

CITY OF ST. AUGUSTINE, FLORIDA

Regular Planning and Zoning Board Meeting
December 5, 2006

The Planning and Zoning Board met in formal session at 2:00 p.m., Tuesday, December 5, 2006, in the Alcazar Room at City Hall, St. Augustine, Florida. The meeting was called to order by Leanna Freeman, Chairperson, and the following were present:

1. ROLL CALL:

Leanna Freeman, Chairperson
Deltra Long, Vice Chairperson
Carl Blow
Gerald Dixon
Roxanne Horvath
Bill Leary
John Valdes

City Staff:

Mark Knight, Director, Planning and Building Department
David Birchim, Planning Manager
Robin Upchurch, Assistant City Attorney
Sharon O'Keefe, Administrative Coordinator
Grace M. Vante, Recording Secretary

2. APPROVAL OF MINUTES
November 7, 2006 – Regular Meeting

Mr. Knight clarified that item 4.c., page 1: The neighbor, through their attorney, requested that the items be tabled, and the applicant had no objection.

Mr. Valdes clarified the following statements on item 4.e., page 12, and the right hand column:

- The first sentence should read: Mr. Valdes advised that he was familiar with the property as he had *intended to* purchase it the previous year, and had conducted a considerable amount of research.
- Second sentence should read: He expressed concern about placing a bulkhead where a bulkhead *would not be* needed.
- Fourth sentence should read:

He pointed out that the site was a natural *marsh front* embankment that would not require bulkheading for stabilization.

Ms. Horvath moved to approve the minutes of the November 7, 2006 regular meeting, with the noted changes. Ms. Freeman seconded.

MOTION CARRIED BY UNANIMOUS VOICE VOTE.

Mr. Leary acknowledged the new appointments on the board and apologized for his uncharacteristic responses during the previous meeting.

Ms. Upchurch acknowledged the new appointments on the board. She also reiterated the importance of disclosure of exparte communications as follows:

- *The when* indicated that the disclosure must be made before or during the public meeting at which the vote was to be taken and to allow persons with opinion contrary to the exparte communication the opportunity to respond.
- *The why* avoided the presumption of any prejudice.
- *The what* indicated the substance and the person or group involved.
- If the exparte communication was in writing, the writing must be summarized and included in the record.

Ms. Upchurch reminded the Chair to request disclosure prior to the public hearing, and the Chair acknowledged and advised that she would make the request before an applicant spoke, and she asked to be reminded if necessary.

3. VARIANCES

Item 3 (a) 2006-1106 **Chad Smith – Applicant and Newcastle** **Homes, LLC - Owner** **329 Riberia Street**

To reduce the required side yard and secondary front yard setbacks for construction of a new residence.

Chad Smith, Applicant, 56 Dufferin St., was sworn in.

Mr. Birchim reported the following information:

- The application was for a variance to reduce the required side yard and secondary front yard building setbacks.
- The property was located in the RG-1 zoning district and it had a minimum 10-foot side yard setback, and a minimum 7.5-foot secondary front yard setback.
- The owner would like to reduce the setbacks to four-feet each.

- A variance could only be approved after it was determined that a property suffered from a unique physical disadvantage, and the disadvantage must be based on the property's size, shape, topography, or some other unique physical condition creating a unique hardship.
- In the current case, the property was small and had an irregularly unique shape; it was 25-feet wide, and 2,392-square feet in area.
- Because of the small size and unique shape the applicant was not able to construct the house he was requesting without a variance.
- Based on a review of section 28-29, staff found that the board could approve a variance to reduce the required side and secondary front yard setback, without the support of evidence to the contrary.

Exparte communication:

Mr. Leary asked if exparte communication included visiting the site.

Ms. Upchurch responded positively and advised that as long as disclosure was made that a site had been visited, or that a discussion was held with experts about the site, that there would be no presumption of prejudice.

Ms. Long and Mr. Blow disclosed that they had visited the site, and Mr. Valdes noted that he had driven by the site many times.

Ms. Freeman advised that 16 comment forms had been mailed and no responses were received.

Mr. Smith made the following statements:

- The lot was narrow, and he presented a survey that showed a building that had encroached closer than four-feet.
- He presented a letter dated November 1, 2001, from the city to a previous owner of the property. The

letter indicates different setbacks than currently existed.

- He based purchase of the lot on that letter, with the understanding that he would be able to build a wider building.
- He had discovered the letter on December 4, 2006 during his visit to Olde Carriage Realty.
- A second handout demonstrated what he would be authorized to build without a variance approval, which was 8.5-feet in the front, and between 58 and 61-feet long, and 12.5-feet long to the rear.

Mr. Smith stated that he would prefer a wider building to a three-story building, which he was allowed. He said the lot had a water view over the road, and to build a single-story home would probably limit him to about 800-square feet, however, a two-story home would measure approximately 1,600-square feet with a water view. He noted that he was looking for some guidelines, as he needed more room, but he would not want to build a weird looking tower. He concluded that he would design a structure with an elevation and present it during a future meeting.

Ms. Freeman noted that no citizens were in attendance for the item.

Mr. Birchim clarified that the setbacks could only be reduced in RS-1 and RS-2 zoning categories, but the property in question was located in RG-1.

Mr. Dixon noted an error in the November 1, 2001 letter that stated the setbacks could be reduced to 7.5-feet.

Mr. Birchim stated that the secondary setback was in fact 7.5-feet, however there was an error made in the side setback as it was 2.45-feet, but the lot coverage remained at 35%. He said the height allowed was 35-feet, unless it was in single family residential zoning. He explained that when the property was located on a corner, it had a front yard setback and a secondary

front yard setback, and the owner could choose which way he wanted to orient the house. He clarified that Code defined the secondary front setback as one half of the front setback requirement, but he said that in the current case, there was a 15-foot front setback requirement, and on the secondary front it would be 7.5-feet, and he referred the board to the first page of the staff report.

Mr. Birchim had looked at the sketch, and stated that the setbacks were correct, but he had not reviewed lot coverage. He confirmed that the secondary front setback could be 7.5-feet per code, but the side setback were 10-feet.

Mr. Smith exhibited a copy of the plans that Mr. Crichlow had designed for the lot for a previous owner.

Mr. Valdes stated that there might be several lots that were 25-feet wide and less. He said if the lot was zoned prior to 1975, the owner probably had the right to build a reasonable structure up to the 35-feet in height. He said that he would be amenable to a variance if the person had owned the lot prior to 1975. The buyer should have had knowledge that there would be restrictions requiring a variance for any lot acquired since then. He said the board needed to know what would be built on the lot, including the height and the size. He stated that if the building looked like it belonged there and would not be a detraction in the neighborhood, he would be willing to help the owner.

Mr. Blow and Ms. Long concurred with Mr. Valdes' willingness to work with the owner.

Mr. Blow also stated that the owner might sell the property, and other owners could be involved.

Ms. Long noted that the lot had previously been used for a store. She said that most of the houses in the area were single story structures.

Ms. Freeman asked whether 7.5-feet could be acceptable with the right design.

Mr. Dixon said he could go with four-feet on the back, and 7.5-feet on the secondary side if the architecture was in character, and Mr. Valdes agreed.

Ms. Freeman suggested tabling the item allowing the owner to present specific plans.

Mr. Dixon and Mr. Valdes agreed they would not approve anything without establishing a front and side elevation, and without knowing how the street parking would be handled.

Mr. Valdes recommended that the owner check the internet for ideas.

Ms. Horvath noted that the 7.5-feet off of the secondary side and four-feet off of the side would be something the owner could work with. She suggested that the owner bring such a rendering back for review.

Mr. Dixon moved to table item 2006-1106 until January, 2007. Mr. Valdes seconded.

VOTE ON MOTION:

AYES: Dixon, Valdes, Blow, Horvath, Leary, Long, Freeman

NAYES: None

MOTION APPROVED UNANIMOUSLY

Item 3 (b) 2006-1137

Gary L. Stehli – Owner/Applicant
8 Hedrick Street

To reduce the required side yard building setback for a residential structure.

Mr. Stehli, owner/applicant, 1172 Hellbranch Rd., Winterpark, with a future address of 8 Hedrick St., was sworn in.

Mr. Birchim reported the following information:

- The 8 Hedrick Street application was for a variance to reduce the required side yard building setback for a gazebo.
- The property was in RS-1 zoning category, which had a 15-foot minimum side yard setback for habitable space, and a three-foot minimum setback for non-habitable space.
- The gazebo was approximately 20-inches from the side property line, built 11 years ago, and had been used as habitable space since that time.
- There was a home under construction on the property, and the owner wanted to continue to use the gazebo for cooking, eating, reading, and working, until the home was completed, after which the owner indicated that the gazebo would not be used for residential purposes.
- A building setback variance would be required whether the gazebo was considered as habitable or non-habitable.
- A variance could have been approved only after determination that the property suffered from a unique physical disadvantage.
- The disadvantage must be based on the property's size, shape, topography, or some other unique physical condition creating a unique hardship.
- It appeared there was not a unique physical hardship associated with the property necessitating a 20-inch building setback for the gazebo.
- Based on a review of section 28-29, staff found that the board could deny a variance to reduce the required building setback for the structure, without the support of evidence to the contrary.

Exparte communications:

Mr. Blow and Ms. Horvath advised that they had visited the site.

Mr. Knight advised that the neighbor, Norma Joyce, had called him before the meeting. He said that during their conversation, Ms. Joyce stated that she had spoken with Mr. Stehli who indicated willingness to raise the back fence; therefore she no longer opposed the application, provided that the gazebo would not be used for residential purposes. He clarified that he understood that *Ms. Joyce meant that it would not be used for residential purposes for any duration of time.*

Mr. Stehli stated the following:

- Ms. Joyce had told him that it would not be a problem for three-months, as long as construction was finished in three-months, however, there was no written confirmation.
- He had bought the property twenty years ago, and the gazebo had been built eleven-years ago.
- He stated that he had been using the area for painting, reading and cooking, but not for sleeping.
- If necessary, he would have been willing to leave, however, he asked for authorization to keep the little structure.
- He would like to use it for an additional three-months, at which time he expected that his house would be completed.
- There was an electrical cord for his spotlight, however, there was no electrical service.
- He noted that there had been a conservation zone in front of the property, and if the structure moved forward it would infringe 50-feet into the conservation zone.
- He had cut down one tree to position the house.
- He had gotten a variance to move the real house forward, in order to save a Cedar and a Palm tree. (The conservation of trees was a priority).
- He noted that most houses in the neighborhood had additional structures which were only one-foot from the property line.

- Initially he had been advised of the distance by the neighbors, however, he had not checked it himself.
- He noted that the Joyces' structure was six-inches from the property line.

Ms. Freeman asked staff to confirm whether the neighbors had unconnected structures within the three-foot requirement.

Mr. Birchim stated that he had not seen surveys of the neighboring properties; therefore, he could not confirm.

Mr. Valdes stated that he had done some work on the Joyces' property. He said the garage behind the Mediterranean revival building had been built prior to 1975, and it was possibly six-inches from the property line.

Mr. Stehli noted that when he had built his home, the Grafton House had a similar garage, however, it had since been torn down, and another structure had been built.

Mr. Dixon, having been the architect for the addition to the Grafton House, noted that it had been within three-feet of the property line.

Mr. Blow noted that he had reviewed the aerial on the property appraiser's site, and it appeared that some structures were close to the property line.

Ms. Freeman noted that there were no citizens in attendance for the item.

Ms. Freeman advised that 35 comment cards had been mailed, and six had been returned. She said that two were in favor and four were against the proposal.

Ms. Freeman noted that Norma Joyce had been opposed, however, she would not have an issue if the structure was not lived in.

Mr. Dixon moved that if the gazebo was reverted to a gazebo structure in 90 days, when Mr. Stehli would move into his house, that he would not have had a problem.

Mr. Knight noted that the use of the structure for "residential purposes" for ninety days would not authorize Mr. Stehli to live in the structure; it was an issue with the housing code. He explained that even if it was used for painting or temporary daytime activities, it would still be for residential purposes. He said the proposed motion would allow Mr. Stehli to paint, however, he could not live there per the housing code.

Mr. Knight further explained that if Mr. Stehli painted a few hours a day it would not be considered residential; however, if he painted 24/7 or slept in the structure it would be considered residential use. However, he said that a clear determination had not been made.

Ms. Freeman recommended approval of

Mr. Dixon's motion, and suggested that Mr. Stehli had to deal with the issue for the next ninety-days. She pointed out that the initial concern had been the trees.

Mr. Leary asked for clarification. He asked if there had been any restrictions on what

Mr. Stehli could or could not do in the gazebo during the ninety-days until his house was completed, and after the house was completed, and if the gazebo remained on the site.

Ms. Upchurch stated that the board member who made the motion needed to articulate the criteria, and the basis for the motion. She noted that she believed the application had been for residential use.

Mr. Dixon clarified that after ninety-days, the structure would have to be opened up and screened. He noted that the structure had been there for several years as part of the

site, and Mr. Stehli had been using it without citation.

Mr. Stehli stated that he had created the disadvantage by vowing not to go into the woods any further. He stated that if his house was not completed within three months he would not use the gazebo when the three-months expired.

Mr. Valdes moved to approve the structure for non-residential use at the present location, with the hardship having been that the board would not want to infringe on wetlands or existing trees.

Ms. Freeman asked for clarification on the number of motions that had been made.

Mr. Dixon stated that he had been trying to clarify the motion as follows:

The motion was to grant a non-residential setback, with a one-foot variance, or 16-inches, to allow Mr. Stehli to continue, and to indicate that the board wanted the structure returned to non-residential uses within ninety days.

Mr. Leary stated that he would have been more comfortable to second Mr. Dixon's motion if the vote had included the following:

- To allow a structure that had been required to be three-feet away to twenty-inches away, with the condition that Mr. Stehli could use it for a brief period of time for other purposes.
- He objected to going from fifteen-feet to twenty-inches and then switching back.
- Sixteen-inches had not bothered him.
- He expressed concern that other people might want to install a temporary trailer for living purposes while their house was being built.

- The property line might have been an issue, but it had not been clear what would be allowed.

Mr. Dixon further clarified that it had been a non-conforming structure built some years ago, and if it had been cited as a result of the existing code, but Mr. Stehli's proposal was because of the trees and the setback which would be the reason the board could use to grant him the additional sixteen inches.

VOTE ON MOTION:

AYES: Dixon, Valdes, Blow, Horvath, Leary, Long, Freeman

NAYES: None.

MOTION APPROVED UNANIMOUSLY

Ms. Freeman advised the following for the benefit of citizens who might have been in the audience:

- **Item 4.(a) 2006-0800**
The application for Conservation Overlay Zone Development
57 Comares Avenue,
The applicant had withdrawn the item.

Mr. Dixon asked if the item had been withdrawn permanently, and Ms. Freeman clarified that it had been withdrawn permanently.

- **Item 4.(e) 2006-1157**
The application for Conservation Overlay Zone Development
5 Radio Road
Had been requested for tabling by Deborah James.

Ms. Freeman moved to table Conservation Overlay Zone Development Item 4.E, 2006-1157, as requested by the applicant.

MOTION CARRIED BY UNANIMOUS VOICE VOTE 7-0

Ms. Freeman requested that item 4.(a), 2006-0800 and item 4.(e), 2006-1157, be taken off of the Conservation Overlay Zone Development portion of the Agenda.

Item 3 (c) 2006-1148

Kenneth David Brown – Owner/Applicant
6 Spencer Street

To exceed the maximum lot coverage to construct a carport.

Mr. Birchim reported the following information:

- The 6 Spencer Street application was for a variance to increase the maximum lot coverage from 30% to 33% for a carport.
- The application had been approved by the Board on September 7, 2004, based on the physical location of trees on the property.
- A variance was valid for one-year after the board acted, and therefore the current variance had expired.
- The owner had asked for a renewal of the previously granted variance.
- Based on a review of section 28-29, staff found that the Board could approve a variance at 6 Spencer Street.

Exparte communication:

Mr. Blow advised that he had driven by the site.

Ms. Freeman advised that 17 comment forms had been mailed; 8 had been received in favor and none in opposition.

Ms. Freeman stated that there had been a positive recommendation from staff. She asked for further comments, but there was no response.

Mr. Bill Schmidt, representing Mr. Brown, was sworn in.

Ms. Freeman confirmed that the item had been approved, for a period of one-year,

and that Mr. Brown had not acted in that timeframe, but he asked for the same action previously approved by the board.

Ms. Freeman asked if there were any citizens in attendance for the item, but there was no response.

Ms. Freeman moved to approve the item, and Mr. Blow seconded.

VOTE ON MOTION:

AYES: Freeman, Blow, Dixon, Horvath, Leary, Valdes, Long

NAYES: NONE

MOTION APPROVED UNANIMOUSLY

Item 3 (d) 2006-1166

Don Crichlow, Architect – Applicant

Sessell W. Boring – Owner

93 Washington Street

To reduce the required side yard building setback for an office/residential structure.

Don Crichlow, Architect-Applicant, 24 Cathedral Place, was sworn in.

Mr. Birchim reported the following:

- The 93 Washington Street application was for a variance to reduce the required side yard building setback for dual purpose as an office and a residential building.
- The zoning for the property was Commercial Low One (CL-1)
- CL-1 zoning category had a 10-foot minimum side yard building setback, but the owner wanted to reduce it to 6-feet on the south side.
- A variance could be approved only after determination that the property suffered from a unique physical disadvantage.
- The disadvantage must be based on the property's size, shape, topography, or some other unique physical condition creating a unique hardship.

- In the current case, the property was vacant, regular in shape, and did not appear to suffer from any problem based on size.
- Based on a review of section 28-29, staff found that the board could deny a variance at 93 Washington Street, without the support of evidence to the contrary.

Exparte Communications:

Ms. Long advised that she had visited the site.

Mr. Blow advised that he had visited the site. He noted that approximately 20-years ago he had a business relationship with Mr. Boring's engineering firm, however, he had not seen Mr. Boring since; he said that his decisions would not be affected.

Mr. Valdes advised that he had visited the site.

Ms. Horvath advised that she had driven by the site.

Ms. Freeman advised that 21 comment forms had been mailed out; two were received in favor, and two against the proposal.

Mr. Crichlow stated staff that had already indicated that the application had not met the normal criteria or justifications the board would normally have reviewed for granting a variance. He commented, however, that the application met the development pattern that existed in the commercial neighborhood of Washington Street. He said the site plan indicated that the property to the north was approximately three-feet from the property line, and the property on the south was approximately one foot from the property line. He added that the pattern also existed with the residential properties on the west side of Washington Street. He commented that It was an early to mid-century commercial development with numerous structures close together. He said that he had not put the building footprint into the

setback and only overhangs would intrude the setback on the south side. He said the applicant/owner had requested the board look at the possibility of granting a variance based on those considerations. He said the pattern of the neighborhood had been taken into account, and the owner had tried to stay within the same urban/commercial pattern of the street. He offered to answer questions.

Ms. Freeman asked if there were any citizens in attendance for the public hearing.

Ms. Evelyn Johnson, 233 South Washington Street, was sworn in, and noted that she was in attendance on behalf of her mother, property owner at 95 Washington Street. She advised the following:

- Her mother was opposed to the variance.
- Her mother's home was on the south side, and the property in question was currently vacant.
- Several months ago she had met with an associate of Mr. Valdes' company, and she was waiting for firm plans as the house needed work.
- It was one-foot from the property line, and a structure close on the other side would be a problem in the residential neighborhood.

Mr. Valdes noted that he could not recall that his company had any involvement with the direct neighbor. He asked Ms. Johnson if she had met with one of his associates, and she responded positively. He questioned whether he should recuse himself from the item, and the Assistant City Attorney advised that it would be best.

Ms. Freeman noted a potential problem for a board member with a client who might need to speak on an issue. She asked whether it would have been acceptable for Mr. Valdes to make disclosure, then review concerns.

Ms. Upchurch suggested asking the applicant if there was a concern of any impropriety or potential for prejudice. She recommended that if the relationship impacted the board member's finances, he either receive a waiver from the applicant or allow Mr. Valdes to recuse himself.

Mr. Valdes noted that there had been no relationship, only a preliminary discussion. He questioned the Assistant City Attorney whether he should recuse himself because of possible future discussions with Mr. Crichlow.

Mr. Crichlow advised that he would follow counsel's decision.

Mr. Valdes recused himself.

Ms. Freeman noted that there were no citizens in attendance for the item.

Mr. Dixon noted that he agreed in concept with the applicant. He said that the proposal was in character with the neighborhood however, the ordinance was clear. He said the ordinance stated that no variance shall be granted unless the application showed (hardship), and the board found on four items. He noted a PUD would require more architectural detail.

Mr. Blow stated that he also thought that a PUD would be appropriate. He noted the area was transitional and the property was zoned CL-1, but Ms. Johnson's property was zoned RS-2. He agreed that a PUD would address everyone's concerns.

Ms. Freeman noted that she would not want to encourage a PUD because it would not work within the current zoning. She said that a variance application would be appropriate, whether or not it was approved.

Mr. Crichlow noted that the structure would be two stories. He said there would be two professional retail offices on the lower level, and three residential units on the second level, and the balcony overhangs would be

part of the residential portion of the structure. He said that he expected the owner to occupy one residential unit, and the other units would be rentals. He said that the document showed the following:

- The eastern unit would be residential above, and parking garages below.
- The subsequent unit would contain offices below and residential above.
- The unit to the extreme left would have parking garages below, and residential above.

Mr. Crichlow noted it would be low intensity use. He thought that there would have been a transitional area between commercial and residential, but there were no trees requiring removal. He stated that the project represented an effort to encourage development of Washington Street, and to re-generate commercial activity. He recognized the project as unique in terms of the guidelines for granting a variance, but he was not sure if the owner would be willing to go through the PUD process.

Mr. Leary asked if the structure itself would be 10-feet on the side, and whether the four balconies on the side would intrude.

Mr. Crichlow confirmed and he commented that if the project had been in the county, it would be approved because the county allowed overhangs into the setback.

Mr. Leary commented that he had mixed feelings. He said the board had previously granted variances for a side lot with overhead intrusion, and one case might have been for a balcony in the Lighthouse area.

Ms. Freeman noted that there would be three sets of renters in close proximity to what was currently a single-family residence, and she said that was a concern; however, the project was great. She said she did not think the situation existed with

the previous variance that Mr. Leary had referred to.

Mr. Leary noted that if the applicant had been willing to modify some of the residential space, by recessing the balconies along the property line, he did not think there would be an issue. He recommended recessing the balconies.

Ms. Upchurch noted four criteria to consider:

- If there had been a singular disadvantage to the property.
- If the owner had been unable to make reasonable use of the property.
- Whether or not the disadvantage had been created by the owner.

Ms. Upchurch had not noted the fourth criteria because she thought the first three were a good start. She said they were conjunctive considerations; all three had to be found, including the fourth. She said evidence before the board, including the staff report, had been entered into testimony. She noted that she had not seen or heard substantive evidence to support approval of the variance or the application.

Ms. Freeman asked if there was disagreement to Ms. Upchurch's comment, and there were none.

Mr. Leary asked if the applicant would be interested in a vote, without prejudice, which would allow him to return with a different approach.

Mr. Crichlow said he could not say whether the owner would embrace a PUD as the matter had not been discussed.

Mr. Dixon noted there were two options:

- Redesign
- PUD

Mr. Crichlow asked if he could return with a PUD if the variance was denied, or if the proposal was denied without prejudice.

Mr. Leary noted it would be denied without prejudice, with the understanding that the PUD would be forthcoming, and it would not make a difference if Mr. Crichlow did not submit a PUD.

Mr. Crichlow noted that he might prefer the aforementioned.

Ms. Freeman noted that she would not want to mislead the owner into thinking that if he submitted a PUD with the same structure, that it would be supported.

Mr. Crichlow acknowledged.

Mr. Dixon moved to deny without prejudice. He noted that the applicant failed to meet the criteria to allow a variance. Ms. Long seconded.

VOTE ON MOTION:

**AYES: Dixon, Long, Blow, Horvath,
Leary, Freeman**

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mr. Valdes had recused himself.

Item 3 (e) 2006-1167

Jane M. Mathis – Owner/Applicant

116 Fiddler Crab Lane

PID #158571 9070

To reduce the required rear yard building setback for a new residence.

Mr. Valdes disclosed an interest in the item as he might be the contractor. He recused himself, and left the room.

Exparte communication:

Mr. Blow advised he had driven by the site.

Mr. Les Thomas, 32 Cordova Street, was sworn in, and he noted that he was the architect representing Jane Mathis.

Mr. Birchim reported the following information:

- A variance was requested at 116 Fiddler Crab Lane to reduce the required rear yard building setback from 20-feet to 10-feet.
- The property was zoned RS-2, and had a 10-foot wide conservation easement in the rear, adjacent to the wetlands, and a 10-foot setback from the conservation easement.
- The setbacks followed the meandering path of the jurisdictional wetlands; therefore, the rear building setback was irregular in shape.
- The irregular shape was a physical condition of the property, and not based on the action of the owner.
- After review of section 28-29, staff found that the board could approve a rear setback reduction at 116 Fiddler Crab Lane without support of evidence to the contrary.

Mr. Thomas stated that he agreed with staff, and he noted the following items:

- One of the requirements of parks and (inaudible) was that a garage door could not be placed directly in the front setbacks.
- It had to be moved to the north, creating a need for a driveway and making the house narrower.
- It was a two-story house, and the area for which the setback had been requested was a one-story covered porch.

Mr. Thomas said he had been encouraged to attend the Pelican Reef ARC hearing, however, the hearing had not been held yet. He questioned whether he should seek approval with the contingency that the Pelican Reef ARC must also approve the proposal.

There were no citizens in attendance for the issue.

Ms. Freeman advised that 9 comment forms had been mailed out, and two in favor and two opposed had been received.

Mr. Dixon noted that one of the favorable responses had been from the seller of the property. He commented that the lot was irregular in shape, and if the house was pushed back and maneuvered a bit, there might not be a problem, however in doing so, some of the vegetation would be removed, and the intent was to minimize the impact to the trees.

Mr. Thomas noted that most of the trees were to the north.

Ms. Freeman noted there had been a similar application several months ago for a small screened porch.

Mr. Blow commented that there might have been two applications for properties in a development about 200-feet away.

Ms. Freeman commented that both applications had been approved at the same meeting.

Ms. Horvath stated that she had no problem with the item since there was an open porch. She said it could have been designed differently.

Mr. Leary commented that he would vote in favor of the item. He said he understood the property was irregular, however, other properties in the area were also irregular. He commented that the board was giving more attention to the criteria than during previous meetings. He recommended having a discussion about the criteria at the end of the meeting.

Mr. Blow noted that he was inclined to approve the application primarily because of the tree situation. He said the affected trees appeared to be Red Cedars, which were protected. He further noted that specific

butterflies fed on the Red Cedar. He said they looked mature considering the height of the foliage in the development.

Mr. Thomas noted when the plot had been laid out, all the trees had been at the north end of the site, and the entrance was to the south. He said that the house would be located in the small southern area, which might have worked, however, because of the driveway, it had not worked.

Mr. Blow moved to approve variance 2006-1167, in an effort to save some Red Cedar Trees. Ms. Freeman seconded.

VOTE ON MOTION:

AYES: Blow, Freeman, Dixon, Horvath, Leary, Long

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mr. Valdes returned to the room.

4. CONSERVATION OVERLAY ZONE DEVELOPMENT

Item 4 (a) 2006-0800 (Previously Tabled) Conch House Builders, LLC- Owner/Applicant 57 Comares Avenue

To relocate a party barge and to add additional boat slips.

Ms. Freeman advised that the item had been withdrawn.

Item 4 (b) 2006-0957 (Previously Tabled) Herbert van der Mark – Applicant and Richard J. and Tina C. Toomey – Owners 28 N. St. Augustine Boulevard

To construct a dock with a 12,000-pound boat lift and 7,000-pound jet ski lift.

Ms. Freeman noted that **Item 4.(b), 2006-0957 and 4.(c), 2006-0958** were from the same applicant, therefore, she asked

whether both items could be heard together, but voted on separately, and it was accepted.

The following witnesses were sworn in:

- Ryan Carter, 36 Bayview Drive, Environmental Consultant, with ESI.
- Herb Vandermark, 300 Pine Lane, Construction Consultant, with F&A Marine.
- Richard and Tina Toomey, 246 Cayman Court, Homeowners.

Exparte communications:

Mr. Blow advised that he had visited the site and spoke on the phone with Mrs. George, the neighbor to the north. He said that he had hired F&A Marine on occasion, but his position on the issue should not be affected. He said Mrs. George had phoned him to advise of her opposition to the application.

Mr. Leary advised that Mrs. George had called and invited him to view the property, and have an on-site discussion, and he walked the site with Mr. George, who voiced his concerns about the application, but he advised that he would not comment until he had heard public testimony.¹

Mr. Valdes said his office had received a call from Mrs. George, but he had not spoken with her. He said he had visited the site in the past.

Ms. Freeman advised that she had visited the site and spoken with Mr. Green who was in favor of the application. She said she also spoke with Mr. George, who was opposed to the application.

Ms. Long advised that Mrs. George had left a voicemail message at her home, but she had not made contact with her.

Mr. Dixon advised he had visited the site; he visited Mr. Green's residence and had seen plans for the proposed development. He

said he knew the George family, and he had spoken with Mrs. George on the item.

Ms. Horvath advised that she received a voicemail message from Mrs. George. She said she had visited the site, but she had not spoken with anyone.

Mr. Birchim reported the following information:

- The application requested identical docks for each lot at 26 and 28 North St. Augustine Boulevard.
- The vacant lots were adjacent to each other and were owned by the applicant.
- The docks were approximately 120- feet in length.
- The docks would have a 12,000-pound boat lift, and a 7,000-pound jet ski lift.
- The plans indicated the docks would be centered at the rear of each property.
- This application had been tabled at the November meeting.
- Based on review of section 1129, staff found the board could approve a dock at 26 and 28 North St. Augustine Boulevard, with the condition that all necessary permits be obtained prior to construction.
- By approval of the application, the City did not make representation, approval or claim of riparian rights to any party.

Isabel Lopez, 240 Southlake Drive, made the following comments:

- She concurred with staff report.
- Noted that staff had independently evaluated the 17 criteria and had found them in compliance.
- Received CORE and DEP permits on each dock.
- All 17 criteria had been complied with, and testimony would be presented in support.
- Mr. Carter would address the environmental issues for the 17

¹ End of tape 1

criteria, as well as existing conditions adjacent to property and overall vicinity.

- Some homeowners would give their personal history, and one neighbor would address the development patterns in the area, and the consistency of the patterns.
- St. Augustine was interactive, and its history involved waterfront access.
- Requested time at the end to respond to comments by the board and neighbors.
- The experts had handouts that would be shared.

Mr. Vandermark made the following comments:

- The item had been previously tabled due to issues with neighbors.
- He had met with Mr. Green and Mr. George.
- He had swam the site at low tide to determine what the actual dock length should be.
- Mr. George was concerned that the ingress and egress of his vessel had not been a consideration.
- He did not think the dock needed to be the full 120-feet in length.
- Recommended shortening the dock to the exact same length as Mr. George's dock, which was 108-feet, making all the docks in line, with the exception of Mr. Green's.
- A low-profile, unobtrusive dock had been designed; it would be concrete with a single row of piling, and be 5-feet wide.
- It had not been determined if the design would be for a concrete or wooden upper structure.
- Handrails were a personal preference and a safety issue for the Toomeys, and probably should not be addressed.

Mr. Valdes viewed the aerials that showed the proposed location of the docks, and Mr. Vandermark responded as follows:

- Aerials showed the full 120-feet.
- The green dots indicated pilings.
- Sandbar necessitated going south before going west.
- At low tide, there were approximately 3-feet of water over the sandbar.
- The outermost pilings on the proposed lift would be even with the end of the Georges'.
- The three docks would all be in one exact line, so everyone would have the same burden.
- When Mr. George backed out of his slip, and motored south before making a west turn, he would have to go about 20-feet south of the southern dock before turning west, he would have to hug the face of the docks.
- The need for the 10-foot x 10-foot platform at the sea wall was for entry/observation, to avoid having to walk out to the dock.

Ms. Horvath said that within the past seven years she could not recall approval of a platform at the seawall, however, there had been approvals for platforms on the water.

Mr. Blow, in agreement with Ms. Horvath, stated that it was rare that the board had permitted a 10x10 or a platform adjacent to the bulkhead.

Mr. Carter, Environmental Consultant, made the following comments:

- The aerials showed the plans for which a permit had been granted from the DEP and Corp of Engineers; he noted the reduction that would equal the distance of the dock, as mentioned earlier.
- Advised Mr. Toomey about the Corp of Engineers' lack of support regarding shared docks.

- There was an email from the Corp of Engineers noting their concerns about maintenance, liability, permit transfers, and permit identifications; therefore, Mr. Carter had not requested a permit from the Corp in ten years for a shared dock.
- There was potential for the railings to be removed to improve the vista.

Mr. Carter made the following comments regarding the additional aerial he provided:

- Showed docks along the eastern side of the Matanzas River and the city marina.
- The southwestern portion of the aerial indicated single-family docks.
- The marina was south of the Bridge of Lions, and further south there were two lots, # 59 and #60.
- Both lots were 50 feet wide, and each had a dock in the center of the property. (Mr. Dixon noted that they had been there approximately 20 years.)
- Docks were prominent throughout the city.

Mr. Carter made the following comments in relation to the 17 environmental concerns: The impact of development on vegetative and animal communities:

- There was no submerged aquatic vegetation which reduced manatee feeding in the area; the manatees migrated past the area.
- No oysters had been killed as a result of the docks.

The impact of development on shoreline by linear feet or percent of the site:

- There had been an existing bulkhead on the site.
- The dock would be constructed per the DEP and Corp of Engineers dock construction guidelines.

- The shade would not be a concern because of the open water and narrow gangway.

Existing native plants proposed retention and use of native plants for landscape and open purposes:

- The proposal was re-development.
- There was an existing bulkhead, therefore, native vegetation would not be an issue.

Impact of development on water quality:

- A DEP permit had water quality requirements.

Mr. Leary thanked the witnesses for having gone through the criteria. He asked for the orientation of the boats on either sides, as he thought the boats were east to west instead of north to south. He said if the boats sat north or south, they would block the neighbors' egress/ingress, as Mr. Carter had discussed.

Mr. Carter noted the boats would face east. He clarified there had been no intention for any boat to be docked at either dock.

Ms. Tina Toomey and Mr. Richard Toomey introduced themselves.

Mr. Toomey made the following comments:

- They originally bought the subject property about one-year ago and had intended to follow the plans they presented.
- Current land values necessitated building a home for their use and one for sale.
- Property taxes and insurance were high.
- They had contracted on the property, contingent on being able to build two homes as shown in the photographs.
- They designed both homes and the two vertical homes had been permitted.

- The curb cuts and the utility easements had been permitted.
- The curbs and driveways had been put in; they were ready to go.
- They had their building permits, the utility permits, the DEP permits for the docks and the ARMY Corp of Engineer permits.
- Construction was anticipated to begin in January or February.
- He presented a photographic rendering of the proposal.

Mr. Dixon noted the rendering did not show two platforms being built out from the (inaudible) and two docks.

Mr. Toomey noted that the property next to his had a platform approximately half the length of their lot extending about 4-feet, and the length of the lot by about 40-feet.

Mr. Toomey presented pictures of each house facing downtown St. Augustine. He said the houses would add value to St. Augustine, and the intent was to continue that value through the development of both docks.

In response to Mr. Blow's question, Mr. Toomey said that they would live in whichever house Mrs. Toomey liked, however, he had a letter of intent with the GC to buy one of the lots and spec one house. He noted that the GC could change their intent.

Ms. Freeman opened the meeting to the public.

Mr. & Mrs. M. W. George were sworn in.

Mr. George made the following comments:

- He had met with Mr. Toomey to discuss the details.
- They wanted to exhibit the impact on the vista, but not to stop the Toomey's dock construction.
- Exhibited a scaled photograph depicting the two proposed docks.

- He would work with Mr. Toomey regarding an occasional parked boat; therefore, reducing the length to 108-feet would be helpful.
- There had been 17 items given to the City staff to review covered by City Code section 11.
- Impact of development on vistas and scenic opportunities was a concern.
- In addition to the two dock permits being reviewed, there had been permits for # 25, 53 and 55 Vista Circle in October, 2004, with the following comment: *the impact of this dock on scenic vistas is unknown.*
- The downtown vista was important to bayfront.
- The citizens had an opportunity to prevent St. Augustine from becoming another Ft. Lauderdale.
- The south side of the dock seemed to be the standard place for boat lifts.
- The proposed docks, with a ski lift on one side and a boat lift on the other side, would put them in line, cutting down about 1 or 2- feet of the width.
- He recommended changing to no profile lifts.
- He and his neighbor, Mr. Green, would be willing to upgrade their docks if they could get relief from potential tax increases, as once a dock permit was submitted for upgrade, tax assessment was involved.
- Boats perpendicular to the sea wall would reduce the visual impact by 20-feet.
- The Corp of Engineers indicated that anything could be changed, as the concerns were navigation and commerce.
- The owners of boat slips at the Conch House shared common space; therefore, sharing a dock on the bayfront could be successful.
- The density of docks on the bayfront was 75-feet or more.

- The property in question had been replatted from a one single-family lot to develop two 50- foot lots.
- The City had defined buildable lot and lot line adjustment policies subject to appeal on a case basis.
- The adjoining property owners had not been formally contacted by the City in regards to the proposal.
- Property owners should be notified and invited to public hearing regarding any action that could have a materially degrading value.
- Requested that the city attorney review the legality of the policy.
- Section 11 of the City ordinance specified that staff needed to analyze dock permits for impact on shoreline by linear feet and percentage of site.
- He reviewed permits that had been requested for approximately 15 properties on his street and around Inlet Drive in terms of a lot width analysis compared to the linear width of the sea wall.
- He looked at the lot width and the dock width, the width with the boat lift on the end and the platform on the end; he added the percentages and divided by 13, and the result was an average of 38.6.
- To approve the two docks, they would be about 55.9% each, out of alignment.
- On item #17, he proposed one dock with a 16-foot pad, and two twelve foot slips on each side, which would reduce the vista disruption to 40%.
- Proposed dividing two docks by 6- inches, and everyone could have their own dock on the other side, and still be down to 40%.
- Urged the board to establish criteria for issues, one of which was not to have more than a 40% coverage on a seawall.
- Referred to Section 11 of the City ordinance.
- Expressed concern that developers might take down a beautiful neighborhood.

- Price/profit justified building multiple houses.
- Suggested prohibiting a single dock on any lot that was less than 75- feet.
- Expressed concern about congestion on the bayfront.
- Recommended tabling the subject permit, and having the City Council handle it as if it was an ordinance problem.
- Suggested tightening the vista definitions; one dock per two fifty-foot wide properties.
- The City attorney should investigate the policy of January 5.
- To include mandatory neighbor notification, with a hearing for each case.
- Associated the January 5 policy to Mr. Toomey's item because it had been generated and signed on January 5, and Mr. Toomey's plats were dated January 5.

Mrs. George made the following comments:

- Was a registered real estate broker in the state of Florida.
- Agreed with the comments made by her husband.
- Invited board members to the site.
- Spoke with the Corp of Engineers.
- Density had been part of a proposition that appeared on the November ballot, and passed by voters.
- The issue seemed to have manifested itself at 28 St. Augustine Boulevard.
- 28 St. Augustine Boulevard was now mysteriously 28 and 26 St. Augustine Boulevard.
- The density issue extended to the two docks that were proposed for the newly re-drawn subject property.
- Property on the sea wall had recently been bought, and replaced two houses.
- The docks had been approved for both, over the objections of one

neighbor, the Edmistons (38 N. St. Augustine Boulevard). The Edmistons had been advised by the Zoning Board that nothing could have been done, which explained their absence today.

- If the applications were approved, the dock density would set a dangerous precedence for the historic waterfront.
- Urged the board to formulate a policy for use along the Matanzas Bay waterfront, opposite St. Augustine.
- Eliminate the potential for docks every 50-feet on the waterfront.

Mr. Dixon commented that he had not been a supporter of the two docks referred to on the vista circle. He said that even though a single-family home had been removed, two legal sized lots remained.

Mr. Green, 24 North St. Augustine Boulevard, was sworn in, and made the following comments:

- He was the neighbor directly to the south of the subject property.
- The Toomeys had been concerned about the setbacks, and the view.
- His dock, as well as Mr. George's, blocked some views, and Mr. Toomey's would as well; this was a reality of living on the water.
- He had casually spoken with the Georges about the potential for the property before the Toomeys had bought it.
- He had no issue with Mr. Toomey's project as long as the setbacks and requirements were met.
- His dock was approximately 140-feet.
- There had always been a sandbar, and this would be an issue for Mr. Toomey and Mr. George.
- Mr. Green had allowed Mr. George to use his dock for approximately one hour whenever he had a problem.

- The dredging that had been done might have created more issues with the sandbar, as the size appeared to be increasing, and it appeared to be getting deeper in some areas.
- Longer docks were not the issue; water depth was.
- Longer docks usually necessitated increased taxes.

Mr. Blow commented that in addition to vista issues, there was a dredging problem. He said that additional dredging could eliminate the need for longer docks.

Mr. Dixon noted that dredging was an economic consideration.

Ms. Lopez made the following comments:

- The comments from the Georges were more positive than she had expected.
- Shortening Mr. Toomey's dock would make it the length of Mr. George's dock.
- The navigability issues were the same for everyone in the area.
- The permitting agency had reviewed the issue.

Mr. Dixon noted that the navigability comments were not accurate, and he clarified that the agency reviewed the navigability of the dedicated waterway to ensure there would not be interference with the navigable channel which was outside the buoys.

Ms. Lopez noted that several of Mr. George's issues were of a legislative nature, and might be addressed more appropriately by other organizations in the future. She commented that the Planning and Zoning Board was limited to the existing criteria.

Mr. Toomey noted there was a legal liability with sharing docks.

Mr. Toomey commented that the recommendation to place the proposed

docks 8-inches apart could be more obtrusive to the vista.

Mr. Toomey noted that when he had purchased the property, three non-conforming lots had already been platted. He said that no variance had been requested when he designed the two houses; he had designed them to be in line with the homes of the Georges and the Greens.

Mr. Toomey noted that his docks complied with the requirements of the existing system.

Mr. Toomey noted that the closing for the subject properties had been in January, 2006. He said that before the closing, he had checked to ensure that he could build two houses on the properties. He noted that he had filed for the DEP and Corp of Engineers' permits after the closing. He said that prior to the closing, he had received professional assurances that he could get permits for both docks, provided he complied with standards required by the DEP and Army Corp of Engineers. He commented that there had not been docks on the properties at the time of purchase, but there was a bulkhead.

Mr. George agreed with Ms. Lopez that several of his issues had been legislative in nature, however, in accordance with Section 11 and 12, City staff was required to assess the vista and linear feet, which had not been done. He stated that he had learned in December, 2006, of the policy to divide the lots in question, however, it had been finalized in January, 2006. He recommended placing one house on the 100-foot lot. He noted that the docks in questions, with the lifts, would be 8 feet from his property line, and his lift was 11-feet.

Ms. Horvath commented that the request for 28-feet of coverage for a 50-foot lot was excessive. She thought two docks could be permitted, however, the width coverage should be reduced. She commented that

the shortened dock would be good, however, she would not want the 10x10-foot platform at the seawall. She said that she would want the terminus at the end reduced to approximately 10x10-feet.

Mr. Dixon asked staff how lot #12 had been subdivided without review by the board.

Mr. Knight responded with the following comments:

- A citizen had been denied authorization to build on a lot on West Augustine, and the citizen's family had complained to the City Managers' office.
- He had explained the situation to the City Manager who had issue with the manner in which the code was being addressed.
- The City Manager had made suggestions which resulted in the removal of Mr. Toomey's lots from the available status, as well as lots on Fullerwood Drive and others.
- As a result of the City Manger's actions, a policy had to be established.
- Clarification was needed for buildable lots and lot lines, the Code explained a buildable lot as one established by deed or plat, etc. prior to 1975.
- The Code stated that lot lines and new plats can be adjusted provided there were no more buildable lots than older lots.
- The code was not clear regarding older platted lots.
- It had been tradition that if 3 lots existed at Davis Shores, as was the case with Mr. Toomey's properties, citizens had added half lots to full lots, splitting one lot down the center, and combining it with the adjacent property.
- In Mr. Toomey's case, there had been two 25-foot wide buildable lots with a 50-foot wide buildable lot down the center; the 50 foot wide buildable lot had been divided in

half, giving half to the lot owner on each side, resulting in two 50-foot wide buildable lots.

The Assistant City Attorney made the following statements:

- The issues being reviewed were two applications for two different lots for which building permits had been obtained.
- Appeal of the subdivision, was not part of the criteria for the board's consideration.
- She would communicate the neighbors' suggestions to the Commission.
- The language of criteria #12 was as follows: *Impact of development on vistas and scenic opportunities by lowering feet, height, mass, and percent of site.*
- Criteria # 11 stated: *Impact of development on shoreline by linear feet and percent of site.*
- The January 5th policy that had been referenced by Mr. George applied to every lot in the City, therefore, notice would not have been given to the Toomeys' neighbors.
- The board was required to consider the width of the dock compared to the width of the property.²

Mr. Dixon noted he would support only one dock in consideration of vista, maneuverability and historic reasons, and he would not grant a 10x10-foot overhang.

Mr. Valdes said that he would not recommend two docks.

Ms. Upchurch noted that the applicant could or could not change an application at his/her discretion. She clarified that the board could request a change, but the applicant was not obligated to make the change; the board could only approve or deny an application.

Ms. Long asked if the Army Corp of Engineers had approved both applications, and if the approval had been for 108-foot or 120-foot docks.

Mr. Vandermark responded that the applications had been approved for 120-feet, however, he recommended reducing both docks to 108-feet.

Mr. Leary noted concern that the applicant's attorney had stated limitations for issues for which the board could rule.

Mr. Leary referred to Section #1129 with respect to structures such as docks, which stated: *The Planning and Zoning Board is authorized to impose limitations in the nature and manner of construction and/or use so as to avoid damage to adjacent salt marshes and vegetative communities contained therein, to eliminate any harm, etc., to avoid blocking or disrupting vistas and scenic opportunities and to enhance those vistas and scenic opportunities which are determined to benefit the public as a whole.*

Mr. Toomey stated he would consider all recommendations made by the board as a whole. He noted that his boat was 29-feet.

Mr. Vandermark commented that it was not feasible or logical to have one dock. He recommended flipping the 12,000-pound lifts from the outboard side to the inside, which would make the nearest boat lift 31 feet away and not 8-feet away, also opening the vista on Mr. George's side.

Mr. Dixon reminded the board of an application that had been denied for a marina, because of a vista concern; the issue was now in the courts. He suggested consistency in the board's review.

Mr. Blow recommended tabling both applications to which Mr. Toomey responded that he was not in favor.

Mr. Dixon moved to deny item 4.b., 2006-0957.

² End of tape 2

Mr. Toomey stated he would like the discussion to continue and he stated the changes he would be willing to make as follows:

- Flip the dock on the north of lot #28 placing the boat lift on the south side of the dock.
- Shorten the docks to 108-feet, making them the equal length of the George's dock.
- Remove the 10x10 terminals at the end of the docks, on the eastern side of the property.
- No profile docks.
- Make the terminal platform at the end 12-feet wide north/south, and 14-feet deep east/west.

Mr. Toomey said that this action would make it 12-feet for the terminal width, and another 12-feet for the boat slips (there would be a 5-foot section in between, included in the 12-feet). He said the jet ski lifts would be on the other side, in the corner. He agreed that railings would not be discussed.

Ms. Freeman noted that Mr. Dixon's motion had not been seconded.

Mr. Valdes noted that the vista from the terminal end would be obstructed if not lowered. He suggested shrinking the width of the dock relative to the length of the property.

Mr. Leary noted a publication by NOAA that showed an area in Massachusetts similar to the Davis Shores. He said the area had no docks, however, the publication included a photo demonstrating the impact on vista if all homeowners had docks. He noted there were differences, however, the intent was to show the broader potential impact on vistas.

Mr. Leary stated his preference for only one dock, however, he could support two docks if Mr. Valdes' suggestions and Mr. Toomey's changes would be taken into consideration.

Mr. Leary noted that the applicant had been reasonable considering the existing laws, and he noted a need for change.

Ms. Freeman said that her concern had been for percentage based on the lot size, and she noted that the applicant had worked to limit the impact on the public.

Ms. Long noted that she agreed with the comments that had been made by Mr. Valdes, Mr. Leary and Ms. Freeman.

Mr. Valdes withdrew his suggestion.

Mr. Dixon withdrew his motion.

Ms. Horvath moved to approve item 4.b., with the following modifications:

- **The proposed dock would be shortened to 108-foot in length.**
- **A 10x12 foot terminus end, 10 being the width (including the 5 foot width of the dock making the total width 22 feet).**
- **A 12 x 12-foot boat slip.**
- **No platform at the seawall.**
- **No profile.**
- **Jet ski lift, 12-foot width, in tandem on the south side of the dock.**
- **Handrails at the discretion of the applicant.**
- **The boat slip orientation would be to the south.**

Ms. Horvath withdrew her motion.

Ms. Freeman called for a break at 6:20 p.m. She requested that the applicants meet with the concerned citizens in attendance to present their final recommendation for the board's review before the close of the meeting.

Mr. Dixon excused himself from the remainder of the meeting.

The discussion was resumed as follows:

Ms. Lopez advised that Mr. Vandermark would display the overhead of the design based on the discussion held at the board's request.

Mr. George noted the following based on the overhead display:

- Two docks would be placed one or two-feet apart.
- Starting from the right, there would be a 12-foot wide boat lift, with a 10-foot platform that could be 16, 12 or 10-feet deep.
- There would be a 1-foot gap between the two docks that straddled the property line.
- Reverse the other dock, giving a total of 46-feet, approximately 45% lot coverage or dock coverage, which was acceptable.

Mr. Toomey noted that one dock would be on the south side of lot #28, and the other dock would be on the north side of lot #26. He noted that the agreement had been reached with the Georges. He said he wanted to ensure that both docks could be built at the same time, and still be separate to maintain the liability/ non-sharing issue. He stated that agreement had been reached to place the jet skis further back than shown. He said Mr. Vandermark indicated that 90% of the time low tides would not be a concern, however, if necessary, the jet skis could be tied up until high tide.

Mr. Toomey noted that the changes would limit the privacy of each dock, however, in an effort to resolve the issue, the changes were necessary.

Ms. Upchurch noted that the display could be entered as an exhibit to the board's motion, as it demonstrated visuals and contained measurements.

Ms. Long asked for clarification of the docks being centered or to the side of properties.

Ms. Freeman asked if the agreement would be accepted by the board.

Mr. Blow noted that approximately 90% of docks, the portion out to the terminal end, were two pilings, and the decks were 5-feet wide. He noted that the subject docks would have one piling with a 5-foot wide walkway. He said that if someone were viewing that type of construction from the other side of the bay, it would appear to be traditional piling.

Mr. Valdes noted that the lots were legal. He questioned if two docks could accurately be positioned one foot on either side of the property line, but noted that it would be an issue for the owners/applicants.

Ms. Lopez stated that the dock builder had confirmed that 1-2 feet could be done.

Ms. Freeman noted that the new presentation was the least intrusive to neighbors on both sides.

Mr. Blow clarified that the 12,000-pound boat lift would be low profile, with no deck. He said the jet ski lift would be no profile with a deck.

Mr. Vandermark stated that with either low profile or no profile lift, there could be either a cradle or a deck.

Mr. Toomey stated that the no profile jet ski was imperative for safety reasons.

Mr. Valdes stated that the jet ski area would be 12x12-feet.

Mr. Knight stated that per City code, there was no setback requirement for a dock from the property line, and anything that might be approved would be subject to all state/federal permitting. He noted that if one existed that would not meet state/federal permit, it would have to be presented to the board for modification.

Mr. Blow moved to approve item 4.b., 2006-0957, the north lot, with the following requirements, and Ms. Horvath seconded:

- A dock that met the criteria of the sketch, as well as the specification that the 12,000-pound boat lift would be low profile, without a deck.
- The jet ski lift would be a no profile lift with a deck.
- Single piling support from the bulkhead to the terminal end.
- The applicant would utilize only light fixtures that had been approved by the Dark Skies organization.

VOTE ON MOTION:

AYES: Blow, Horvath, Leary, Valdes, Long, Freeman

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mr. Toomey requested that a 12x12 dimension be placed on the sketch for the jet ski.

Item 4 (c) 2006-0958 (Previously Tabled)
Herbert van der Mark – Applicant and
Richard J. and Tina C. Toomey – Owners
26 N. St. Augustine Boulevard

To construct a dock with a 12,000 pound boat lift and 7,000 pound jet ski lift.

Please refer to the discussion from item 4.b, 2006-0957.

Mr. Blow moved to approve item 4.c., 2006-0958, the south lot, with the following requirements, and Mr. Leary seconded:

- A dock that met the criteria of the sketch, as well as the specification that the 12,000 pound boat lift would be low profile, without a deck.
- The jet ski lift would be a no profile lift with a deck.
- Single piling support for the portion of the dock from the shore to the terminal end.
- The applicant would utilize only light fixtures that had been approved by the Dark Skies organization.

VOTE ON MOTION:

AYES: Blow, Leary, Horvath, Valdes, Long, Freeman

NAYES: None

MOTION APPROVED UNANIMOUSLY

Item 4 (d) 2006-1044 (Previously Tabled)
Walker L. Newton Revocable Trust –
Owner/Applicant
Rambla Street, PID# 150350 0000

To construct a bulkhead.

Mr. Anthony Bradock, potential builder representing the owner/applicant, was sworn in.

Exparte Communication:

Mr. Blow and Mr. Valdes noted they had visited the site.

Ms. Horvath and Ms. Freeman noted they had seen the site.

Mr. Birchim made the following comments:

- The Rambla Street/Saratoga Boulevard property was directly south of the Fort Mose museum

site, and backed the jurisdictional wetlands.

- The owner was asking for Conservational Zone Development to construct a bulkhead on the east side of the property.
- The applicant had submitted the required DEP permit.
- Based on review of section 1129, staff found that the board could approve a bulkhead at this location with the condition that all applicable permits were obtained prior to the start of construction.

Ms. Freeman advised that 13 comment forms had been mailed and two had been received in favor and none in opposition.

Mr. Birchim noted that when the item had been previously introduced, the applicant had not been in attendance to answer questions.

Mr. Valdes noted the following:

- He was familiar with the property; he had considered purchasing it in the year 2005, however, he had not proceeded because of permitting issues.
- The aerials demonstrated the property was completely marshfront, with no titled creeks.
- The elevation/cross section, was questionable.
- Mr. Bradock's data showed the mean water level above the (inaudible) as typical, however, it was a static shoreline, and only hurricane conditions might have created the water levels demonstrated.
- A natural shoreline existed.
- A bulkhead would be a needless expense for the developer.
- A bulkhead might not be the best action for the land.

Mr. Bradock agreed that the water was static. He noted, however, that during the building process, runoffs could be

problematic, and bulkheads often resolved the problem.

Mr. Valdes said that the builder would be responsible for controlling the problem with barriers. He noted that the natural shoreline was contiguous with Fort Mose. In addition, he noted that the land opposite the area indicated by the arrow on the aerial had been the area that Henry Flagler had used to gather soil to fill Maria Sanchez Creek, and it had also been the real site of Fort Mose, now controlled by Flagler College

Mr. Birchim stated that authorization for the placement of a bulkhead had been granted for a property to the south of the subject property.³

Mr. Bradock noted that he had not commented on the properties at either sides of the subject property. He said that it would not be appropriate for him to comment on the applicant's need for a bulkhead.

Mr. Bradock noted that bulkheads could enhance the beauty of an area.

Mr. Leary noted that he could not find justification for harming the environment by placing a bulkhead.

Ms. Horvath agreed with Mr. Leary.

Ms. Freeman asked if there were citizens in attendance for the item, and there was no response.

Mr. Bradock stated that he was not in a position to respond to questions regarding trees, sewer, water service, or size and location of houses for the item being reviewed.

Mr. Blow said that he would have liked the developer or the property owner to provide detailed plans for the property.

Ms. Freeman noted that if the application was denied, the owner/applicant would

³ End of tape 3

have to wait one-year before re-submitting the item, plus she said there would be a \$100.00 charge. She said that if the item was to be tabled it could be reviewed at the January 2, 2007 meeting or within one year, however, Mr. Bradock and the owner/applicant would have to attend.

Mr. Valdes re-stated the concerns regarding retaining walls/bulkheads. He acknowledged the need for retaining walls and bulkheading seawalls in some cases, however, there might be other options with less impact to the environment.

Ms. Long stated that Fort Mose was a nationally renowned area, and the City of St. Augustine depended on tourism, therefore, they would not want to diminish appearances. She confirmed the need for a better understanding of the item.

Mr. Leary moved to table item 4.d., to January 2, 2007 for the purpose of obtaining more information, and requesting the applicant's presence. Ms. Horvath seconded.

VOTE ON MOTION:

AYES: Leary, Horvath, Blow, Freeman, Long, Valdes

NAYES: None

MOTION APPROVED UNANIMOUSLY.

Ms. Freeman advised that the owner/applicant call the City before the January 2, 2007 meeting to advise if he would not be in attendance.

Item 4 (e) 2006-1157
Deborah James – Applicant and
Gary M. Moore, etux – Owner
5 Radio Road

To construct a dock with boat slips.

Ms. Freeman advised that the item had been tabled.

5. OTHER BUSINESS

a. Parking at Marinas:

Mr. Knight stated that at the last City Commission meeting a second reading had been held regarding the ordinance for parking at marinas.

Mr. Knight noted that most citizens who attended had been representatives from wet boat slip marinas, and they had requested fewer requirements for parking at marinas. He stated that the City Commission said there was not sufficient information to support the request, and they remanded the item to the Planning and Zoning Board for reconsideration. He noted that he had not planned on addressing the issue during the meeting, however, there were two citizens in attendance with information for consideration.

Ms. Freeman recommended having a workshop and inviting the citizens who had been in attendance.

Mr. Valdes, on behalf of the board, apologized to the two citizens who had been in the audience. He noted that it would be more productive to address their concerns at the next meeting.

Mr. Leary recommended making the marina parking issue an agenda item for the next meeting. He stated that the board would need testimony from representatives for wet and dry slips.

Mr. Leary asked if the board could request that staff seek representatives to speak to the issue at the Planning and Zoning Board meeting. He recommended inviting representatives of both wet and dry slips, and businesses that might be affected by the issue.

Mr. Knight noted that when a publicized second reading hearing had been held, only wet and dry boat slip owners had attended. He said that no citizens from the general public had attended. He noted that all neighborhood associations had received notification of the meeting.

Mr. Knight noted there had been a proposal as follows:

- 5-1 for dry boat slips
- 2-1 for wet boat slips

Mr. Knight noted that at the first reading it had been changed back to:

- 10-1 for dry because the dry boat slip supporters wanted it retained.

Mr. Knight noted that at the hearing, the majority of attendance had been representatives of wet boat slips who wanted 3-1, 4-1, 5-1, up to 10-1, being the same as what the dry boat supporters had been receiving. He noted that at that point, the City Commission stated that there was not sufficient documentation.

Mr. Valdes noted that the issue would be best served at the Planning and Zoning Board meeting which would allow the board to take action and forward them to the City Commission.

Mr. Birchim noted that he had started a list with some ideas of what staff might do to meet the suggestions of the board.

b. Parking for Commercial Businesses:

Mr. Knight stated that he had a discussion with the City Manager about eliminating parking for commercial businesses on San Marco, an item that had been noted by Commissioner Boles. He stated that there was a parking garage in that area. He noted the same potential existed at King Street because a parking garage was being built at the end of King Street. He noted that the properties along the areas were commercial low intensity zoning, and extended close to May Street, on San Marco, and between US 1 and the historic downtown district. He stated that the City Manager requested the Planning and Zoning Board review the concept for recommendation. He said that he had drafted an ordinance that had not

been endorsed, and would distribute it at the next meeting for the board's consideration.

c. Workshop Discussion:

Mr. Leary recommended having at least 2 workshops. He said one of his concerns was specific to the length of docks, with relation to private docks and commercial marinas, and vistas. He recommended inviting some experts to speak.

Mr. Leary said that there were several concerns for working waterfronts, and he thought that a separate workshop would be appropriate for this issue.

Ms. Upchurch noted that she had conducted substantial research on the working waterfront issue, and she thought that a significant amount of time would be needed to discuss tax credits and other implications. She commented that the drafted language on the vista issue could use some clarification. She said there was case law with vista language that was similar to the City's, and had gone through the Federal Courts. She noted that the Federal Courts stated that the language had not specifically identified the vistas. She noted that the appeal and objection had been raised by the public's view, and the court had struck it down as not being within the code.

Mr. Leary asked when she thought she would be prepared to staff the needed workshops.

Ms. Freeman noted her schedule required as much notice as possible.

Ms. Upchurch noted that eventually there would be a second attorney in City Hall, which would give her more available time. She thought that February, 2007, would be a good month for the workshops.

After discussion, it was noted that staff would call the individual board members to schedule the workshops regarding docks.

d. Relative Testimonial Information:

Mr. Leary stated concern with low attendance at previous meetings, and limited availability of speakers. He asked if it would be appropriate for the board, or one member of the board, request that staff seek information/speakers who could provide additional valuable testimony on specific issues.

Ms. Upchurch noted that the proposal to change the requirement for parking was a legislative issue, and the board was authorized to do its own investigation. She said that for a quasijudicial issue, if there was a need for additional information or testimony, the board could ask staff for further investigation. She stated that there should be no pretext in the board's request. She noted that it would be inappropriate to request staff to obtain testimony against an issue. She noted that an item could be tabled pending further information.

Mr. Leary questioned whether the board could request that staff speak with someone with expertise on a specific issue, or would it be appropriate for a board member to speak with an agent or person with expertise.

Ms. Upchurch noted that a board member could not be a witness and a judge. The following example was discussed:

- An article from the internet on the negative impact of docks on oysters.

Ms. Upchurch noted that the article could be given to Mr. Knight, or made a part of the record, or the applicant could be questioned if he/she were familiar with a section from DEP. She said that the board could ask staff if a document might be in their possession and if the board could provide a document to staff. She noted that the board would not present evidence. She also noted that the board could individually gather information with the understanding that if the information was to be used in

making a decision, the information should not be presented by a board member.

e. Recusals:

Ms. Upchurch noted the following:

- Mandatory recusal – Pecuniary interest.
- Discretionary – To avoid an appearance of impropriety, which was the decision of the person who was considering recusal.

f. APPEALS:

Mr. Knight noted the following:

- 52 San Marco, the use by exception for electric car rental business, had been denied.
- The Fish Island Dock: It would be going to the City Commission for sufficiency on Monday, December 11, 2006.

6. ADJOURNMENT

Having had no further business, Ms. Freeman adjourned the meeting at 7:45PM.

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Leanna Freeman, Chairperson

⁴ Transcribed by Grace M. Vante

