

## CITY OF ST. AUGUSTINE

### Planning and Zoning Board Meeting May 4, 2010

The Planning and Zoning Board met in a formal session Tuesday, May 4, 2010 at 2:00 p.m. in the Alcazar Room at City Hall. The meeting was called to order by Grant Misterly, Vice-Chairperson and the following were present:

**1. Roll Call:** Grant Misterly, Vice-Chairperson  
Gerry Dixon  
Deltra Long  
David Toner

Absent: Carl Blow, Chairperson (excused)  
James McCune (excused)  
John Valdes (excused)

City Staff: Mark Knight, Director, Planning & Building Department  
David Birchim, Planning Manager  
Carlos Mendoza, Assistant City Attorney  
Elizabeth Carter, Temporary Recording Secretary

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### **2. Approval of Minutes**

The minutes of the April 6, 2010 Regular PZB meeting were presented for approval.

**Mr. Dixon MOVED to APPROVE the minutes as submitted. The motion was SECONDED by Ms. Long.**

#### **VOTE ON MOTION:**

**AYES: Dixon, Long, Toner, Misterly**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

### **3. Variance**

**3. (a) 2010 - 0033 – Steven M. Schuyler, Architect – Applicant  
Jeffrey and Sabrina Kelbert - Owner  
27 Montrano Avenue<sup>1</sup>**

**To encroach into the required secondary front yard setback and to exceed the**

### **maximum lot coverage for a residential addition.**

Mr. Birchim stated that based on a review of Section 28-29 and without the support of evidence to the contrary, staff found that the board could APPROVE a variance to reduce the required secondary front yard setback and exceed the maximum lot coverage at 27 Montrano Avenue.

Steven Schuyler, Architect, provided a brief history on the property and described the proposed renovation to the garage, which included a partial encroachment into the side set-back. He indicated that the style of the garage would match the gables and architectural style of the house.

Mr. Misterly indicated that 14 certified notices were mailed and one was returned in favor with comment that it would be an improvement to an existing building due to the irregular lot.

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<sup>1</sup> Staff report attached to original minutes

Public hearing opened; however, there was no response.

Mr. Dixon engaged a discussion on the distance from the property line to the curb. It was noted that there was a 60-foot right-of-way from the property line to the curb.

Mr. Birchim indicated that there was 24 feet from the curb edge to the closest point of the building.

#### **MOTION**

**Mr. Dixon MOVED to APPROVE application 2010-0033 as submitted. The motion was SECONDED by Mr. Toner.**

#### **VOTE ON MOTION:**

**AYES: Dixon, Toner, Long, Misterly**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

#### **4. Use by Exception**

**4. (a) 2010-0034 – L. John Arbizzani – Applicant  
Rhett's St. Augustine - Owner  
66 Hypolita Street<sup>2</sup>**

**To allow a bar/cocktail lounge at this location.**

Mr. Birchim delivered the staff report and said based on a review of Section 28-2 and 28-29, and without support of evidence to the contrary, staff found that the Board could APPROVE a use by exception to allow a bar/cocktail lounge at 66 Hypolita Street.

Samuel Hale, property manager, stated that the establishment would be a piano bar offering 40's and 50's music.

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<sup>2</sup> Staff report attached to original minutes

Mr. Misterly indicated that 13 certified notices were mailed and three were returned with one favorable comment and one in opposition.

Public hearing opened; however, there was no response.

Mr. Dixon indicated he had a conversation with Len Weeks who expressed concern about the proposed sliding doors in the HARB application, and he asked for an update on the doors.

Mr. Hale stated that the number of sliding doors had been reduced to two, the style had been modified and the application would go before HARB at the next meeting.

Mr. Dixon expressed concern about leaving the sliding doors open, the noise level of the establishment and the potential problem for the neighbors.

Ms. Long questioned how often the doors would be opened and whether there would be indoor and outdoor seating.

Mr. Hale responded that the doors would be closed most of the time but when weather permitted, he wanted to open them. He indicated there would be indoor seating for 48 patrons but no outdoor seating.

#### **MOTION**

**Ms. Long MOVED to APPROVE application 2010-0034 as submitted. The motion was SECONDED by Mr. Toner.**

Mr. Misterly added that previous applications for bars in the area had met public opposition. He felt it was important to

point out that was not the case with the application before them.

**VOTE ON MOTION:**

**AYES: Long, Toner, Dixon, Misterly**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**4. (b) 2010-0035 – Jessica Laurel Baker – Applicant**  
**7 M.L. King Street LLC – Owners**  
**7 Martin Luther King Avenue<sup>3</sup>**

**To allow alcohol sales as a permissible use by exception.**

Mr. Birchim delivered the staff report and said based on a review of Section 28-29 and without the support of evidence to the contrary; staff found that the board could APPROVE a use by exception to allow alcohol sales (not more than 14%) at 7 Martin Luther King Avenue.

Laurel Baker, applicant, introduced herself and stated that she had been a jeweler and boutique designer for four years and looked forward to opening her shop in the City, as well as raising the caliber of designers in the area.

She expanded on her plans for her boutique to include:

- Event driven
- Maximum 6 events per month
- Would not be a bar
- Beer and wine sales only – limited to certain events
- Designer meet and greets
- Bridal Expos
- Showers
- Glitz and Glamour events for charities

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<sup>3</sup> Staff report attached to original minutes

Mr. Misterly indicated that 13 certified notices were mailed and three were returned in favor and six were opposed including comments as follows:

- Development good for the area
- Alcohol next to a boy's dormitory was a bad idea
- Parking issues
- Public intoxication
- Noise concerns

Public hearing opened.

Richard Ornstein, co-owner of the property, provided a brief history on the building and advised that he and his partner had significant investment in the renovation. He believed that the applicant would make a good tenant; the boutique would enhance the neighborhood; beer and alcohol sales would be event driven; it would in no way promote a bar-type atmosphere; and he supported the applicant's business initiatives.

Mr. Dixon confirmed that the variance would run with the applicant unless the Board specified otherwise.

Ms. Long confirmed that if the applicant wanted to give beer and wine to her patrons as opposed to selling it, she would not need approval from the PZB.

Mr. Misterly asked if there were other bars in the area, and it was determined that the closest bars in the area were:

- The Giggling Gator to the east on King Street
- The Casa Monica Hotel to the west on King Street

Mr. Birchim confirmed that there had been no Code violations with the aforementioned

businesses; however, there might be police reports on file.

William Freeman, local resident, expressed opposition to an establishment selling beer and wine next to a boy's dormitory. He felt a jewelry store would do well in that area, but he was concerned that the shop would end up selling beer to the boys, including minors.

Mr. Misterly clarified the definition for a use by exception and the board's role in assuring the criteria was met to grant such an exception.

Mr. Freeman continued his objection, as he felt strongly that it would encourage public intoxication by the dormitory students.

Mr. Dixon stated that the testimony from the applicant indicated beer and wine would only be offered for purchase during special events and functions.

Following a brief discussion with Mr. Freeman about alcohol sales to students, the Board advised him that exceptions could be approved with terms and conditions to address various concerns, such as his.

Tom Cavanaugh, local resident, expressed concern over the extra traffic the business would produce, as well as the lack of parking. He felt the sale of alcohol on a daily basis was a bad idea, and he was counting on the board to restrict alcohol sales for special events.

C.R. Howell, local resident, indicated that he was opposed to the application to sell beer and wine, and he feared that if approved, even on a restricted basis, it would turn into an everyday occurrence.

Public hearing closed.

Ms. Baker assured the community that she had no intention of selling alcohol to the general public, and her purpose for beer and wine sales was solely to promote her events and help to financially offset the cost of bringing in designers. She explained that she would host jewelry events and fashion expos, and her demographic audience would be 30-40 year old women who enjoyed fashion and appreciated the arts. She assured that parking would not be an issue, as her events would be held in the evening. She concluded that she would respect the community's concerns and adhere to the City's restrictions.

Ms. Long confirmed that the boutique included jewelry, fashion accessories, parking was adequate, and the facility was ADA compliant.

Ms. Baker clarified that her goal was to host six events per month, including charitable events; however, for the first two months she only planned on hosting three events each month.

Ms. Long expressed concern with security during the applicant's events, but she was assured that the clientele she would cater to would pose no threat, but in the event that it did, she would call the police.

Following a brief discussion to better understand the applicant's intentions and business plan, it was determined that the considered hours of operation would be Wednesday through Sunday from 11:00 a.m. to 7:00 p.m. with event nights extended to 10:00 p.m. and no more than 6 events scheduled for any given month.

#### **MOTION**

**Ms. Long MOVED to APPROVE application 2010-0035 with the following conditions; events would be limited to**

six within a one month period, the boutique would be closed on Monday and Tuesday, the hours of operation would be 11:00 a.m. to 10:00 p.m., and approval would run with the applicant. The motion was SECONDED by Mr. Dixon with a suggested amendment not to restrict the days of operation but indicate that any event must be over by 10:00 p.m.

Ms. Long accepted the suggestion and amended her motion accordingly.

Mr. Misterly added a proposed condition to define an event as lasting no longer than one day, thus a two day expo would count as two events.

Ms. Long agreed and amended her motion accordingly.

**VOTE ON MOTION:**

**AYES:** Long, Dixon, Toner, Misterly

**NAYES:** None

**MOTION CARRIED UNANIMOUSLY**

**5. Preliminary Subdivision Platt Approval/Conservation Zone Development**

**5. (a) 2010-0026 – Duane Hull, Putnam Bank – Applicant  
Putnam State Bank – Owners  
Hildreth Drive (PID # 151150 0000)**

**To subdivide the property into 12 single family residential lots and to remove trees in conjunction with site development.**

Following a brief discussion it was determined to table the item until the June meeting.

**MOTION**

**Ms. Long MOVED to TABLE application 2010-0026 until the June 1, 2010 meeting. The motion was SECONDED by Mr. Toner.**

**VOTE ON MOTION:**

**AYES:** Long, Toner, Dixon, Misterly

**NAYES:** None

**MOTION CARRIED UNANIMOUSLY**

**6. Preliminary Subdivision Plat Approval/Variance/Landscape Plan Approval**

**6. (a) 2010-0037 – Douge Moran – Applicant  
KB Homes Jacksonville LLC – Owners  
100 Islander Drive<sup>4</sup>**

**To reduce the minimum lot size and subdivide property for a townhouse community and to approve a landscape plan.**

Mr. Birchim delivered the staff report and said that based on a review of the applicable City Codes, and without the support of evidence to the contrary, staff found the Board could DENY a variance to reduce lot width for the proposed townhouse development based on the lack of any unique physical hardship associated with the property. He said the variance to reduce side yard building setbacks for two units adjacent to common parking areas, the acceptance of a new landscape plan and the preliminary subdivision plat approval were tied to the variance to reduce the lot size and could be considered only if the board approved the lot size reduction variance.

<sup>4</sup> Staff report attached to original minutes

Mr. Birchim clarified that the Board needed to open up the hearing and make sure all of the property owners had signed the application or approved of the application for the development of the real estate.

Karen Taylor, Land Planner, indicated that there was no written authorization from the owners, but she assured the board the owner's were in agreement on the variance application. She indicated that there was an authorization from the Condominium Association signed by the President authorizing the project.

Mr. Misterly questioned whether the information provided was sufficient to hear the matter.

Mr. Mendoza advised that if it was the assertion of the applicant that the Condominium Association expressed unanimous consent of all the owners, then the authorization signed by the President would be sufficient; however, it was up to the Board to determine their comfort level with the authorization. He confirmed with Ms. Taylor that her testimony stated that all of the owners were in agreement, and authorized the president of the Condominium Association to move forward.

Following a brief discussion on the ownership of the condominiums, it was decided that the Board would allow the applicant time to contact the owners to obtain definite confirmation of agreement, and the board would revisit the item following the subsequent item.<sup>5</sup>

Mr. Mendoza noted that a member of the public who had spoken to the property owner was present and prepared to provide sworn testimony. He further noted that the information would be legally sufficient and

the City Attorney felt comfortable with the testimony. He said that Michael McCabe, Attorney for Anastasia Lakes, adjacent to the property in question, requested a continuance of the case. He concluded that once Mr. McCabe stated his case the board could discuss different options.

Jesse Kilibrew, KB Homes of Jacksonville consultant, spoke to each property owner (Bill Conklin, Nicky & Jim Parron, and Mary Tinlin) and noted that all were in support of the Islander re-plat and further confirmed that he had not spoken with the Association's president.

Mr. McCabe requested a continuance for the item and explained that issues such as stormwater ponds, lighting for taller structures and nuisance considerations should be addressed with his clients and KB Homes. He felt that the preliminary discussions were on the right track; however, no agreement had been finalized.

Mr. Misterly questioned the relevance of the adjacent property's concerns as related to the case.

Mr. Mendoza stated that the applicant had followed the proper procedures and rules for due process; however, he suggested the board consider whether the type of objections raised by Mr. McCabe could derail the process in the future. He further suggested deferring to the applicant for a continuance; however, the applicant was within their right to be heard.

Mr. John Diegle, attorney for KB Homes, clarified that the variance had no effect on the stormwater system, as it was an entirely different issue. He felt there was a justifiable legal basis for a continuance, and pointed out that the homeowners of the adjacent property had been given due

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<sup>5</sup> This item resumed discussion following item 2010-036

process and time to prepare a formal opposition.

Ms. Taylor added that representatives from KB Homes had met with the homeowners of the adjacent property and some of the issues raised were presented in a letter, which was included in the agenda packet.

Mr. Birchim clarified that the issues under consideration dealt with a subdivision plat and a landscape plan.

Ms. Taylor indicated that the variance was a critical part of the application to achieve the minimum lot size to accommodate townhomes and reduction of two side yards to provide for parking spaces. She stated that CM-1 allowed townhomes; however, lot sizes were not included. She said single family lot sizes were 15,000 square feet, but townhome lots would be on a smaller scale. She said a portion of the RG-1 pertained to townhomes and pointed out the minimum lot size would be 5,450 square feet; however, that would require board approval. She felt there was little difference between the RG-1 and Variance processes. She described the property as follows:

- 7.35 acres
- Accommodate 117 units
- Development plan 80 total units
- Existing property had eight units
- 72 units would be townhomes
- Land cleared
- Utilities and roads currently existing
- Working with an existing situation

Existing eight units were as follows:

- Flat over flat quads
- Met multi-family density requirements
- Had to be sold through condominium ownership

Ms. Taylor said approval of the variance would allow townhomes to be built instead of condominiums, and allow the owner to sell the units as fee simple townhomes. She said the side yard set-back variance was for Lot 8 and Lot 67, which would provide additional parking. She indicated that the adjacent property owners had submitted a letter expressing their concerns, and KB Homes had agreed to everything in the letter except the request that the buildings be single story. She said KB Homes agreed to:

- Relocate the units
- Not disturb existing trees
- Plant additional trees
- Limit the unit height
- Protective coverings applied to street lights
- Add a stop sign at Mizell Road
- Work on additional architectural design such as color and siding
- Add a retaining wall
- Additional landscaping

Mr. Misterly indicated that 68 certified notices were mailed, four were returned in favor and 17 were opposed.

Public hearing opened.

Verna Brown, Anastasia Lakes Home Owners Association President, said she had hand delivered a letter to the board that explained the residents concerns. She said the Association and KB Homes had worked together to mitigate the concerns of the residents. She said she was not speaking on behalf of the entire Association; however, a draft agreement had been created with KB Homes that included the following:

- Five foot setback
- Removal of sidewalks
- 15 foot property reduction setback

- KB Homes would repair and secure the existing fence
- All sides of structure included in Architectural detail
- Add language stating that the townhomes would not offer short term rentals

Mr. Misterly said the item in question was a variance related to the lot size and the property setbacks. He questioned whether Ms. Brown was opposed to the proposed variance, and the response was affirmative.

Raymond Hamilton, Anastasia Lakes homeowner, said he was opposed to the variance and provided the board with 28 letters from residents in opposition. He said the size of lot setbacks would be too close to his property; therefore, an invasion of privacy, and he felt property values would be decreased.

Tara Vighetti, Anastasia Lakes homeowner, said she felt that the plans as presented were not acceptable, and she was opposed to the item. She concluded that adequate notice was not provided to Anastasia Lakes homeowners.

Mr. Misterly pointed out that the back setback was not included in the variance.

Sandra McKinney, Anastasia Lakes homeowner, said the size and scale of the buildings was not acceptable. She expressed concern about the property and hoped the land would not remain vacant.

Mary Kerr, Anastasia Lakes homeowner, said she had concern about the location of the buildings, traffic, landscaping; moreover, she was opposed of the application.

Nicky Paron, Islander homeowner, said the proposal would be a quality project, and she was in favor of the application.

Lynn Qualls, nearby resident, said she preferred the height be reduced, and she was not in favor of the proposal.

Public hearing closed.

Mr. Dixon stated that the project did not meet the qualifications for a variance. He said to pursue the project the property would have to be rezoned or made a Planned Unit Development (PUD). He said the qualifications were as follows:

- No variance shall be granted unless the applicant could show and the board found that the size, shape, or topography or other physical conditions suffered a singular disadvantage
- Disadvantage to make reasonable use of the property, such as a unique physical disadvantage to the property

Mr. Dixon said the property suffered no unique or physical disadvantage, and noted that he was in favor of the project being determined a PUD.

Ms. Taylor said she disagreed with the proposal to change the project to a PUD. She said everything in the project met all of the qualifications. She concluded that the road and utilities would remain private.

Mr. Dixon said he felt the application would not meet the criteria under the current zoning.

#### **MOTION**

**Mr. Dixon MOVED to DENY application 2010-0037 because the application did not meet the criteria (size, shape, physical conditions).**

Mr. Dixon said the application did not demonstrate a singular disadvantage. He said the owner could design the subdivision to meet the minimum requirements; however, that would require rezoning the property to RGO or request a PUD. He noted that public comment supported his decision.

**The motion was SECONDED by Mr. Toner.**

**VOTE ON MOTION:**

**AYES: Dixon, Toner, Long, Misterly**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**7. Rezoning**

**7. (a) 2010-0036 – Larry Weeks, Flagler College – Applicant  
Flagler College - Owner  
63 Cordova Street<sup>6</sup>**

**To rezone the property from Historic Preservation two (HP-2) to Planned Unit Development (PUD) for a new Welcome Center.**

Mr. Birchim delivered the staff report and said staff found that a final review by HARB would be necessary provided the Planned Unit Development (PUD) was approved by the Planning and Zoning Board. He said the rezoning process was an act of the City Commission upon recommendation of the PZB, and staff would not make recommendations concerning the rezoning of land.

Ken Smith, architect, said the facility would be used by Flagler College to welcome new students and family members. He pointed out that currently it was a vacant parking lot. He said the proposed application would be

compatible with the surrounding buildings, and parking would be located in Flagler College's Kenan Hall parking lot.

Mr. Misterly reported that 11 certified notices were mailed and one was returned in favor with comments.

Public hearing opened; however, there was no response.

Ms. Long asked staff whether the tree mitigation could be accomplished by planting on the main campus.

Mr. Birchim replied the arborist determined that the trees were in decline, and he noted that the site would be elevated to install an underground stormwater system, which could be installed directly across from the property on the main campus. He said the board could suggest a one-for-one or two-for-one tree replacement to the City Commission.

Mr. Misterly asked why the applicant chose to apply for a PUD versus the current zoning.

Mr. Smith replied that the PUD would allow the square footage of the building to be slightly larger.

Mr. Dixon noted that the PUD was being used to circumvent building size, and he expressed concern about the size of the building compared to the lot size.

Mr. Smith said the building would not be located in a residential area, and he noted that the building size was compatible with the surrounding structures.

Mr. Toner questioned whether Flagler could achieve the same goal with a smaller building, whether they had another location, and the number of students and parents

<sup>6</sup> Staff report attached to original minutes

that would be crossing from the College to the proposed building.

Mr. Smith replied that he was unsure about a smaller building, but no other locations were available. He said they would have from two to 20 people touring the college.

Mr. Toner questioned whether they would need to add a crosswalk, and the response affirmed a crosswalk would be added at the end of Valencia Street.

Ms. Long said the College would benefit from the project, but questioned the benefit to residents.

Mr. Smith said the project would provide the following benefits:

- Underground stormwater system
- Landscaping improvements
- Structure that would fit the character and size of the neighborhood

#### **MOTION**

**Mr. Toner MOVED to APPROVE application F2010-0036 and the traffic flow would be worked out between Flagler College and staff. The motion was SECONDED by Mr. Long.**

#### **VOTE ON MOTION:**

**AYES: Toner, Long, Misterly**

**NAYES: Dixon**

**MOTION CARRIED 3/1**

#### **8. Other Business**

**8. (a) Consideration of Ordinance 2010-10 (Amending the Historic Preservation Policy 1.4 of the Comprehensive Plan)**

Mr. Birchim said the Historic Architectural Review Board suggested that Ordinance 2010-10 be heard by the City Commission. He said the comp plan wording "Architectural Guidelines for Historic Preservation" would change from capital letters to lower case letters and would not represent one specific item. He said that would allow local approval versus the final approval being made in Tallahassee.

Mr. Misterly said the changes would include the lettering being written in lower case and asked what references would be included in the City Code if a document no longer existed.

Mr. Knight replied that general guidelines would be included in the City Code. He said the guidelines would be adopted by City Code by reference, not the Comp plan.

Mr. Dixon said the references were held at a state level, but would be brought back to the local level through the proposed changes.

Ms. Long asked if ordinance 2010-10 would be sent to the City Commission and whether to hold-off on ordinance 2010-11 for further research, and the response was affirmative.

Public hearing opened; however, there was no response.

#### **MOTION**

**Ms. Long MOVED to RECOMMEND that Ordinance 2010-10 go before the City Commission for consideration. The motion was SECONDED by Mr. Toner.**

#### **VOTE ON MOTION:**

**AYES: Long, Toner, Dixon, Misterly**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

Mr. Knight concluded that if approved Ordinance 2010-10 would take six to nine months to complete the approval process.

**8. (b) Consideration of Ordinance 2010-11 (Amending the Architectural Standards for zoning district HP-1, redefining the method for amending the AGHP)**

**MOTION**

Ms. Long MOVED to RECOMMEND that Ordinance 2010-11 be sent back to HARB for further consideration. The motion was SECONDED by Mr. Toner.

**VOTE ON MOTION:**

**AYES:** Long, Toner, Dixon, Misterly

**NAYES:** None

**MOTION CARRIED UNANIMOUSLY**

**8. (c) Discussion Regarding Regulation of Automobile Sales Lots**

Mr. Knight said John Valdes requested that information regarding Automobile Sales Lots on small lots. He said Automobile Sales Lots were allowed in CL-2, and language was added to say "however any lot where automobiles were offered for sale, sold, or rented must be a minimum of "x" square feet", and noted that the language was also included in CM-1 and CM-2.

Ms. Long asked that staff provide other locations and available lot sizes at the subsequent meeting.

Mr. Misterly questioned how the matter related to scooters.

Mr. Knight replied that motorized bicycles were defined in section 316.003. He referred to a Transmission lot located on A1A, and he noted that the business repossessed vehicles, and sold them for a

balance owed on the work that had been completed.

**9. Adjournment**

Having no further business, Mr. Misterly adjourned the meeting at 5:13 P.M.<sup>7</sup>

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Grant Misterly, Vice-Chairperson

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<sup>7</sup> Transcribed by Elizabeth Carter & Carly Mason