

CITY OF ST. AUGUSTINE, FLORIDA

Regular Planning and Zoning Board Meeting  
September 7, 2004

The Planning and Zoning Board met in formal session at 2:00 p.m., Tuesday, September 7, 2004, in The Alcazar Room at City Hall, St. Augustine, Florida. The meeting was called to order by Harvey Simms, Vice-Chairman, and the following were present.

**1. ROLL CALL**

Todd Grant  
Roxanne Horvath  
Deltra Long  
Harvey Simms

Excused:

Matthew Baker  
Gerald Dixon  
Leanna Freeman

City Staff:

James Wilson, Esq., City Attorney  
Mark Knight, Director, Planning and Building Department  
David Birchim, Planning Manager  
James Whitehouse, Staff Attorney  
Pam Halterman, Recording Secretary

**2. APPROVAL OF MINUTES**  
**(July 6, 2004 - Regular Meeting)**

Minutes from the August 3<sup>rd</sup>, 2004 meeting were approved as presented.

Mr. Simms advised that Items 4A, 6A and 7A would be tabled until the October 5<sup>th</sup>, 2004 meeting per the request from each applicant.

\*\*see individual case for motion and vote.

**3. VARIANCES**

**Item 3(a) 2004-0853**  
**Kenneth David Brown**  
**6 Spencer Street**

**To exceed the maximum lot coverage to construct a carport.**

Mr. Birchim reported that the applicant had requested a variance to exceed the maximum lot coverage to construct a carport. He

noted that the applicant was requesting a variance to build a carport in order to protect his vehicles from falling debris. He advised that the maximum lot coverage was 30% and the applicant desired to build-out to 33%. He stated that the property was entirely covered by a tree canopy, which constituted a physical hardship for the applicant. He noted that the alternative to granting a variance was the removal of the trees. He stated that granting a variance in order to safeguard trees and private property was reasonable and in harmony with the spirit and intent of the Code. He advised that, based on review of Section 28-29, staff found that the board could approve a variance to exceed lot coverage at 6 Spencer Street as submitted.

Mr. Simms opened the hearing to public comment.

Kenneth David Brown, property owner, 6 Spencer Street, was sworn in. He stated that

staff's report was accurate regarding his feelings about saving the trees and protecting his vehicles. He noted that the request involved only a 3% increase in lot coverage. He advised that the carport would match the style of the house, and one would not detect a change to the structure once it was completed.

Robert Hall, 42 Spanish Street, was sworn in. He stated that he was in favor of protecting trees and vehicles. He suggested that protecting vehicles was an important financial issue.

John Cunningham, 11 Myrtle Avenue, was sworn in. He stated that in was in favor of the application.

Mr. Simms closed the public hearing. He noted that sixteen written response forms had been sent to surrounding property owners with five returned in favor and one returned in opposition to the application.

Ms. Horvath stated that the carport would be set-in from the property line and involved a small 3% lot coverage increase; therefore, she could support the application.

**MOTION**

**Ms. Horvath moved to approve the application as submitted. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**Item 3(b) 2004-0877**  
**Brian Eckstein**  
**Mr. & Mrs. Randy Belyew**  
**483 Arricola Avenue**

**To encroach into the required side yard setback for a residential addition.**

Mr. Simms asked for a representative to approach the podium; however, there was no response. It was suggested that the application be placed at the end of the agenda in hopes that a representative would arrive.

**\*\*see page ten for motion and vote.**

**Item 3(c) 2004-0885**  
**Mark and Krista Bobbitt**  
**24 Ocean Avenue**

**To encroach into the required side yard setback and to exceed the maximum lot coverage for a residential addition.**

Mr. Birchim reported that the applicant had requested a variance to encroach into the required side yard setback and to exceed the maximum lot coverage to construct a residential addition. He noted that the property was small in size and measured thirty-five feet in width and consisted of 2,418 square feet of area. He advised that the small size of the property constituted a unique physical hardship, which qualified the property for a variance. He stated that the applicant had requested a five foot by twelve foot addition at the rear of the property, which would be setback approximately two feet from the property line and would increase lot coverage by two percent from 36% to 38%. He advised that the maximum lot coverage in the RS-2 category was 30%. He stated that, based on review of Section 28-29, staff found that the board could approve a variance for property located at 24 Ocean Avenue.

For clarification purposes, Mr. Knight directed attention to a drawing included in the board's packet and explained that window openings could not be installed within three feet of a property line; therefore, if the board did approve the variance the submitted design would not be allowed due to the window installation requirement.

Mr. Simms opened the public hearing.

Mark Bobbitt, property owner, 24 Ocean Avenue, was sworn in.

Ms. Long noted that the Mr. & Mrs. Bobbitt had purchased the property in July 2004. She questioned whether they were aware of their desired building revisions prior to purchasing the property.

Mr. Bobbitt stated that he was not aware of the desire to construct the proposed addition at the time of purchase.

Ms. Long questioned whether they were aware of the limitations to the property.

Mr. Bobbitt advised that they had questioned the previous owner and real estate agent and were told they would not have any problem with the addition.

Mr. Wilson advised that ex-parte communications should be disclosed by the board members.

Ms. Horvath disclosed that she had received a telephone message and a packet of information from Ms. Hawley while she was out-of-town.

Mr. Grant and Ms. Long affirmed that they had also received the packet of information from Ms. Hawley.

Mr. Simms stated that he had not received the packet.

Mr. Wilson advised that one of the packets would need to be given to the clerk to include as part of the record.

Mr. Simms noted that eleven written response forms had been sent to surrounding property owners with one returned in favor and six returned in opposition to the application. He advised that a response was received from the director of the Shrine of Our Lady of La Leche (Mission of Nombre De Dios), which stated that if the board allowed the addition it would eliminate parking for the current residents of the subject property.

Mr. Bobbitt advised that they currently did not have parking on their property; however, they had been allowed to park at the Shrine's parking lot. He explained that they had agreed to park in the lot across the street because parking in front of the house would block the Shrine's exit. He noted that a business representative from the Shrine had asked that they park in the Shrine's lot.

The following citizens spoke in opposition to the application:

- Jill Hawley, 21 Myrtle Avenue
- John Cunningham, 11 Myrtle Avenue
- Mark Thomas, 28 Ocean Avenue
- Jim Hawley, 21 Myrtle Avenue

Those citizens offered the following reasons for the board to deny the application:

- It would be a fire hazard if allowed to place the addition within five feet of another structure
- Parking in the Shrine's lot was only a temporary arrangement due to the on-going construction at the applicants' house
- The Fire Marshall had advised the applicant and City staff that extra fire protection would be required if the variance was granted
- Allowing the variance would not be in the best interest or protect the publics' health, safety and general welfare
- Adding density to the area would increase flooding problems in the area
- The structure was currently functional as a two-bedroom house
- Applicant's property already exceeded the maximum lot coverage
- Size of the lot was not unique to the area
- An addition would cause a wind-tunnel effect between the structures
- Applicant would be required to gain access to neighbors yard in order to construct the addition

Ms. Hawley said she had asked Mr. Birchim to revisit the subject property; however, he had told her that the staff report had been completed and that he would not revisit the site because there was no reason to and it would not change his opinion or his recommendation in the staff report. She suggested that Mr. Birchim had been disrespectful to her. She stated that they had been required to abide by the rules, and she

asked that the applicant be required to do the same.

Mr. Knight advised that not all building and fire Code issues would be covered in staff's zoning report; however, items not mentioned would be handled through separate review processes with individual City departments.

Mr. Simms closed the public hearing.

Mr. Bobbitt responded to public comments by stating that the five foot separation documented in the report was incorrect. He said the house was currently twenty inches from the property line and had been since the house existed. He noted that he had three daughters and a wife and needed more room in order to live comfortably. He said he had asked the contractor if the addition was possible and was informed that there would be no problems. He clarified that he was not aware of the requirement for a variance until he spoke to the Planning and Zoning Department personnel. He suggested that the neighbor needed to add dirt to his yard to level it off in order to prevent the flooding problem. He clarified that he would not need to gain access to his neighbors' property because enough room existed between the fence and his building to handle any repairs or construction to his house. He noted that fire protection was required and would be installed due to the close proximity of the structures and that many structures in the area had been placed close together. He reiterated that the addition would allow a more livable and attractive structure. He noted that the house consisted of 1,300 square feet and the

variance would increase the size to 1,600 square feet.

Ms. Horvath suggested that the addition be moved toward the east side of the property, which would allow windows to be installed and would alleviate the issue of space between the structures and would allow light and ventilation.

Mr. Bobbitt stated that he had not thought of handling the addition in that manner.

Mr. Grant suggested that the structure was currently in need of repair and updating. He stated that the applicant would still require a variance; however, Ms. Horvath's suggestion might solve both the neighbors' and applicants' problems.

Mr. Simms stated that he was opposed to the submitted plan because it would be too close to the neighbors and it lacked the ability to add windows to one side of the addition. He stated that Ms. Horvath's suggestion was a good solution.

Ms. Long noted that maximum lot coverage was 30%; however, the property was currently at 36.2%. She questioned whether the board had approved the original lot coverage increase.

Mr. Birchim advised that the original lot coverage increase predated the current process.

Mr. Simms stated that Mr. Birchim offered a professional opinion with his staff report and visited each application site at least once. He said he hoped that Ms. Hawley understood that staff's report was not personal, and that Mr. Birchim did a good

job with offering facts to the board members, who were responsible to find an equitable solution for everyone involved.

Ms. Long asked Mr. Bobbitt if he was receptive to Ms. Horvath's suggestion about moving the addition toward the east side of the property.

Mr. Bobbitt affirmed that he was receptive to that solution.

#### **MOTION**

**Mr. Simms moved to table the application until the October 5, 2004 meeting. Ms. Horvath seconded.**

#### **MOTION CARRIED UNANIMOUSLY**

#### **4. EXCEPTIONS**

##### **Item 4(a) 2004-0893**

##### **The Allegro Senior Housing, LLC**

##### **1101 Plantation Island Drive South**

**To allow an assisted living facility as a permissible use by exception.**

#### **MOTION**

**Ms. Horvath moved to table the application until the October 5, 2004 meeting. Ms. Long seconded.**

#### **MOTION CARRIED UNANIMOUSLY**

#### **5. CONSERVATION ZONE DEVELOPMENT**

**Item 5(a) 2004-0644**

**Doran Dean Yelton**

**Yelton Construction Co.**

**Robert B. Gregory**

**23 Inlet Place**

**To enlarge an existing dock and construct boat slips in Conservation Overlay Zone One.**

Doran Yelton, 509 11<sup>th</sup> Street, was sworn in.

Mr. Birchim reported that the applicant had requested to enlarge an existing dock and to construct boat slips. He noted that the application was tabled at the July and August meetings because the board requested additional information from the applicant. He advised that, based on review of Section 11-29, staff found that the board could approve the application with the condition that all applicable Federal, State and City permits were obtained prior to construction.

In response to an inquiry from Mr. Simms, Mr. Birchim advised that no additional information had been received.

Mr. Simms asked the applicant why the board continued to wait for him to provide the additional requested information.

Mr. Yelton said he had no reason, but noted that he did have the requested information with him.

Mr. Simms noted that the board members did not have time to review the new information. He said he did not desire to review the application.

**MOTION**

**Mr. Simms moved to deny the application without prejudice.**

It was noted that a public hearing needed to be completed.

**Mr. Simms withdrew his motion.**

Mr. Simms opened the hearing to public comment.

Mr. Yelton said it was his misunderstanding and he had no excuse for not providing the additional documents to the board.

Mr. Simms closed the public hearing.

**Mr. Simms moved to deny the application without prejudice. Mr. Grant seconded.**

**MOTION CARRIED UNANIMOUSLY**

**Item 5(b) 2004-0848**

**Bill Weldon**

**18 Althea Street**

**To remove trees in Conservation Overlay Zone Three.**

Mr. Birchim reported that the applicant had requested tree removal in Conservation Zone Three. He noted that the applicant had removed trees with an approved tree removal permit when he had constructed his house. He advised that a total of twenty-five trees had been removed, but the site remained heavily wooded with a tree canopy covering the property. He suggested that

replanting twenty-five trees was possible; however, it was not likely that the replacement trees would flourish due to the existing tree canopy. He noted that the remaining trees provided eighty-one tree credits to offset the twenty-five tree debits from the tree removal. He said that, based on review of Section 11-29, staff found that the board could approve tree removal at 18 Althea Street.

Bill Weldon, property owner, 18 Althea Street, was sworn in. He affirmed that they had obtained a tree removal permit with the idea they would replant the twenty-five trees. He stated that they had preserved as many trees as possible on the lot during the construction of the house.

Mr. Simms opened the hearing to public comment.

Gina Burrell, 27 Seminole Drive, was sworn in. She stated that she was in favor of the application.

Mr. Simms closed the public hearing. He noted that nineteen written response forms had been sent to surrounding property owners with none returned in favor and three returned in opposition to the application.

Ms. Horvath questioned whether the City had a tree bank to handle such situations.

Mr. Knight advised that the City had established a tree bank which was currently set by the Code Enforcement, Adjustments and Appeals Board with a cost of \$300.00 per tree payment. He noted that it would be handled on a case-by-case basis.

Mr. Weldon clarified that the removed trees were scrap pines located in an extremely dense area. He suggested that, due to the density, the twenty-five pines trees were equal in size to approximately two to three shade trees.

Mr. Grant stated that he was not concerned about the application because it involved the removal of pine trees and the lot remained with a heavy tree canopy. He suggested that the opposition probably did not understand that the trees had already been removed for the construction of the house.

#### **MOTION**

**Mr. Grant moved to approve the application as submitted.**

Mr. Simms noted that the applicant had attempted to relocate the structure in order to protect some of the oak trees. He disclosed that he had driven by the site.

Ms. Long concurred with the other members' comments.

**Ms. Horvath seconded.**

#### **MOTION CARRIED UNANIMOUSLY**

##### **Item 5(c) 2004-0880**

##### **Richard W. George**

##### **201 S. Matanzas Boulevard**

**To construct a dock and boat lift in Conservation Overlay Zone One.**

Mr. Birchim reported that the applicant had requested a single-family dock with boatlifts. He stated that, based on review of Section 11-29, staff found that the board

could approve the application with the condition that all applicable Federal, State and City permits were obtained prior to construction.

Richard George, property owner, 201 S. Matanzas Boulevard, was sworn in. He stated that he was pleased that staff had offered a positive recommendation of his application. He noted that his property was located at a corner lot; therefore, he had designed the dock and lift at an angle in order to maintain his neighbors' right to the waterway and enough room for a dock and lift for their property.

Mr. Simms opened the public hearing but there was no response from the public. He noted that seven written response forms had been sent to surrounding property owners with two returned in favor and none returned in opposition to the application.

Ms. Long thanked the applicant for being considerate to his neighborhood property owners.

Mr. Simms concurred with Ms. Long's comments. He asked for the measurement from the wall to the dock.

Mr. George affirmed that it measured ten feet to the first piling.

**MOTION**

**Ms. Horvath moved to approve the application as submitted. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**Item 5(d) 2004-0891**

**Tom McDermott**

**Kevin Jurecko**

**101 Marine Street**

**To install a sea wall.**

Mr. Simms asked for a representative to approach the podium; however, there was no response. It was suggested that the application be placed at the end of the agenda in hopes that a representative would arrive.

**\*\*see page ten for motion and vote.**

**6. REZONING**

**Item 6(a) 2004-0895**

**Cameron Jacobs**

**19 Florida Avenue**

**To rezone the property from Residential General Two (RG-2) to a Planned Unit Development to construct condominiums.**

**MOTION**

**Ms. Horvath moved to table the application until the October 5, 2004 meeting. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**7. MAJOR AMENDMENT TO A  
PLANNED UNIT  
DEVELOPMENT**

**Item 7(a) 2004-2188**

**Colin Boal**

**North Florida Commerce Center**

**3395 Lewis Speedway**

**To modify by reducing the amount of commercial square footage and adding 116 condominium units.**

**MOTION**

**Ms. Horvath moved to table the application until the October 5, 2004 meeting. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**8. OTHER BUSINESS**

**a) Proposed revision to the trees and landscape Code.**

Fred Halback, Chairman of the Street Tree Advisory Committee, 287 St. George Street, stated that the board had received a packet with recommendations concerning changes and modifications to the tree ordinance. He noted that their intention was not to rewrite the Code but to tweak it and remove the loopholes or items that had been challenged or hard to understand.

Mr. Simms stated that he was pleased to see language regarding after-the-fact permitting.

Mr. Halback voiced that they had attempted to be more stringent on the tree credits one would be required to replace on the

property. He noted that application fees had been raised.

Mr. Knight advised that the modification would be presented to the City Commission who would hold two public hearings. He added that Mr. Halback had completed an excellent job and had received a unanimous vote approval from the Street Tree Advisory Committee.

Mr. Halback suggested that the most important item to identify was the requirement to replace more tree deficits, but he said they had left the portion of assigned credits to existing trees of the Code unchanged.

Mr. Simms questioned why the trees located in buffer zones were not counted toward tree credits.

Mr. Birchim advised that one would already have a mandatory landscape requirement, which should not count toward tree mitigation if large amounts of trees were removed from a property.

Mr. Halback reiterated that the landscape Code was not rewritten, but they had dealt with tree removal, and he suggested that the buffer requirements should exist no matter the other requirements.

**MOTION**

**Mr. Simms moved to recommend approval of the changes regarding the tree and landscape Code to the City Commission. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**Item 3b, 2004-0877**  
**483 Arricola Avenue**

Mr. Simms asked for a representative to approach the podium, but there was no response. He suggested that it be tabled.

**MOTION**

**Ms. Horvath moved to table the application until the October 5, 2004 meeting. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**Item 5d, 2004-0891**  
**101 Marine Street**

Mr. Simms asked for a representative to approach the podium, but there was no response.

**MOTION**

**Ms. Horvath moved to table the application until the October 5, 2004 meeting. Ms. Long seconded.**

**MOTION CARRIED UNANIMOUSLY**

**b) Request to revise the HP-5 Zoning Category.**

Mr. Knight summarized that at the previous meeting the board had asked staff to return with language to identify options for adding a commercial aspect to the HP-5 zoning category. He stated that he had asked Ms. Lee, who had requested the change, to contact Mr. Birchim in order to create a

specific use for her business, but staff only had minimal contact from Ms. Lee; therefore, staff did not have revised language to present to the board.

Mr. Simms suggested that Ms. Lee had not found the issue important enough to contact staff in order to create language for the board to review.

Mr. Simms opened the hearing to public comment.

Mr. Simms disclosed that he had received two telephone calls regarding the issue.

Ms. Horvath disclosed that she had also received two telephone calls.

The following citizens spoke against changing the language in the HP-5 zoning category:

- Michael Robbins, 28 Grove Avenue
- Pete Montero, 39 Grove Avenue
- Yvonne Puckett, 30 Grove Avenue
- Sharon Mortensen, 40 Grove Avenue

Those citizens offered the following reasons for the board to deny changing the HP-5 category language:

- A retail business would generate more vehicular traffic
- The entrance corridor would soon become the busiest in the city due to the new parking garage
- Gifts and accessory retail sales consisted of anything from Rooms-to-go to Wal-Mart products

- Allowing one retail business would open the area to other retail businesses
- The residential neighborhood would be destroyed
- Two vacant lots existed with a potential for additional retail encroachment
- Four out of ten residential homes had already been changed into multi-family structures
- Changing HP-5 zoning for one person / one business would be spot-zoning which the City Commission disapproved of
- Ms. Lee had demonstrated disregard by not obtaining a license to open and operate her gift and accessories shop
- Residents threatened by developments
- Neighborhood should remain residential
- Chipping away at the history of St. Augustine would be detrimental to tourism which sustained the economics of the city

Ms. Long disclosed that she had received two telephone calls from citizens regarding the issue.

Mr. Grant disclosed that he had received a telephone call regarding the issue.

Mr. Simms noted that the person who initiated the request did not follow through with staff and did not feel that the issue was important enough to attend the meeting. He questioned what the next step was for the board.

Mr. Knight clarified that the PZB or the City Commission could initiate a change in the Code. He stated that if the board decided not to move forward on the change, the issue would not be placed on next months' agenda. He explained that a PZB member could ask that it be placed again on the agenda with a majority vote from the PZB; although, Ms. Lee could also ask for the change directly through the City Commission. He advised that any change would need to be presented to the PZB for their recommendation.

Ms. Horvath agreed with public comment. She stated that Ms. Lee was currently able to operate the business for her immediate clients and could sell interior design products without a change in the Code. She voiced that she was concerned about increased vehicular traffic along with truck deliveries to the business. She suggested that it remain as a professional office type business.

Mr. Grant stated that he could not support the change in the HP-5 zoning category because of the following reasons:

- Ms. Lee knew she was not allowed to operate as a retail business; however, she had for over three months
- The board would set a precedence to allow additional retail sales in the residential area
- Location was an entrance corridor to the City
- Many citizens had made an effort to attend the meeting and Ms. Lee, who requested the change had not attended

Mr. Simms stated that he was opposed to changing the zoning in the HP-5 District. He noted that three years earlier, Ms. Lee had asked the board to change the zoning to allow a Bed & Breakfast Inn at her residence; however, the board denied the request. He stated that Ms. Lee knew what was allowed, and he did not want to reward anyone who was knowledgeable of the law but would so blatantly break the law. He said he shared the concern about granting one person a change then later disallowing anyone the same request for the vacant properties. He noted that the erosion of neighborhoods affected the tax base for the City, and he desired to retain the neighborhood as it was; therefore, he was opposed to the request.

Ms. Long stated that she was concerned about the impact of the proposed parking garage in the area. She voiced that Ms. Lee had been at that location for three years and was able to make a reasonable living for herself without resorting to retail. She stated that the neighborhood should remain as residential as possible. She agreed that Ms. Lee should have made an effort or sent a representative to attend the meeting on her behalf.

#### **MOTION**

**Mr. Simms moved to recommend that the board not move forward with the request to change the HP-5 District zoning. Ms. Long seconded.**

#### **MOTION CARRIED UNANIMOUSLY**

In response to an inquiry from Mr. Simms, Mr. Knight affirmed that the issue was dead

unless a PZB member resubmitted it to the board.

#### **c) Request to include Assisted Living Facilities as a permissible use by exception in the RGO Zoning Category.**

Mr. Knight advised that some issues had been raised by the Regional Planning Council, and an attorney who had requested the Use-by-Exception involving the Allegro had also desired the change in the Code. He suggested that the issue be moved to the next months' agenda to be heard in conjunction with the Use-by-Exception application for the Allegro.

Consensus of the board was that the change would be heard at the October meeting.

#### **9. REVIEW OF CONFLICT STATEMENTS FROM PREVIOUS MEETING**

##### **a) Gerald Dixon, 1409 N. Ponce de Leon Boulevard**

Ms. Halterman noted that Mr. Dixon had recused himself from the application, as he was the architect on record for the project.

#### **10. ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:37 PM.

Harvey Simms, Vice-Chairman

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Pam Halterman, Recording Secretary