

CITY OF ST. AUGUSTINE, FLORIDA

Planning and Zoning Board Meeting
July 1, 2008

The Planning and Zoning Board met in formal session at 2:00 P.M., Tuesday, July 1, 2008, in the Alcazar Room at City Hall. The meeting was called to order by Deltra L. Long, Chairperson, and the following were present:

1. ROLL CALL

Deltra L. Long, Chairperson
John Valdes, Vice-Chairman
Carl Blow
Gerald Dixon
Grant Misterly
William Leary

City Staff:

Mark Knight, Director, Planning & Building Department
David Birchim, Planning Manager
Robin Upchurch, Assistant City Attorney
Carly Mason, Recording Secretary

**2. APPROVAL OF MINUTES -
May 16, 2008 Special Meeting**

The following changes were noted for the minutes from the May 16, 2008 meeting.

- Page Six, other business, Mr. Blow stated that he would like to expand on his comments and stated the minutes should read that he would like to define the difference between a marina versus a community dock.
- Page Six, last paragraph, Mr. Misterly said he questioned whether the board had met the requirements of the Bert Harris Act.
- Page Six, Mr. Leary said he tried to make the point clear that he felt, under the circumstances, the board had made two offers to the applicant. He said the board asked the applicant to provide a selling price, and they also suggested conditions 1, 2, and 6. He felt they had done everything a board could have done, and he wanted the record to

reflect how he felt. He said that the board had reached out with some suggestions to the applicant, and the applicant rejected the offers.

- Page Six, Mr. Valdes stated that he felt the second reason for adjourning the meeting was to remind themselves that they were negotiating with the applicant not themselves.

The minutes of the Planning and Zoning Board meeting of May 16, 2008 were approved as amended.

3. Conservation Zone Development

Item 3 (a) 2008- 0078
David Miner-Miner's Marine
Construction, Inc.- Applicant
Arthur and Mary Runk – Owner
61 Dolphin Drive

To install a boat lift.

Mr. Birchim delivered the staff report and said that staff found that the applicant indicated that the existing dock directly to

the south of the proposed dock was 232 feet in length and the existing dock to the north of the property was 141 feet in length. He said the design of the dock had changed slightly since the March 4, 2008 meeting, and the boatlift was moved from the eastern terminal end of the dock to the south side of the dock. He stated that prior to construction, a copy of the approved state and federal permits must be submitted and a building permit must be issued. He said that approval of the dock would not mean the city made any representation, approval or claim of riparian rights to any party.¹

Exparte Communications:

Mr. Blow reported that he visited the site.

David Miner, applicant, said that an 8 x 12 piece of the existing dock would be removed. He said the size of the boatlift was changed to 12 x 24 feet to accommodate the boat.

Ms. Long stated that twelve certified notices were mailed, three were returned in favor, none were opposed, and two had comments including the following:

- Good design, aesthetically pleasing
- Not opposed as long as a boathouse was not built

Public hearing opened, but there was no response.

Mr. Dixon commented on how thoroughly the application was put together, and he expressed appreciation.

Mr. Leary concurred and questioned why the map did not show lots #37-38.

Mr. Miner replied that the aerial photos were not exactly to scale. He said the applicants

¹ Staff report attached to original minutes.

dock was next to the property line and met the Riparian Rights requirements.

Mr. Leary questioned whether the dock to the north was the applicant's next door neighbor.

Mr. Miner replied no, because of the double lots.

MOTION

Mr. Dixon MOVED to APPROVE case 2008-0078 that met the requirements set forth and matched the items that have been approved. The motion was SECONDED by Mr. Blow.

VOTE ON MOTION

**AYES: Dixon, Blow, Misterly, Valdes
Leary, Long**

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

Item 3 (b) 2008-0080

**Hurley Haywood and Steve Hill –
Applicant
Nautilus Trust – Owners
65 Water Street**

To construct a bulkhead, dock and boat lift.

Mr. Birchim delivered the staff report and said staff found that prior to construction, a copy of the approved state and federal permits must be submitted and a building permit must be issued. He said by approval of the dock, the city made no representation, approval or claim of riparian rights to any party.²

Exparte Communications:

Mr. Blow reported that he drove by the site, Mr. Leary had a conversation with one of the neighbors, and Ms. Long reported that she visited the site.

² Staff report attached to original minutes.

John Cook said he represented the applicants, and he had no comments.

Ms. Long stated that fourteen certified notices were mailed, seven were returned in favor, none were opposed, and three had comments including the following:

- If the project blocked access they were opposed to the application
- Welcome to Water Street and Abbott Tract and St. Augustine was a fair City
- Boatlift should be low-profile to reduce visual impact

Mr. Cook said the application indicated that the boatlift would be low profile. He stated he was comfortable with the fact that they would not be encroaching into the waterway.

Public hearing opened; however, there was no response.

Mr. Leary questioned whether the channel would be in the middle at high tide, and the answer was affirmative.

Mr. Cook showed an example of where the deepest part of the water would be in the center of the channel.

Mr. Leary said it would be 15 feet to the deepest part of the water from the dock.

Mr. Blow questioned whether the boatlift would be no-profile or low-profile.

Mr. Cook replied that no profile boatlift was a product from Way Marine in St. Augustine.

Mr. Knight said the board could not make the applicant select the no-profile product, because that would force them to use one particular company. He suggested that the board stay with low-profile.

Mr. Misterly asked why the bulkhead was being installed.

Mr. Cook replied that the area had a serious erosion problem and both sides of the property had existing bulkheads. He explained that the material would either be vinyl or timber. He said that it would be designed by a registered structural engineer approved by the City. He said that upon approval he would start the permitting process from the state and federal authorities.

MOTION

Ms. Long MOVED to APPROVE Item 2008-0080 regarding a conservation zone development for 65 Water Street. Motion SECONDED by Mr. Misterly.

VOTE ON MOTION

**AYES: Long, Misterly, Valdes, Blow
Dixon, Leary**

NAYES: None

MOTION CARRIED UNANIMOUSLY

4. Exception

Item 4 (a) 2008-0024³
Joseph Homann-Scooter Pro, LLC –
Applicant (Previously Tabled)
Philip Martocci – Owner
30 Bay Street

To allow a scooter rental, sales and repairs.

Item 4 (b) 2008-0079
Medina Jenkins and Warren Merrill –
Applicants
Medina Jenkins-Owner
48 Spanish Street

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

Mr. Birchim delivered the staff report and said staff found that based on a review of section 28-29, the Board could approve a

³ Item 2008-0024 tabled until August 5, 2008

use by exception to allow a bar/tavern at the location if the board determined that there were no negative impacts on surrounding properties.⁴

Ms. Long asked the board if they would like to waive the rule to allow the applicant to discuss the application, and the response was affirmative.

Ms. Upchurch stated that the board had heard a similar application; however, it was a new application, and it stood alone.

Todd Grant stated that a letter was provided to the board members that brought them up to date with the status of the meeting with the neighbors. He said that the applicant performed a noise test, met with neighbors, and also spoke to Mr. Banta regarding the noise abatement. He showed a map of the different types of noise levels that were heard in the area. He stated that the upstairs would be for residential use, and he would install noise abatement products to lower the noise level. He said the applicant would employ a door person to see that no one left the business in a loud manner.

Exparte Communications:

All board members reported that they spoke with the neighbors and Ms. Long reported that she visited Kosmic Bluz, Mr. Valdes said he spoke to Mr. Grant and Mr. Leary and Mr. Valdes said he spoke to Irene Arriola.

Ms. Long said 21 certified notices were mailed and three were returned in favor, eleven were opposed, and nine had comments, which would be heard during the public hearing.

Mr. Misterly asked staff to report the criteria for an exception.

Mr. Birchim replied that it was on the first page of the staff report. He said an exception must promote the general welfare, orderly development, appearance and prosperity of the community.

Public hearing opened.

Robert Hall provided a copy of an article from the St. Augustine Record regarding the noise ordinance. He said that he did not want to go into a lengthy discussion but his answer was "No" he did not want that type of business in his community.

The board asked Mr. Hall how long he had lived at his residence and whether or not he approved of outside amplified music any day of the week at any time.

Mr. Hall's response was that he had lived in his residence for 43 years, and his answer would be no to amplified music.

Ms. Upchurch said she would not try to define ambient, and she recommended using terms that were concrete instead.

John Johnson said he represented Carriage Way Bed and Breakfast. He said that in the HP district there were areas or residential and commercial creating a mixed-use neighborhood. He said that during the day, the district was more commercial and at night, it was more residential. Therefore, he felt that the proposed business would deter the residential aspect of the mixed use; furthermore, adding an alcohol element was a bad idea. He quoted Karen Orr saying that "Good neighbors always keep their noise to themselves"

The board questioned how long Mr. Johnson had lived at his residence and whether Cuna and Spanish Streets had been commercial or residential. The board also asked whether he approved of exterior music.

⁴ Staff report attached to original minutes.

Mr. Johnson response was 16 years and the area had definitely been residential. He said he did not like the idea of any music outside.

Linda Larson said she owned a Bed and Breakfast, and she was opposed to the application, as the business would have a negative impact on guests. She concluded that a doorman could not control an intoxicated person late at night.

The board questioned whether Ms. Larson was opposed of amplified music, if she had met with Mr. Grant, and whether the disturbance from the public was currently happening.

Ms. Larson responded that she was opposed of any amplified music; however, acoustical would be okay. She replied that she had not met with Mr. Grant; however, she read the proposal he provided.

Ms. Long questioned whether the word tavern, cocktail lounge, or bar had the same definition, and staff's response was affirmative.

Nancy Pellicer said that she had lived in the area for 48 years. She said that there was a lot of foot traffic and at night the public walked by and threw beer bottles, banged on her shutters, and drew on the walls. She said that the people would have to pass her house on the way to the parking garage. She voiced her concern about the type of people the bar would attract.

Deanna Welch expressed concern about music in the evening affecting her, plus people urinated in her driveway and threw beer bottles in her yard.

Staff questioned whether the problem occurred with the current owner, and pointed out that if the application was not granted she could continue to face problems. Staff also questioned whether

she had contacted the police about the problem.

Ms. Welch replied that she was aware that the issue could continue, her husband had contacted the Police, and he spoke to the general public when he saw them outside.

Charlyn Rainville, owner of Opus 39, said her primary concern was the noise level, and noted that she owned the building adjacent to James Banta. She said her restaurant served beer and wine, and she had not experienced problems with her neighbors.

Staff questioned whether she had any soundproofing experience and whether she provided outside music.

Ms. Rainville replied that her building was concrete block, and she did not provide outside music.

James Banta said he had lived in his home for 36 years. He commented that residents had not attended the May meeting, because they were unaware of it. He said that there were three single family residences left on the street, and he expressed fear that they might get something much worse. He said the noise level would be worse if the business hours continued seven days a week. He said he had visited both of Mr. Merrill's businesses in Jacksonville to see the kind of atmosphere. He said that he obtained signatures from residents opposed to the application. He concluded by asking the board to deny the application.

Mr. Misterly and Ms. Long agreed that the applicant and neighbors had presented themselves in a polite and respectful manner, and the board appreciated that.

Mr. Blow asked if Opus 39 had been a good neighbor, and the response was affirmative.

Tony Woodward said that he owned the Prince of Wales English Pub, and he supported the application. He said the current owner was not a good neighbor and the proposal would be an opportunity to change the situation.

Staff asked Mr. Woodward whether he lived above his business and the business hours of operation. Staff also questioned whether he thought a doorman would help control the noise level, and whether he had any suggestions. Staff also questioned whether stopping alcohol service at 9:00 p.m. would negatively impact the business.

Mr. Woodward's responded that he lived above his business, the hours of operation for amplified music were Thursday from 5:30 p.m. to 8:30 p.m. and Sunday from 5:00 p.m. to 8:00 p.m. and his business closed at 10:00 p.m. He commented that a doorman would be a positive addition for security. He suggested that more police presence downtown would help deter disruptive patrons. He said that the 9:00 p.m. cutoff time for alcohol would not be a good idea, because it would hurt sales. He concluded that the application was a good idea and if the applicant was buying the establishment, updating the structure and living upstairs, would want to be a good neighbor.

Public hearing closed.

Mr. Grant suggested that they were putting the cart before the horse, as Mr. Merrill had not been able to guarantee 51% food sales. He said Mr. Merrill was trying to accommodate the noise level issues and would like to have speakers outside for some sort of music. He noted that it was hard to schedule noise demonstrations with the neighbors because of his work schedule. He added that the building was limited to 49 patrons. He gave an overview of what Mr. Merrill intended to provide as an owner of the property. He said that a doorman could have some control of the

patrons. He said that the business would not have a five piece band or a stage inside. He assured the board that employees would not take breaks outside. He concluded that Mr. Merrill had done everything he could to meet the approval of the neighbors and to follow the board guidelines.

Ms. Long asked staff if Mr. Merrill opened an establishment similar to Opus 39 whether he would need to go before the board, and the answer was no.

Mr. Dixon asked whether he should recuse himself, because he owned an empty lot at 45 Cordova Street, and the response was no.

Ms. Upchurch said that hear-say was not competent evidence, because it was not sworn testimony subject to cross examination. She said the article published by the St. Augustine Record and the signed notices from the neighbors were not competent evidence or sworn testimony.

Mr. Dixon said that he had lived downtown since 1991, and he had moved because of the noise level. He said that if the businesses windows were open the music could be heard outside. He said the neighbors indicated that, if approved, the proposal would negatively impact the neighborhood.

Mr. Misterly agreed the neighborhood was against the application; however, the applicant was willing to bend over backwards to make changes. He said he tended to support the applicant, because according to the current zoning the neighbors could end up with worse. He said with an exception the neighbors would have some control over the applicant. He suggested some constraints as follows:

- Trash to be taken out in the morning
- No live musicians outside on Sunday through Thursday after 7:00 p.m.

- No live musicians outside after 9:00 p.m. on Friday and Saturday
- The applicant could have background music that would not interfere with normal conversation within 25 feet of the speakers
- Six months to see whether the applicant kept the music to those standards

Mr. Knight clarified that Mr. Misterly's constraints required the applicant to return in six months to review the level of musical entertainment,

Mr. Misterly further clarified that the applicant would go before the board for review of the aforementioned constraints.

Mr. Knight noted that it would be the applicants prerogative, as under the proposed circumstances he might not be willing to purchase the property.

Warren Merrill, applicant, replied that he would not want to revisit the entire application in six months, as it would not be worth it, but he had no problem revisiting the music portion in six months.

Mr. Leary reiterated Mr. Misterly's constraints for clarity. He said that the applicant was restricting the upstairs for residential use, and he was willing to install sound deadening material downstairs, and he would have a doorman to encourage patrons leaving quietly and to help limit the liability.

Ms. Long asked if a person strumming a guitar through a microphone would be considered amplified, and the response was yes.

Mr. Blow asked if the applicant had any experience with acoustical engineers and what the board thought of having an acoustical engineer make sure the room was soundproofed.

Mr. Blow suggested a last call for 11:00 p.m., but the applicant refused.

Ms. Long said she had researched the area, and she questioned whether the proposed establishment met the intent of the HP-3 district.

Mr. Merrill responded that he felt it met the requirements of HP-3, because he would be making improvements to the building. He concluded that the only reason he was in front of the board was because he could not guarantee 51% food sales.

Ms. Long questioned whether the applicant would gain the percentage of food sales needed if the application was denied, and the response was no. She said that live testimony weighed significantly on the board's decision. She concluded that she would not be able to support the application.

Mr. Leary said the neighbors had concern about outdoor music. He questioned whether the applicant needed to provide music outdoors in order for his business to operate, and the response was no; however, he would like some sort of background music.

Mr. Valdes said the neighbors views weighed heavily on him. He said that under the circumstances he had a hard time making a decision, and he was not sure how to vote.

Mr. Blow concurred with Mr. Valdes and agreed with Mr. Woodward comments, because it would be better to take a chance with Mr. Merrill than keep the current situation. He said he could not tell the neighbors that in the current form the exception promoted health, safety, and welfare. He questioned whether having the last call at 11:00 p.m., and no music outdoors after 9:00 p.m. would be an option for the applicant. He added that he would like an acoustical engineer to submit drawings of the layout. He said he would

deny the application based on the comments he had heard.

Mr. Leary said the issue said a lot for how the residents perceived the city. He was impressed with Mr. Merrill and how he handled himself by trying to appease the neighbors; however, he never voted against the neighbors, and he believed that the neighbor's comments could persuade the board to approve or deny the application. He concluded that he did not feel that strong about the case, because he knew the board would vote against the application.

Mr. Valdes expressed hope that the board and neighbors would not regret the decision.

Mr. Leary said that if the applicant agreed to closing earlier for a period of time and have no outside music, it would give everyone a chance to see how well it would work out; however, he was not sure that even if the applicant accepted those terms that it would work in his favor.

MOTION

Mr. Misterly MOVED to approve case 2008-0079 with the following conditions that all improvements must be made and the architect must consult with an acoustical engineer, no live music outside after 7:00 p.m. on Sunday - Thursday or 9:00 p.m. on Friday and Saturday, background music would be allowed as long as it did not interfere with normal conversation levels within 25 feet of the speakers, return in 6 months to discuss the background music, commercial only downstairs, trash removal after 8:00 a.m. MOTION FAILED FOR LACK OF A SECOND.

MOTION

Mr. Dixon MOVED to deny application 2008-0079 based on the comments in opposition by the neighborhood. Motion SECONDED by Mr. Valdes.

VOTE ON MOTION

AYES: Dixon, Valdes, Blow, Leary, Long

NAYES: Misterly

MOTION CARRIED UNANIMOUSLY

5. Other Business

Mr. Knight said Mr. Lippi mailed a letter to the board and staff and asked that his letter concerning application F2008-0067 be disregarded.

Mr. Dixon questioned whether Mr. Lippi was the arborist for the Palmetto Street-Anastasia Restaurant Project.

Mr. Knight replied that he sent Mr. Lippi to the clerk's office to obtain a copy of the minutes, after which Mr. Lippi wrote the letter to the board and staff.

CM-2 Zoning:

Mr. Knight said the City Commission would like to see some recommendations from the board on the modifications to CM-2.

A brief discussion followed regarding CM-2 zoning. The board discussed the setbacks for the Walgreens Drug Store on U.S.1 and the entry corridor. The board would continue discussing their recommendations for the CM-2 at the next PZB meeting.

Mr. Knight concluded that the CM-2 zoning was primarily U.S.1 and a short section of State Road 16 and the north end of San Marco Avenue.

5. Appeals

(None)

6. Conflict of Interest Statements

(None)

7. Adjournment

Having had no further business, Ms. Long adjourned the meeting at 5:41 P.M.

John Valdes, Vice Chairperson