

**PLANNING AND ZONING BOARD MINUTES  
THURSDAY, DECEMBER 2, 2021 - 1:30 PM  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**PRESENT:** Chairman, Steven Lauer; Vice Chairman, Robin Pelensky; Members: Jose Prieto, Jeb Bittner, Theodore Perry, Alternate Member #1, Richard Cahoy and Alternate Member #2, Elliese Shaghnessy (arrived at 1:32 p.m.) **Also Present:** Planning and Development Director, Jason Jeffries; City Attorney, John Turner and Deputy City Clerk, Sherri Philo

Today's meeting was called to order at 1:30 p.m.

**I. PRELIMINARY MATTERS**

**A. Agenda Additions and/or Deletions**

None

**II. ELECTION OF OFFICERS**

**A. Chairman**

Mr. John Turner, City Attorney, opened the floor for nominations for Chairman of the Planning and Zoning Board.

**Mr. Prieto nominated Mr. Jeb Bittner for Chairman of the Planning and Zoning Board. Mrs. Pelensky seconded the nomination.**

**There were no other nominations.**

**The nomination of Mr. Jeb Bittner to serve as Chairman of the Planning and Zoning Board passed unanimously.**

**B. Vice-Chairman**

The Chairman called for nominations for Vice Chairman of the Planning and Zoning Board.

**Mr. Lauer nominated Mr. Jose Prieto for Vice Chairman of the Planning and Zoning Board. Mr. Perry seconded the nomination.**

**There were no other nominations.**

**The nomination of Mr. Jose Prieto to serve as Vice Chairman of the Planning and Zoning Board passed unanimously.**

**III. APPROVAL OF MINUTES**

**A. Regular Meeting – November 18, 2021**

**Mr. Prieto made a motion to approve the minutes of the November 18, 2021, Planning and Zoning Board meeting. Mr. Lauer seconded the motion and it passed unanimously.**

**IV. PUBLIC COMMENT**

None

## V. PUBLIC HEARING

### [Quasi-Judicial]

#### A. **Application #A21-000001 Submitted by Attorney Barry G. Segal, P.A, on Behalf of KMM, LLC, Appealing the Planning and Development Director's Interpretation of the City Code Pertaining to the Subdivision (Lot Split) of Existing Platted Single-Family Residential Lots Under an Unity of Title [Sec. 70.14(C)]**

The Chairman read Application #A21-000001 submitted by Attorney, Barry Segal on behalf of KMM, LLC by title only.

The Deputy City Clerk swore in staff and all witnesses testifying for today's hearing en masse.

There were no ex parte communications reported.

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). He reported that what this really comes down to is that the lot width does not meet the criteria under Code Section 70.14 (c) and the meaning of the word "occupied" under Code Section 70.14 (c)(2).

Mr. Perry referred to Veromar Plat 3 of their backup material. He questioned where they get an average lot width of 120 in the area.

Mr. Jeffries explained that it is based on the current development pattern, not this Plat. He said they would have to go back and look at the zoning maps. He explained that originally they developed over one (1) lot and half of the lot next to it, which created one (1) development site, which was what created the unity of title. He felt that because of the development patterns on Ocean Drive, this would be a good case to request a variance.

Mr. Cahoy asked if the property located on lots 4 and 5 were demolished, would they be treated the same as the property they are dealing with today.

Mr. Jeffries answered yes. He explained that staff's interpretation is that it would still be a unity of title because it previously had been developed as a single property, even if they demolished the structure. He felt what this came down to was the term "occupied" under Section 70.14 (c)(2) and the question is can someone tear down a structure and then release the unity of title. He did not think that was the intent of the Code.

Mr. Bittner asked would it be fair to say absent that interpretation for all other reasons the application would be approved.

Mr. Jeffries said it comes down to one (1) word and one (1) criteria. He noted that there are four (4) parts of the criteria and they meet three (3) of them.

Mr. Bittner said oceanfront is an entity to itself and if you look at these lots as being oceanfront it is compatible.

Mr. Jeffries felt that was a reasonable argument. He said that he did mention in his original

memorandum to the applicant that they were justified to request a variance for those reasons.

Mr. Barry Segal, Attorney representing the applicant, felt that Mr. Jeffries made it very clear that this should go through, except for one (1) very small detail in the Code. He said that he would be addressing why it does not apply in this situation and why this should be able to move forward. He said what this comes down to is the interpretation of Section 70.14 of the Code. He then showed on the screen Code Section 70.14 (c) (1) and Code Section 70.14 (c) (2) (attached to the original minutes). He reported that these lots were platted in the early 1900's and they were not looking to change how they were platted at that time. They were looking to have two (2) neighboring lots as they were platted in the early 1900's. He then read in part Code Section 70.14 (c) (1), "*No resulting lot shall be smaller than the average lot width and lot area of existing platted lots located within 300-feet of the lots to be subdivided that are located within the same subdivision and zoning district.*" He noted that these lots far exceed the lot area of the other lots in the area. What it doesn't do is meet the lot width and the reason is because most of the lots across Ocean Drive are more square and these lots are more rectangular. He said this Code Section requires that no resulting lot shall be smaller than the average lot width and lot area of the existing platted lots so in other words for this restriction to kick in you have to satisfy both the lot width and the lot area. He said this makes sense because what the City is saying in this situation is that they don't want a lot that is too narrow and too small so if your lot is huge like this one, that is okay. He then showed on the screen what the Code currently states and what he felt the Code should state (attached to the original minutes). He said this lot far exceeds the average lot size for the properties within the 300-foot radius of this property. For that reason alone this Code Section does not apply to these lots being returned to their normal platted size because they do not violate both the average lot width *and* the average lot area. If the Code Section had said no smaller than the average lot width *or* the lot area then that would be different. He then read in part Section 70.14 (c) (2), "*Any existing platted lots under a single unity of title occupied by principal residential structure and accessory uses and structures occupying more than one lot within a single-family residential zoning district shall for the purposes of this Chapter and (c) (1) above be considered as one lot.*" He said currently there are two (2) different owners of these lots so they don't have unity of title and there is no unity of title recorded. As to the word *occupying*, there is nothing on these properties at this time so they have to look at the meaning of the word. He said these are vacant properties and they are not "occupied." For these reasons, this property is not considered a single lot under this definition. He asked that the Board rule that these are two (2) independent lots and are not subject to this Section of the Code and to allow them to be developed as per the plat in the early 1900's.

Mr. Lauer questioned if the Code Section is unclear, why wouldn't they be seeking modification of the Code rather than the interpretation of the Code.

Mr. Segal said they think it is extremely clear.

Mrs. Pelensky said the interpretation is that this criteria is not met. The lot area is fine, but the lot width is not. She questioned why they didn't seek a variance. She felt that would have been easier.

Mr. Segal said their position is that they feel the Code is very clear and they didn't think seeking a variance was necessary.

The Chairman opened and closed the public hearing at 2:20 p.m., with no one wishing to be heard.

Mr. Lauer said in reading the existing Code, both requirements of the lot area and the lot width have to be met.

Mr. Bittner said Mr. Jeffries is stating that both are required.

Mr. Jeffries said that is correct.

Mr. Lauer said that Mr. Segal is stating that it requires one (1) of the two (2) requirements and the way he reads the Code both are required.

Mr. Prieto referred to the question as to the definition of “occupying.” To him it is clear that the property is not occupied and if it isn’t occupied then it nullifies the unity of title.

Mr. Bittner said the rule as he reads it is that it has to be smaller than the average lot width and smaller in area than the existing platted lots and these lots are only smaller in width so it doesn’t meet both criteria. If the Code said “or” then they could apply either criteria to turn them down.

Mr. Cahoy asked if the Board was to vote in favor of the applicant, would that set a precedent.

Mr. Jeffries said if the Board agrees with the applicant’s interpretation of the Code, he would then go back and revise it.

Mr. Prieto noted that no one was present to speak against this, which weighs heavily on his decision. He asked if this was approved to be split into two (2) lots, would it be compatible with other lots on Ocean Drive.

Mr. Jeffries said this is very consistent with the development pattern of the lots on the east side of Ocean Drive. It is just a technicality of the Code that the provision of Section 70.14 (c) applies to any single-family lot.

Mr. Lauer felt the proper way to handle this was to seek a change in the Code.

Mr. Bittner asked has there been other cases where someone met the lot area, but not the lot width and were turned down.

Mr. Jeffries answered yes. He noted that it was turned down at the staff level, not by the Board.

Mr. Prieto said if they define the word “occupying” as “occupying” then it nullifies the fact of unity of title.

Mr. Jeffries agreed.

The Chairman asked for a motion to approve or deny the appeal of the application.

**Mr. Perry made a motion to approve the applicant’s appeal based on the fact of the property not being occupied.**

Mr. Turner felt that the Board needed to have more discussion on the word “occupied.”

Mr. Jeffries noted that the property is vacant.

Mr. Turner said the issue is the fact that at one (1) point in time the property was occupied by a residence, but it is no longer in that condition. The property is vacant.

Mrs. Pelensky felt that the wording “any existing lot occupied” means at the current time.

**Mr. Perry said that his motion stands. Mr. Prieto seconded the motion.**

Mr. Lauer said that he still doesn't see why it is relevant.

Mr. Jeffries explained that if they determine the property is not currently occupied by structures, then it is not a unity of title and therefore all the provisions in Section 70.14 (c) do not apply.

Mr. Jeffries asked the Deputy City Clerk to reread the motion.

Ms. Sherri Philo, Deputy City Clerk, reported that the motion was basically to approve the applicant's appeal.

Mr. Turner added based on competent substantial evidence as determined by the Board. He asked Mr. Perry if he wanted to restate or amend his motion.

**Mr. Perry made a motion that the Board approves the applicant's appeal based on competent substantial evidence. Mr. Prieto seconded the motion and it passed 4-1 with Mrs. Pelensky voting yes, Mr. Lauer no, Mr. Perry yes, Mr. Prieto yes, and Mr. Bittner yes.**

**[Legislative]**

- B. An Ordinance of the City of Vero Beach, Florida, Amending the Land Development Regulations by Amending Chapter 64, Article III, Temporary Uses and Structures, to Add Mobile Food Establishment as a Permitted Temporary Use in Certain Zoning Districts with Temporary Use Standards; Providing for Codification; Providing for Conflict and Severability; Providing for Correction of Scrivener's Errors; and Providing for an Effective Date (#Z21-000015-TXT)**

The Chairman read the 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.

The Chairman opened the public hearing at 3:05 p.m.

Ms. Wendy McDaniel said that she has been operating a food truck since February and this Ordinance would mean a lot to food truck owners. She referred to the restroom requirement and said that she has the ability to shut down her food truck to take a break and go to the restroom. She felt that it would put a burden on the food truck owners if they have to have a restroom on board. She didn't know if that was something that could be amended, but she did not think that it should be required.

Mrs. Brook Malone, of Walking Tree Brewery, said as a business that has made a home for a food truck every day, they have met dozens of these vendors who really did not have a need to be in Vero Beach because Vero Beach has made the process difficult up to this point. She said the food truck vendors have been kept busy by the counties located north and south of Vero Beach and they have had no reason to come here. She felt that this (Ordinance) was a very good thing for this community and encouraged approval of the Board. As to the restroom issue, she did not think that needed to be in the Ordinance. She felt that any business owner who invites a food truck to come on their site would have restroom facilities.

Mr. Martin Paris reported that the Source is a great non-profit organization that helps the needy and

the homeless people in Vero Beach. The Source now has two (2) food trucks that they use to train people in need in the culinary industry who end up getting jobs at local restaurants. He felt that this was a great opportunity for the City to allow food trucks to operate here.

Mr. Peter DeBenedet, Culinary Director of the Source, said having food trucks operate within the City limits was paramount because they currently are operating in other communities and these other communities are supporting them, not this community. He referred to the restroom requirement and stated that he would not want a restroom on the food trucks because they would be located next to where they are cooking and handling food.

The Chairman closed the public hearing at 3:17 p.m., with no one else wishing to be heard.

Mr. Jeffries clarified that the restroom was not for customers, but for the employees.

Mr. Prieto said then it could be a public restroom.

Mr. Jeffries said that is correct. He said they just have to have access to a restroom.

Mr. Lauer said the Ordinance states that the restroom is to be within 150-feet.

Mr. Prieto said that he would take that requirement out and just have it state “reasonable access.”

Mr. Jeffries said that he could change it from “within 150-feet” to “onsite.”

Mr. Lauer said there is no reason to have a restroom onsite. The employees could go to a restroom offsite.

Mr. Perry asked could they remove that section of the Ordinance.

Mr. Jeffries said for health and safety reasons they need to have it in the Ordinance.

Mrs. Pelensky said it states that the food trucks could only operate during business hours so she didn't think they needed to put “onsite” as a requirement.

Mr. Jeffries explained they just want to make sure that the site has a restroom that they can use.

Mr. Turner said they could have as a requirement that in order to have a food truck on their property, the property owner would have to provide restrooms for the food truck operator and their employees.

**Mr. Prieto made a motion that the Board approves the Ordinance with the amendment of Section 64.45 (c) (3) by removing the distance requirement and to simply allow for the employees to use the establishment's bathroom. Mr. Lauer seconded the motion and it passed 5-0 with Mrs. Pelensky voting yes, Mr. Lauer yes, Mr. Perry yes, Mr. Prieto yes, and Mr. Bittner yes.**

## **VI. DISCUSSION OF ANNUAL REPORT**

This item was tabled to the December 16, 2021, Planning and Zoning Board meeting.

## **VII. PLANNING DEPARTMENT MATTERS**

None

**VIII. BOARD MEMBERS' MATTERS**

None

**IX. ADJOURNMENT**

Today's meeting adjourned at 3:28 p.m.

/sp