.

Mr. Bittner said his point is that it is architectural versus the building component. He said it would add considerable administration to manage this process.

Mr. Barry Siegel, Attorney representing the Applicant, said there is a matrix that has a level of different variables. He respects the issues regarding maintenance, but the thought is that they need to start somewhere. He said this is not something that they came up with on their own. This is based on the research of what other communities are doing to make this work and in that research looking to see what wasn't working. This seemed to be an easy manageable sustainable plan that could be put in place. He then gave some examples of development incentives. He said they have to start somewhere and the Comprehensive Plan states that the City needs to be offering some sort of incentives. He thinks that this is an excellent start and if there is something the Board is concerned with then he would suggest that they put a sunset provision on it so that they could bring it back to look at to see if it is not working or if it is working they could renew it permanently. He said they have to take the first step. He views this as a win/win for the City. This comes at no cost to the City. There is no tax for this and there is no tax credit for this. In theory, by building these homes that are more expensive they are probably increasing the tax base. Realistically, it also increases the marketability of the home when you think that it is a big bragging point, it has energy efficient windows or it is an energy efficient home. He believes this is an excellent start for this community to get ahead of all the other communities in the county in terms of energy efficient buildings.

Mr. Bittner said that he appreciated the sunset provision possibility. He said that he just received this information a few days ago so he has not read the particulars on how the incentives work. He does believe incentives are a good thing, but he also thinks there is a benefit to the homeowner who uses these things long term.

The Chairman opened the public hearing at 2:33 p.m.

Mr. Harry Howle felt that this was a good opportunity to move forward. He thinks that it is a good move and asked the Board members to please consider it.

Mrs. Pelensky asked if she can speak as a member of the public.

Mr. Lauer answered yes.

Mrs. Pelensky felt that this was an excellent way for the City to start looking at sustainable practices for buildings within the City. She felt that they needed to spend more time with the particulars. The one (1) that is glaring out at her that she has an issue with is the 10% reduction in open space. She felt that might be an issue with stormwater, as well as the trees. She thinks that there are a couple things that they need to be careful with, but otherwise she thinks it is a good step.

Mr. Jeffries explained that the stormwater calculation is based on the amount of the impervious area. He noted that if you have less open space sometimes you have less for an open drainage, but you would still have to retain the amount of water. There also is a provision about not conflicting with the Tree Ordinance so they would still have to provide the same amount of trees they normally would have.

Mrs. Pelensky explained that if you have 1,000 square feet of open space, but are reducing it to 800 square feet, then less trees would be calculated per square foot. She thinks there is some tweaking that needs to be done on this Ordinance.

Mr. Jeffries said they have a couple options. The Board could recommend that they remove that particular incentive at this point or they could leave it in with a provision of a five (5) year sunset for staff to bring back a report and if issues come up they could always amend the Ordinance.

Mrs. Pelensky referred to the architectural building standards and reported that there is another program out there, which is called the Sustainable Sites Initiative and that was created and administered by the American Society of Landscape Architects that is less building focus and more on the natural environment. She reported that a number of cities around the Country have adopted the Sustainable Sites Initiative Standards in their Code so that might be another one (1) to look into.

Mr. Richard Baker said this seems like an improvement for our environment and is important for the Board to consider. He felt they were going in the right direction.

Ms. Jean Catchpole, of the Indian River Neighborhood Association (IRNA), said one (1) of the concerns of the IRNA is maintaining a water supply and reducing water usage for landscaping. She felt this was a start to initiate more native plants. She is sure there were details that need to be defined. She said they are very concerned about the tree canopy in neighborhoods in that they see larger homes going in and the tree canopy being reduced. She knows that they are mitigated, but that doesn't mean that the tree canopy is resupplied in their neighborhoods. She asked the Board members to give this some serious consideration.

Mr. Ryan Jones said that he and his wife are the applicants and are present today in case the Board has any questions.

The Chairman closed public hearing at 2:46 p.m., with no one else wishing to be heard.

Mr. Prieto thought the general feeling was that the Ordinance was good, but needed a little tweaking. He asked is there a way to tweak this to move it forward.

Mr. Jeffries thought the applicant was open to their suggestions.

Mr. Lauer said that he was not in favor of changing the density, green space, etc., just so that someone would do the right thing or save money by putting in sustainable building practices. If there

could be some type of incentive in the form of reduced application fees, inspection fees, etc., that was not going to change the character of this community and he would be happy to hear those proposals. He does not like the idea of more density just because you are using sustainable building practices.

Mr. Jeffries noted that no where in the proposed Ordinance is any bonus for density.

Mr. Lauer asked what is Floor Area Ratio (FAR).

Mr. Jeffries said FAR is the intensity of the development.

Mr. Lauer questioned doesn't that affect the density.

Mr. Jeffries answered no. He explained that density is the number of residential units per acre and intensity of development is the size of the building related to the lot.

Mr. Lauer said that he is not in favor of this for the reasons he expressed.

Mr. Bittner said that he is all for the environmental energy saving benefits that these programs bring. He would recommend, like the other jurisdictions that have adopted these kind of programs, that they have a comprehensive study. He said the other places where he has seen this it was driven more by the jurisdiction than the applicant. He said that he is glad the applicant raised the issue and he would request that they involve the stakeholders; the engineers, the Home Building Association, land planners, City staff, etc., to look at the pros and cons to this. He said this is a good start, but to adopt it as a Board having only seen it for a few days as complex as it is, might be a leap too far today. He would support creating some mechanism to study this and to get feedback from other stakeholders.

Mr. Cahoy said that he also has some concerns with the proposal. He suggested that this be extended and reworked. He said one (1) thought he had was to consider a 10-year inspection of the property, much like a mitigation report. Also some of the items, such as the inclusion of shade features to shade all windows and doors, which to him seems like an interior decorator issue. He felt this was a good start, but needed a lot of work before the Board could make a recommendation.

Mr. Bittner felt that a thorough discussion on how they would implement this process needed to happen at a level greater than a few days of review by the Board members and being brought before the Board today.

Mr. Siegel asked if he would be permitted to address some of the issues brought up by the Board.

Mr. Lauer said that he (Mr. Siegel) had ample opportunity to respond.

Mr. Prieto made a motion that the Board approves the Ordinance amending the Land Development Regulations by adding sustainable development incentives by creating Chapter 79, Development Incentives. Mr. Perry seconded the motion and it failed 3-2 with Mr. Cahoy voting no, Mr. Perry yes, Mr. Bittner no, Mr. Prieto yes, and Mr. Lauer no.

V. DISCUSSION OF SITE LANDSCAPING AND TREE PROTECTION ORDINANCE RESEARCH

Mr. Jeffries went over staff's memorandum accompanied by a Power Point presentation with the Board members (attached to the original minutes). He asked for the Board's feedback on the

direction they would like the City to go in terms of the updating the Landscape and Tree Protection Ordinance.

Mr. Perry asked how many permits have been issued for the removal of historic trees. He asked in the past, how many tree removal permits have been issued for trees over 36-inches in diameter breast height (dbh).

Mr. Jeffries said recently there were a couple sites on the beachside where large trees were taken down.

Mr. Bittner suggested allowing a variance to the side yard setback or the front yard setback in order to save the trees. He said that he would look for the most restrictive Tree Ordinance that has been created in the United States and start there.

Mrs. Pelensky said in her experience with prime properties that are available are the least desirable to a developer because of the tree canopy. She felt it was really important to beef up the Ordinance even more in order to save what they have.

Mr. Jeffries said the key to that would be the historic tree provision.

Mrs. Pelensky felt it should be twice the dbh that was recommended in the Ordinance. She said when building a three (3) million dollar home a \$20,000 mitigation fee for removing Live Oak Trees is nothing.

Mr. Jeffries reported that there were people in the audience who would like to speak on this matter.

The Chairman opened the meeting for public comments.

Dr. Richard Baker said regarding landscaping, there are many different types of native plants that can replace grass that doesn't require watering or fertilizer.

Mrs. Katherine Booth, Member of the Tree and Beautification Commission, reported that the City does not have safeguards in the Code that makes pruning trees something that you don't do unless you need clearance.

The Chairman closed public comments at 3:32 p.m., with no one else wishing to be heard.

Mr. Jeffries asked the Board what direction they would like staff to go.

Mr. Bittner recommended that staff continues down the path that they have been going given the considerations the Board discussed.

Mr. Jeffries said that he would bring back before the Board the draft Ordinance at a workshop meeting.

VI. PLANNING DEPARTMENT MATTERS

Mr. Jeffries reported that their May 20, 2021 meeting will be cancelled. Their next meeting will be June 3, 2021.

Mr. Perry, Mrs. Pelensky, and Mr. Lauer said they would be out of town and unable to attend the

June 3, 2021, Planning and Zoning Board meeting.

Mr. Jeffries noted that the Board continued the public hearing on the Minor Subdivision Application to the June 3, 2021 meeting.

VII. BOARD MEMBERS' MATTERS

None

VIII. ADJOURNMENT

Today's meeting adjourned at 3:37 p.m.

/sp