

CITY OF ST. AUGUSTINE

Planning and Zoning Board Meeting January 5, 2010

The Planning and Zoning Board met in a formal session Tuesday, January 5, 2010 at 2:00 p.m. in the Alcazar Room at City Hall. The meeting was called to order by Carl Blow, Chairperson and the following were present:

1. Roll Call: Carl Blow, Chairperson
Bill Leary, Vice Chair
Grant Misterly
Deltra L. Long
David Toner
John Valdes

Absent: James McCune (Excused)

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

2. Approval of Minutes

The minutes of the December 1, 2009 Regular PZB meeting and December 18, 2009 Special Meeting were approved as presented.

3. Use by Exception

3. (a) 2009-0096 – Isaac Mauro – Applicant St. George Street Properties – Owner 21 Spanish Street

To allow a bar/tavern as a permissible use by exception.

Mr. Birchim delivered the staff report and said based on section 28-2, staff found that the board could APPROVE a use by exception to allow a bar at 21 Spanish Street if it could be determined that the proposed bar was appropriate for the location or DENY a use by exception to

allow a bar at 21 Spanish Street if it was determined that the proposed bar was not appropriate for the location.

Exparte Communication:

Mr. Misterly and Ms. Long reported that they drove by the site. Mr. Leary and Mr. Blow reported that they walked by the site.

Isaac Mauro, applicant, said he proposed to open a low-key coffee house, and he intended on sound-proofing the windows to assist with noise control.

Mr. Misterly questioned whether the business would have live music.

Mr. Mauro replied that if live music were played it would be acoustic and confined to the inside of the building.

Mr. Leary questioned the operating hours and the type of food and beverages to be served.

Mr. Misterly questioned the soundproofing process and whether the front porch would be used by patrons.

Mr. Mauro replied that the business would open at 10 a.m. to 1 a.m., seven days a week. He said he intended to sell packaged foods and beer/wine. He said that sound deadening material would be locked into the windows to serve as a barrier, and he noted that all business would be kept inside.

Mr. Leary questioned whether onsite parking would be available, and to ask if the surrounding parking lots were privately owned. He also asked what type of business the previous tenant had operated.

Mr. Mauro replied that the business was intended for a local clientele. He said the parking garage could be utilized, and he noted that a local grocery store was the last known use.

Mr. Misterly asked for clarification regarding the type of music to be played.

Mr. Mauro replied that a stereo would be used for music, and live music would be acoustic and contained inside.

Mr. Blow questioned the use of the two parking lots located near the property.

Mr. Birchim replied that the parking lots were privately owned and managed by the City. He said many of the spaces were reserved; however, some metered spaces were available.

Mr. Blow said 10 certified notices were mailed, four were returned opposed and four had comments.

Public hearing opened.

Robert Hall, resident, said disruptive patrons were a concern, and noted that he was not in favor of the application. He added that the City already had enough drinking establishments, and studies completed in the past revealed that it was important to keep a mixture of businesses and residents within the historic district.

Mr. Blow questioned the length of time Mr. Hall had lived on Spanish Street, and the response was 42 years.

Mr. Leary asked staff to point out the other locations that served beer/wine.

Mr. Birchim replied that the locations were as follows:

Spanish Street:

- Lot 4: Local Hero's
- Lot 6: O' Malley's
- Lot 16: Prince of Whale's
- Lot 2,3, and 4: Columbia Restaurant
- Lot 19: Kosmic Bluz

St. George Street:

- Lot 2: Milltop
- Lot 20: Monk's Vineyard
- Mi Casa Café

Mr. Leary questioned whether 48 Spanish Street was located on the map. He asked Mr. Hall if he could recommend a balance between the residents and tourists. He questioned whether Mr. Hall would prefer fewer establishments that served beer/wine, and the response was affirmative.

Mr. Birchim replied that 48 Spanish Street was located near Lot 19 on the map. He said several other establishments that served beer/wine operated downtown.

Mr. Hall replied that he felt the City had already met the balance. He said police reports would indicate that patrons were noisy and had altercations on the streets.

Ms. Long questioned whether Mr. Hall had additional problems with teenagers on his property, and the response was no.

Mr. Misterly said the applicant was not the owner of the property and asked if the permit would run with the owner, and the response was affirmative.

Donna Parks, resident, said her son owned Local Hero's Café and had daily operating hours that included two nights. She said her family had owned the property for nearly 100 years. She said that it was next to impossible to contain patrons, and noted that fights and vandalism were a major problem. She said she lived 100 feet from the proposed property, and noted that her son's business had been opened for three years and had not been cited for noise violations. She concluded that she was not in favor of the application due to possible increased traffic, vandalism, and loitering.

Ms. Long questioned the operating hours and deliveries for Local Hero's. She asked who owned the delivery zone.

Ms. Parks replied that Local Hero's was closed on Monday, open from 11 a.m. to 5 p.m. six days a week, and Friday and Saturday night they served food and alcohol, and live music was available. She clarified that trucks parked in a delivery zone for no longer than 30 minutes to deliver products.

Mr. Leary questioned whether Local Hero's had outside music and why the resident felt the proposed business should not be approved.

Ms. Parks replied that music was played inside and the doors were kept shut to minimize noise. She said a bracelet system was used to cut down on under-age drinking, and there were two door keepers that checked ID's. She stated that downtown had enough establishments serving beer/wine.

Mr. Long questioned whether the location was leased.

Ms. Parks replied that the building was rented.

Martha Mickler, resident, said she had lived at 30 Spanish Street since 1987, and she also owned 29, 32, 34, and 35 Spanish Street. She noted that her sister owned 27 Spanish Street. She respected the fact that the applicant's wanted to open a coffee house; however, she felt that there were currently enough establishments in the area serving alcohol. She concluded that altercations were a main concern, and she was not in favor of the application.

Mark Howard, resident, said he had heard testimony regarding young people that could not control their alcohol consumption, additional delivery trucks and heavier foot traffic would be the result of the proposed application. He pointed out that patron noise including foot traffic and delivery trucks currently existed, and approval of the application would not add noise to the current day-to-day operations of the surrounding businesses.

Mr. Leary questioned whether Mr. Howard was a regular patron downtown and whether he felt fighting was a concern.

Mr. Howard replied that he had been a lifelong resident. He said fighting occurred downtown, and he felt that it could happen at any location. He concluded that the

applicants had the best intentions and would not encourage disruptive behavior.

Nancy Pellicer, resident, said young people were a major concern downtown. She suggested that the applicants consider another location. She asked what would happen to additional patrons when the ten seat capacity was filled. She said the quality of life for the neighborhood should be maintained, and the application should not be approved.

Mr. Leary asked if there were any conditions that Mrs. Pellicer thought could make the application more appropriate.

Mrs. Pellicer replied that the intentions seemed positive; however, controlling patron's alcohol consumption would be difficult.

Ms. Long asked how long she had lived on Spanish Street, and the response was since 2005.

Ronald Mickler, resident, said his property was located 30 steps from the proposed property, and he noted that sound, additional foot traffic, closing times, fights, broken glass, and language content were major concerns. He said patrons frequently threw debris onto his property. He said the applicant's seemed to have the right intentions; however, he felt that most businesses would not survive with the current economy.

Ms. Long questioned whether the entire property was fenced, and the response was no.

Joanna Jaeger, resident, said the floor plan for the building was small and not equipped for loud music, and she noted that she supported the application.

Max Hamil, resident, said it was the businesses responsibility to watch over the patrons while serving them. He said once patrons left the premise, owners should not be held accountable for thier actions.

Dave Haines, downtown bartender, said it was the bartender's responsibility to make sure patrons would not leave with beer bottles. He noted that he had the right to deny a patron service if they were under the influence. He concluded that the applicants were low-key and would not promote inappropriate behavior.

Kristen Adamcek, resident, said the concerns expressed were not likely in the proposed business atmosphere. She concluded that young people should be given the opportunity to move forward and take risks.

Public hearing closed.

Mr. Toner questioned whether the applicants had considered another location.

Mr. Mauro replied that the selected location was the best option.

Mr. Misterly said the application was for an exception and the board should review whether the application would promote the following:

- Public health
- Public safety
- Public welfare
- Morals
- Order
- Convenience
- Appearance
- Prosperity
- General welfare

Mr. Misterly said many residents had spoken and voiced concerns regarding

noise, traffic, and the saturation point for bar/taverns. He asked why the applicant's felt their establishment would be different.

Mr. Mauro replied that he did not approve of intoxicated people. He said the proposed business would be low-key and a place to relax.

Ms. Long asked how the applicant's would handle removing extra people from the premises, and she questioned what the upstairs would be used for.

Mr. Mauro replied that the establishment had plenty of standing room and ten seats would be available. He said the upstairs would be used for office/storage space.

Mr. Leary said he was impressed with the applicants. He said it was not a generational issue, but a fear that the business could bring additional problems to downtown. He said it was important that young people do business in the City. He asked for additional details regarding their business plans. He questioned whether they had addressed the neighbors concerns, and how they would succeed with a limited menu and space. He asked if cutting the hours would affect the cost plan, and the response was affirmative.

Mr. Mauro replied that an attempt was made to contact neighbors; however, he was unsuccessful. He said the overhead would be cost efficient and the evening hours would accommodate people working in the food industry.

Mr. Mysterly questioned the maximum number of patrons allowed inside the building.

Max Hicks, applicant, replied that the Fire Code allowed a maximum of 39 people.

Mr. Valdes said Spanish Street was an area with several residences. He said the matter had nothing to do with young people, as unfortunately some people did not know how to behave whether they were young or old. He said the residents concerns were important, and he noted that the City's sound ordinance should be kept in mind.

Mr. Toner said the applicants had good ideas; however, he felt that another location would better suit the proposal.

Ms. Long said she was not in favor of the location; however, she felt the application was a good idea. She said the definition of an exception as related to the application would not promote or maintain the historic and pedestrian scale of the neighborhood. She said she was unsure whether the proposal would promote public health, safety, welfare, morals, and comfort in order to approve the application.

Mr. Leary said the Code was not an easy task to overcome and the language required the board to look at similar establishments, location, residents, surrounding establishments, and the affect on the entire neighborhood, also whether the business would promote the Code requirements. He said the application came at a time when downtown was dealing with young people making noise, violence, and late hours of operations. He concluded that he was not in favor of the location.

MOTION

Mr. Leary MOVED to DENY application F2009-0096 as submitted. The motion was SECONDED by Ms. Long.

VOTE ON MOTION:

AYES: Leary, Long, Misterly, Toner,
Valdes, Blow

NAYES: None

MOTION CARRIED UNANIMOUSLY

Mr. Blow said the application was not an issue of young people versus old people. He said the applicants seemed sincere regarding opening an establishment for locals, and he urged the applicants to search for another location.

4. Variance

4. (a) 2009-0097 – Edward S. Main, Ancient City Building and Restoration – Applicant Nancy Nevin – Owner 36 Weeden Street

To encroach into the required front yard building setback for a single family residence.

Mr. Birchim delivered the staff report and said based on section 28-29, staff found that the board could approve a variance to reduce the front yard building setback from 15 feet to 10 feet at 36 Weeden Street, without the support of evidence to the contrary.

Exparte Communication:

Ms. Long reported that she visited the site and spoke to Sonya Jones, a nearby resident.

Mr. Blow reported that he drove by the home and spoke to Mr. & Mrs. Rubino, nearby neighbors, and Mr. Misterly reported that he drove by the site.

Edward Main, applicant, said a five foot setback was needed to install off-street

parking in the back. He said the application would provide better parking coverage.

Mr. Birchim distributed photographs of the nearby properties.

Mr. Misterly said the packet included a survey, and he questioned whether the plans indicated the use for the building or whether the plans complied with the current Code. He said the drawings indicated that the house was 929 square feet, 16.55 from the property line, and he noted that the builder requested a change to 11.55 feet from the property line. He said the home to the south was built to the curb. He questioned whether the property owner's view would be obstructed when entering/exiting the street.

Mr. Main replied that the request would put the structure in compliance with Code.

Ms. Long asked if an arched driveway had been considered.

Mr. Main replied that an arched driveway would not be deep enough or allow landscaping.

Mr. Blow said the applicant had proposed a ten foot setback from the property line, which would not affect the square footage of the home.

Public hearing opened; however, there was no response.

Mr. Blow said 17 certified notices had been mailed and one was returned in favor, and one was opposed with comments from Florida Power & Light, and he suggested that the applicant make sure his proposal was in compliance with FPL.

MOTION

Mr. Toner MOVED to APPROVE application F2009-0097 as submitted. The motion was SECONDED by Mr. Valdes.

VOTE ON MOTION:

AYES: Toner, Valdes, Long, Misterly, Leary, Blow

NAYES: None

MOTION CARRIED UNANIMOUSLY¹

5. Conservation Zone Development

5. (a) 2009-0071 Thompson Rains, Rains Marine Construction, Inc. – Applicant Bernard & Janice Sisko – Owners 219 Coquina Avenue²

To install a dock and boatlift.

Mr. Birchim said the applicant had indicated that a permit had been reviewed and approved by the Florida Department of Environmental Protection for construction of a dock. He said all applicable federal and state permits and building permits were required prior to construction. He said by approval of the dock, the city would not make a representation, approval or claim of riparian rights to any party.

Thompson Rains, applicant, said he had been hired by the homeowners to take care of permitting and construction of the dock.

Mr. Blow said he would have liked to review the applicant's letter before the meeting and asked that the applicant review the letter with the board to reduce the number of questions.

Mr. Rains said he had completed a self certification because he was in compliance

¹ Mr. Valdes left early

² Staff report attached to original minutes

with DEP; however, neighbors raised concern about submerged sea grasses and mangroves. He said he felt that DEP should return to the site and address any concerns to avoid future problems. He said the certification had been voided to allow DEP to address the concerns of the neighbors, and he would need to be recertified. He addressed the questions as follows:

- Whether existing dock would be replaced
- ❖ Existing dock would be replaced; however, the dock would be pulled back onto the land to allow for better access with a terminal and a low-profile boatlift
- Whether dock would be over submerged Aquatic vegetation
- ❖ No protected submerged aquatic vegetation present
- Available clearance from the edge of boatlift to the edge of the channel
- ❖ Water would not be present at low-tide, and proposed boatlift would extend seven feet into the waterway
- Would material for terminal end be metal or wood
- ❖ Terminal end material would be wood deck
- Mean-low/high-water at the end of the dock
- ❖ Boat-lift would be cantilever style, designed for a small skiff and average mean-high-water would be four ½ to five feet maximum

Mr. Blow questioned whether the lift would be for a skiff or double jet ski.

Mr. Rains replied that he proposed to use a small skiff no larger than 14 feet.

Mr. Leary questioned whether the applicant had reviewed the surrounding docks, and he asked how the other boats were tied up.

He asked if the lift and skiff would be the first in the area, and the response was affirmative.

Mr. Rains replied that few lifts existed in the creek, which was rarely used for boat access; however, kayaks and canoes had better access.

Mr. Misterly asked questions as follows:

- Would dock extend to the edge of the marsh
- ❖ Dock would extend 17 feet into the waterway
- Percentage of shoreline used by the dock
- ❖ 30%
- Percentage of waterway used by the dock
- ❖ 50%
- Type of boat likely to be used
- ❖ 14 foot flat boat
- What would remainder of platform be used for
- ❖ Relaxation
- Asked if eight feet width would be used for access to the channel or to sit and relax
- Eight feet width would be used for both access and relaxation

Mr. Blow said the applicant indicated that the original packet included an aerial photo of a private t-type dock similar in size to the proposed project. He questioned whether the L-shaped dock located to the south had been reviewed.

Mr. Rains replied that he was unable to gain access to the T-shape dock, because it was located on private property, and the dock located to the south had a different configuration.

Mr. Blow said 14 certified notices were mailed one was returned in favor, and five were opposed with comments. Public hearing opened.

John Cahill, resident, asked how kayaks would be able to access the property if the proposed dock was built. He expressed concern about the location of the dock, and he stated that he was not in favor of the application, because he felt that the dock would affect people's aquatic use.

Mr. Leary asked if Mr. Cahill had sent in an aerial photo including the location of his property.

Mr. Cahill replied that the faded line on the aerial map reflected his property, and the white dock with a small T was owned by his neighbor Debbie Pellicer. He clarified that the City owned the adjacent property.³

Mr. Leary questioned the access limitation for a canoe and whether a skiff or boat would be able to navigate through the creek.

Mr. Cahill replied that his canoe would reach the end of the homes near Quarry Creek. He said skiffs/boats accessed the waterway during high tide. He said navigation and safety of the wildlife were his concerns related to the proposal.

Ms. Long asked if Mr. Cahill was still opposed to the application after hearing the applicant's testimony including the request for specific information

Mr. Cahill replied that he was opposed to the configuration of the dock and boatlift. He said people should be considerate, and he noted that he did not want to see the boat lift sitting out in the channel.

³ Aerial photo attached to original minutes

David Abraham, resident, said he purchased the home adjacent to the applicant last spring, and he chose the home for the view of natural wildlife and the marsh. He said he had visited with the homeowners and voiced his concerns. He said the Code stated that an application should avoid interfering with vistas and wildlife and noted that if the project was approved his view would be obsolete. He suggested installing a hanging lift alongside the dock and he noted that in the Code section 17 of 11-29 it indicated that only a single watercraft was permitted.

Ms. Long asked Mr. Abraham if he felt the application would set a precedent if approved, and the response was affirmative.

Mr. Misterly questioned whether Mr. Abraham had any environmental expertise

Mr. Abraham replied that he had taken environmental law courses and practiced environmental law in the past; however, he would not consider himself an expert in that field.

Mr. Leary asked if the applicant installed a floating dock whether that would eliminate Mr. Abraham's vista concerns.

Mr. Abraham replied that vegetation safety and the width would remain a concern. He said a boat other than a canoe or kayak would be incompatible with the area and would destroy the environment. He noted that a natural oyster bed currently existed in the location of the proposed dock.

Mr. Blow asked if the boatlift was removed and only a dock built, whether he would be in favor of the application, and the response was affirmative.

Public hearing closed.

Mr. Misterly stated that he was not in favor of the application unless changes were made to meet the criteria as follows:

- Section 2: Sites relationship to adjacent properties/bodies of water and surrounding conservation zone
 - ❖ Board heard the adjacent property owners concerns and asked how the applicant would handle them
- Section 11: Impact of development on shoreline by linear feet, percent of site
 - ❖ 30 feet
- Section 12: Impact of development on vistas and scenic opportunities
 - ❖ Testimony from adjacent neighbor that indicated his scenic view would be compromised
- Impact of development on plant and animal habitat and potential lost

Mr. Rains replied that PZB had previously passed a 38 foot structure on a much smaller lot. He said the proposed area did not have a lot of vegetation. He said the dock would not be built near the oyster beds, because they were protected areas. He concluded that the lift chosen was the best fit for the available space.

Ms. Long clarified that the 38 foot structure Mr. Rains referenced had been approved for a completely different body of water.

Mr. Misterly asked for clarification regarding criteria #17 stating that no-profile boatlift was a boatlift for a single watercraft, in which no part of the boatlift would protrude above the deck. He said the application included "three feet above the deck."

Mr. Birchim replied that either a low-profile or no-profile boatlift would be acceptable.

Mr. Blow asked that a detailed survey of the waterway be brought to the board for review.

Mr. Knight clarified that the reviewed information would not guarantee approval.

Mr. Misterly noted that he was still not in favor of the application.

Mr. Rains asked what Mr. Misterly would like to see, and the response was a four foot by eight foot platform at the end of the dock.

Jane Sisko, homeowner, said she was familiar with the waterway and had no problem accessing the water with her ten foot kayak. She said the area currently had some docks, which were derelict, and she concluded that the scenic vista would not be impeded by the proposal.

Mr. Blow questioned whether the homeowner was aware of the existing dock at the time of the walk-through with the realtor. He questioned whether the applicant assumed the dock was part of the property and could easily be rebuilt, and whether she would be willing to pay for a survey of the width of the creek at mean-low/high-tide.

Mrs. Sisko replied that she was aware of the dock and had not assumed the dock could be rebuilt and she noted that some of the existing docks were derelict. She indicated that rebuilding the dock would enhance the neighborhood value.

Mr. Leary said he concurred with Mr. Blow's concerns. He said the docks located to the north were at the waterline and built to avoid blocking navigability of the creek. He said the board wanted to be certain the size and location of the dock would allow everyone access to the creek.

Mr. Toner asked that additional information be presented to staff and the board in a timely manner.

Mr. Misterly asked staff to include the dimensions of the dock located to the north of the proposed project of the applicant's property for the subsequent meeting.

MOTION

Mr. Leary MOVED to TABLE application F2009-0071 until February 2, 2010 provided that requested survey be provided to the City by January 22, 2010. The motion was SECONDED by Mr. Toner.

VOTE ON MOTION:

AYES: Leary, Toner, Long, Misterly, Blow

NAYES: None

MOTION CARRIED UNANIMOUSLY

6. Other Business

6. (a) Review of Section 28-31 Withdrawal or amendment of applications

Mr. Knight referred to the handout and asked what the board would like to see for consideration. He said the board could extend the dates to 5, 10, 15, 20 or 30 days as follows:

- 5 days: current deadline
- 10 days: information would be included in packet; however, not addressed in the staff report
- 15 days: would receive information at the same time neighbors received mailed notifications
- 20 days: information would be required before neighbors received notifications

- 30 days: entire application deadline would need to be reset

Mr. Misterly asked what staff preferred, and the response was 10 days.

Ms. Misterly asked how long the current five day setting had been in effect and whether the board could approve a change for a period of time.

Mr. Knight replied that the current setting had been in effect for ten years, and the board could set a trial period to make sure the change would be appropriate.

Mr. Toner expressed support for the change.

Mr. Leary agreed with the ten day change.

Mr. Toner suggested that the board wait until the next meeting to make sure all board members were present before making a final decision.

Mr. Leary asked staff to write up a proposal regarding the deadline to be included in next month's packet.

6. (b) Discussion Regarding Tethered Balloons

Mr. Knight said the Commission asked that the board consider banning/prohibiting tethered balloons, bungee cord structures and Ferris wheels, and he noted that the regulations would depend how fast the aforementioned items could be dismantled. He asked that the board consider whether they would like to handle each item on a case-by-case basis or permanently ban the items. He concluded that the item would be included on next month's agenda for discussion.

7. Adjournment

Having no further business, Mr. Blow adjourned the meeting at 5:25 P.M.⁴

Carl Blow, Chairperson

⁴ Transcribed by Carly Mason