

CITY OF ST. AUGUSTINE, FLORIDA

Code Enforcement, Adjustments and Appeals Board Meeting
September 9, 2008

The Code Enforcement, Adjustments and Appeals Board met in formal session at 3:00 P.M., Tuesday, September 9, 2008, in the Alcazar Room at City Hall. The meeting was called to order by Irene Arriola, Chairperson, and the following were present:

1. ROLL CALL

Irene Arriola, Chairperson
Enid Hurst
William Rosenthal
Gary McMahon

Excused: Cathy Brown
Rhett Davis

Staff Present:

Robin Upchurch, Esq., Assistant City Attorney
Mark Knight, Director, Planning & Building Department
Curtis Boles, Code Enforcement Inspector
Noel Mahr, Code Enforcement Inspector
John Rayno, Fire Marshall
Sharon O'Keefe, Administrative Coordinator, Recording

The City staff was sworn in.

**2. APPROVAL OF MINUTES
(August 12, 2008)**

MOTION

Mr. McMahon moved to approve the minutes. The motion was seconded by Mr. Rosenthal and approved by a unanimous voice vote.

3. DISCLOSURE OF EX-PARTE COMMUNICATIONS

Ms. Arriola said Mr. Erickson called her to inquire about the time of the meeting.

4. VARIANCES/TREE REMOVAL

**Item 4(a) 2008-0112
Tim Valley
35 Atlantic Avenue
**City Code, Chapter 8, Section 8-401
Flood control variance.****

Mr. Knight reported the following:

- The applicant proposed a 191 square foot addition to an existing house below the required Base Flood Elevation (BFE)
- There would be substantial renovations (approximately \$50,000) to the interior of the house, valued at \$53,000

- Current elevation was 8.83 feet was two inches short of the required BFE
- Staff recommended approval with the following conditions by the Building Official:
 - Applicant must use flood resistant materials below the 9' flood elevation
 - All new electrical components shall be elevated to 12 inches above the base flood elevation
 - All new mechanical components must be elevated to or above the BFE
 - Applicant must submit engineered plans confirming flood prevention measures
 - No new construction shall be lower than the existing elevation

Tim Valley, 5 Seminole Drive, was sworn and stated that he would abide by the conditions if the variance was approved.

There was no public comment.

MOTION

Ms. Hurst moved to approve the variance subject to the conditions of the building official. The motion was seconded by Mr. McMahon and approved by a unanimous voice vote.

5. REVIEW OF PREVIOUSLY HEARD CASES

Item 5(a) **2008-4256**
Anne L. Garcia
56 Water Street

City Code, Chapter 8, Section 608 Construction without a permit

Mr. Mahr reported the following:

- The building had been brought into compliance
- The un-permitted portion of the building had been removed and the building restored it to its original condition
- The unsafe condition of the property had been addressed
- The upstairs door had been boarded from the inside and outside
- Recommended the Board find the case in compliance

Bill Lanni, 320 High Tide Drive, St. Augustine Beach, was sworn and told the Board he "buttoned up" the building and it was secure. He thanked the Board for their time.

There was no public comment.

MOTION

Mr. McMahon moved to issue an order to "Close for Compliance". The motion was seconded by Mr. Rosenthal and approved by a unanimous voice vote.

Item 5(b) **2008-4260**
Erickson Development
54 Lovett Street
**City Code, Chapter 8, Section 301
Unsafe Structure**

Mr. Boles reported the following:

- An Order Finding Violation was issued on April 8, 2008
- The respondent was ordered to correct the violation within 30 days or a fine of \$250 per day would be imposed
- On July 8, 2008 a fine in the amount of \$2,750 was imposed
- On August 12, 2008 a fine of \$8,750 was imposed
- Concrete steps and the dumpster, full of debris, remained at the site
- He recommended a fine in the amount of \$7,000 representing the time from August 13, 2008 to September 9, 2008 during which the violation continued
- The property was substantially in compliance, by August 15, 2008, but not completely

George Erickson, Erickson Development, 6170 St. Andrews Court, Ponte Vedra Beach, was sworn and had the following comments:

- During the demolition the neighbor's fence was damaged
- Withheld \$500 from payment to the demolition company who agreed to fix the fence
- Called the dumpster company twice during the month but it had not been picked up
- Had no control over the companies he hired for the job

Mr. Rosenthal stated that Mr. Erickson kept going before the Board with reasons why he could not comply with the Board's orders. He said he had a

problem with the respondent's performance in the matter.

Mr. Erickson said the situation had been a nightmare for him, and it took much longer than he anticipated. He stated that if he met many obstacles then a person, not working within the construction business, would be more disadvantaged in trying to comply with the Board's order. He asked the Board to rescind the previously imposed fines.

Ms. Arriola asked Mr. Knight for hard costs involved in the case.

Mr. Knight recommended against fines being totally rescinded due to administrative costs involved. He estimated the administrative costs to be approximately \$1,500.

Mr. McMahon said he agreed with Mr. Rosenthal that because the respondent was in the construction business he should have done whatever was necessary to comply with the Board's orders.

Discussed continued regarding the issue of imposing fines.

There was no public comment.

MOTION

Mr. McMahon moved to maintain the fine, imposed on August 12, 2008, in the amount of \$8,750 and found the case substantially in compliance "Closing for Compliance". The

motion was seconded by Mr. Rosenthal.

VOTE ON MOTION

Ayes: McMahon, Rosenthal

Nays: Hurst, Arriola

The motion failed.

MOTION

Ms. Arriola moved to find the case substantially in compliance and to modify the previous fines to \$5,000, and issued an order "Closed for Compliance". The motion was seconded by Ms. Hurst.

VOTE ON MOTION

Ayes: Arriola, Hurst, McMahon

Nays: Mr. Rosenthal

MOTION CARRIED 3/1

Item 5(c) 2008-4265

Brandon Parsons

260 St. George Street LLC

City Code, Chapter 8, Section 608

Construction without a permit

Mr. Boles reported as followed:

- The case was found in violation of construction without a permit on August 12, 2008
- The respondent was given until September 9, 2008 to bring the property into compliance
- The property remained in violation
- He recommended the board impose a fine in the amount of \$250 beginning September 10, 2008 to continue for each day of violation

Fire Marshall, John Rayno, told the board the smoke and heat detectors had been reinstalled. He said he had no contact with Mr. Parsons since the last hearing. He said he assumed the fire separation wall had not been completed, and the hole in the ceiling for the stairway constructed without a permit remained.

Mr. Knight told the Board that he spoke to Mr. Andrade Friday, who informed him that no contact had been made between him and Mr. Parsons since the Friday Review.

Brandon Parsons, 401 E Street, St. Augustine Beach, was sworn and had the following comments:

- A stop work order was issued in April and he attended a Friday Review meeting in May
- Understood he was required to complete all the issues discussed within six months
- The issues of heat detectors, and some holes in the ceiling had been addressed
- Mr. Andrade informed him during the Friday review that because of the spiral stairway to the third floor remained the whole building required a sprinkler system
- Redesigned his plans and was close to submitting for a building permit

Mr. Knight asked Mr. Parson if the unpermitted construction still existed.

Mr. Parsons responded yes; however, believed he was still in compliance with

the six months timeline decided at the Friday Review meeting.

Mr. Parsons claimed he did not receive notice of the August 12, 2008 CEAAB hearing.

Mr. Parsons submitted a letter he received, from the Planning & Zoning Department, with a list of items to be completed within six months.

Mr. Knight said the letter did summarize the items that needed to be completed but the Respondent was supposed to apply for a permit. He said four months had passed since that Friday review and no permit had been applied for.

Ms. Arriola asked Mr. Rayno if the building remained safe for the other tenants in the building.

Mr. Rayno said the alarm system was intact; however, in the event of a fire, the hole in the ceiling would create a chimney effect, creating a hazard for the rest of the building (attic was not separated by unit). He explained the six month time frame was to complete the work after a building permit was issued, not before.

Mr. Parsons asked for additional time, because he had not received notice of violation or notice of last month's hearing.

Mr. Knight explained that notices were sent, some returned unclaimed; however, Mr. Parsons had been on

notice since May that he needed a permit.

Ms. Arriola suggested to Mr. Parsons that he work closely with the building official and Mr. Rayno to promptly mitigate the safety issues and the Board could revisit the fine at the next compliance hearing.

There was no public comment.

MOTION

Ms. Hurst moved to issue an "Order Finding Violation", for failure to obtain a building permit, and failure to maintain required fire walls, and imposed a fine in the amount of \$250 per day, beginning September 10, 2008, and for each day thereafter the violation continued. The motion was seconded by Mr. McMahon and approved by a unanimous voice vote.

6. REVIEW OF NEW CASES

**Item 6(a) 2008-4257
Scott Singleton
Creekside Dinery- 160 Nix Boat Yard Rd
City Code, Chapter 8, Section 608
Failure to obtain a building permit
City Code Chapter 17, Section 17-67
Failure to obtain a Use Permit/Cert of Occupancy
Florida Building Code Chapter 11-4.1 thru 11-4.1.6
Failure to provide disabled access**

Mr. Boles had the following comments:

- On September 21, 2007 Mr. Lawlor applied for a building permit for an office trailer
- Although the permit was issued the respondent installed and occupied the office trailer without required handicap requirements and without a use permit
- Utility fees associated with the installation of an office trailer had not been paid
- Notice of the violations were sent via certified mail on January 16, 2008 and February 13, 2008
- To date permits had not been issued
- Recommended the board find violation, and allow the respondent 30 days to correct the violation or impose appropriate fines

Mr. Knight clarified that the original permit issued had not included the required handicap ramp and access. He said the respondent was notified of the required ramp and access and the need to reapply for a new permit. He clarified that six months had elapsed nullifying the original permit. He said respondent applied for a new permit Friday September 5, 2008. He said he was notified by Mr. Andrade that the handicap accessibility ramp was under construction and an electrician had been employed. He said they were almost in compliance and agreed with the recommendation allowing 30 days for compliance.

Scott Singleton, 11 Oak Avenue, was sworn and had the following comments:

- Was one of the partners at Creekside Dinery
- In February 2008 submitted drawings to the city
- The delay was due to issues of storm-water retention for a single handicap parking space and licensing problems with the contractor
- Was unaware a separate business license was needed for the trailer
- Construction had begun that morning
- Requested 30 days to bring the property into compliance

There was no public comment.

MOTION

Mr. Rosenthal moved to issue an “Order Finding Violation” and allowed the respondent 30 days for compliance or a fine of \$250 per day would be imposed beginning October 14, 2008. The motion was seconded by Mr. McMahan and approved by a unanimous voice vote.

Item 6(b) 2008-4267

Peter Lawlor

Creekside Dinery- 160 Nix Boat Yard Rd

Life Safety Code Section 7-3.1, 7-3.3 & 7.4

Exceeding Occupant Load, non complying Egress Capacity & Egress Width

City Code Chapter 17, Section 17-67 Exceeding Use Permit

Mr. Boles reported the following:

- On March 21, 2008 the Fire Marshall notified Code Enforcement that the restaurant had exceeded its capacity by adding 76 seats
- Excess seating triggered additional requirements regarding handicap access, parking, sanitary facilities and utilities fees
- On April 3, 2008 Mr. Singleton met with the City's Development Review Committee (a/k/a Friday Review) to discuss issues of non-compliance
- A written summary was provided to the respondent, pertaining to issues discussed at the Friday Review, and requested corrections within 30 days
- On May 13, 2008 Mr. Rayno and Mr. Andrade met at the site for an inspection and advised the respondent to correct the violations again
- The case had lingered for several months and little had been done to comply with Code
- Staff recommended the Board find the respondent in violation and impose a fine

Mr. Rayno clarified that there were two capacity issues to address; first, the total seating must be returned to 250, second, there was an interior section of the restaurant that had too many seats for the size of the room.

Mr. Singleton, 11 Oak Avenue, Manager of Creekside had the following comments:

- Addressed the issues of seating capacity and the three feet between tables as directed by Mr. Rayno

- Explained that although the number of seats exceeded the allowed amount, the actual use of seats never exceeded capacity
- Said in good weather people wanted to sit outside so they purchased plastic seats and tables to avoid moving inside tables back and forth depending on weather
- Could not afford the additional fees involved to allow additional seating and would remove all extra seating beyond the 250 allowed
- Requested at least five days to confirm that all pathways met Codes

There was no public comment.

MOTION

Mr. Rosenthal moved to issue an "Order Finding Violation" and allowed the respondent 7 days for compliance or a fine of \$250 per day would be imposed beginning September 17, 2008. The motion was seconded by Mr. McMahon and approved by a unanimous voice vote.

Item 6(c) 2008-4266

Kathleen & Joseph Latona

24 Louise Street

City Code, Chapter 8, Section 608 & 612

Construction without a permit

City Code Chapter 28, Section 28-7 & 28-33

Multi-residential unit in Industrial Warehouse Zone

Mr. Mahr reported as followed:

- Inspected the property on May 5, 2008 after a complaint of residential occupation of a garage unit
- Advised the tenant, Carl Arnold, who would not allow entry to the building that the occupation was a City Code violation
- Noted a six foot fence had been constructed around the garage without a permit
- Met with the owner, Mrs. Latona, on May 30, 2008 at the site for another inspection
- Mrs. Latona told him she was aware of the violation and would have the tenant move out
- She could not allow entry into the garage because she did not have the key
- Violations involved a cooking stove, kitchen sink, refrigerator, microwave, glass sliding door that replaced the garage door
- Mrs. Latona told him she wanted to convert the garage to commercial office space
- He advised her to contact the Planning and Building Department for a Friday review
- An official Notice of Violation was sent on June 9, 2008, allowing thirty days to restore the garage to storage
- Notice of Hearing, scheduled for September 9, 2008 was sent on August 5, 2008
- He hand delivered a notice to Mrs. Latona on August 6, 2008
- On August 8, 2008 she opened the building for him, and Building Inspector Wil Franke, to performed another inspection

- The tenant had been removed but no building corrections had been made
- Recommended the Board find the case in violation and order a fine of \$250 per day beginning on September 25, 2008
- Noted it was the second time the respondent had been cited for the same offense
- The garage had been converted into a dwelling unit in 2006 and was restored to storage after a notice of violation

Kathleen Latona, 96 Manresa Road, was sworn and had the following comments:

- She had converted the garage to use as an office
- She purchased the house with the sliders and loft but had installed new appliances
- Tried to schedule a Friday Review; for a change in use; however, the Planning and Building Department would not accept her site plan
- Could not afford an architect for professional drawings
- The fence was installed without her knowledge and would be taken down
- Thought she could have appliances in an office

Mr. Rosenthal asked Mrs. Latona why she thought she could re-install appliances after she had been informed previously that it constituted a Code violation.

Mrs. Latona said she did not have an answer.

Mr. Knight explained conversion to commercial use would involve many issue such as; ADA compliance, parking and stormwater. He said he did not want to give false hope that all that could be addressed within thirty days.

Discussion continued regarding the garage doors and staircase to the loft and whether they needed to be removed.

The Board decided the sliders and loft with stairs were not an issue if they had been installed by the previous owner. Also if the fence was to remain a permit had to be obtained.

Mr. Mahr said the plumbing and electrical appliances needed to be removed.

There was no public comment.

MOTION

Mr. McMahon moved to issue an Order Finding Violation” allowing the respondent until September 24, 2008 to remove the refrigerator, sink, plumbing to the sink, stove and electrical to the stove, stairs and glass doors (unless it was determined they existed prior to the Respondent purchasing the property) and the fence, (unless a permit was obtained) or a fine of \$250 per day would begin September 25, 2008. The motion was seconded by Mr. Rosenthal and approved by a unanimous voice vote.

7. CITY ATTORNEY ITEMS

(None)

8. OTHER BUSINESS

Item 7 (a) 2008-4258

Kenneth McClain

64 Oneida Street

Release of Lien

- Mr. Knight announced that a \$5,722 lien, imposed on 64 Oneida Street, for abatement by the city, had been paid in full, and a Release of Lien had been prepared for the Chairman's signature.
- Mr. Rosenthal reminded staff that the Board hoped to have a workshop, regarding the 50% threshold in the case of flood variances

9. REVIEW OF CONFLICT STATEMENTS FROM PREVIOUS MEETING

(None)

10. ADJOURNMENT

Ms. Arriola adjourned the meeting at 5:15 P.M.

Irene Arriola, Chairperson

Sharon O'Keefe, Administrative Coordinator