

The Special Meeting of the City Council of the City of Panama City Beach, Florida, and when permitted or required by the subject matter, the Panama City Beach Community Redevelopment Agency, conducted on October 23, 2014.

ROLL

MAYOR GAYLE F. OBERST

COUNCILORS:
JOHN REICHARD
RICK RUSSELL
JOSIE STRANGE
KEITH CURRY

CITY MANAGER:
MARIO GISBERT
CITY CLERK:
HOLLY J. WHITE
CITY ATTORNEY:
DOUG SALE

ITEM 1 REHEARING OF THE PLANNING BOARD'S DENIAL OF THE VARIANCE FOR THE FRONT YARD SETBACK FOR 15007 AND 15010 FRONT BEACH ROAD.

Mayor Oberst called the meeting to order at 1:00 P.M., with all the Council, the City Manager, City Clerk and City Attorney present.

Mr. Sale asked for anyone who wished to testify to stand and be sworn. A number of witnesses stood and were sworn.

Mr. Leonard confirmed that the notice requirements were met with a sign on the property and the notice published in the News Herald.

Regarding the Jennings Disclosures, Councilman Reichard said he had spoken with Mr. Neel Bennett, Mr. Mike Bennett, Mr. Jason Oakes, Mr. Robert Carroll, Mr. Gisbert, Mr. Leonard, Planning Board Chairman Mr. Ed Benjamin, and Planning Board member Ms. Clare Pease. He said he visited the property and surrounding areas several times. In response to Mr. Sale's request, Councilman Reichard summarized the conversations as Mr. Oakes and Mr. Carroll were in favor of changing the Planning Board's ruling and the Bennetts opposed changing the ruling. Mr. Benjamin, Ms. Pease and the Planning Board Minutes gave him information as to how the Planning Board made their decision.

Councilman Russell visited the property and spoke to Mr. Neel Bennett, Mr. Mike Bennett and Mr. Derek Bennett. He also spoke with Mr. Leonard, Mr. Gisbert, Mr. Oakes and Mr. Carroll. He said Mr. Oakes lobbied for the property and the Bennetts had concerns if it was the correct change to make.

Councilwoman Strange said she had spoken with Mr. Leonard, Mr. Gisbert, Mr. Neel Bennett, Mr. Oakes, and Mr. Carroll. She said she also attended the Planning Board meeting.

Councilman Curry said he met with Mr. Carroll, spoke with Mr. Benjamin who affirmed the Planning Board's decision, met with Mr. Neel Bennett and Mr. Derek Bennett who opposed this change, and spoke with Mr. Oakes on the phone who was for the change. He visited the property and the neighborhood, spoke with Mr. Leonard and Mr. Gisbert.

Mayor Oberst said she met with Mr. Oakes and Mr. Carroll who supported the change, talked with the Bennetts who opposed the variance, talked with Mr. Leonard and Mr. Gisbert, and talked with the News Herald. She also corrected what had been published in the News Herald for the record.

Councilman Reichard added that he also attended the Planning Board meeting where this matter was discussed.

Mr. Leonard said this was a front yard setback variance and parking lot location request by Mr. Jason Oakes, to construct a Gulf-front restaurant at 15007 and 15010 Front Beach Road. He said the zoning was CH Commercial High Intensity located in the FBO-4 Overlay District. The Quasi-Judicial Hearing of the Planning Board was held September 8, 2014 and they denied the Variance Request by a vote of three to two (3-2). On August 19th, Mr. Robert Carroll, acting on behalf of Mr. Oakes, submitted the application to construct the Gulf-front restaurant, and on September 8th, the Planning Board received evidence during the Hearing and requested comments

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from the public. Mr. Leonard said the applicant requested to increase the front yard setback from fourteen feet (14') on the easterly portion of the property and five feet (5') on the westerly portion of the property, to a front yard setback to seventy-four feet (74') for the entire property. He said the applicant also wished to construct the associated parking lot in front of the proposed restaurant which would exceed the requirements in the LDC restricting parking lots to 50% of the lot width or 100' of lot width, whichever was less. The Planning Board entered the Order on September 12, 2014 and the City received a request for Rehearing on September 19, 2014 via email. The property was posted, a notice placed in the News Herald, and the applicant and interested parties were notified of today's Hearing. He then placed the Agenda Packet into the record, which contained the Planning Board Agenda, the draft Minutes and the associated materials presented to the Planning Board.

Mr. Leonard said if a variance was granted in the FBO District, it could have the flexibility of meeting the purpose of that District which was to enhance the quality of life for residents, achieve greater compatibility between different land uses, foster greater mobility, increase the convenience of walking biking and using transit, maintain allowable uses in the underlining zoning districts, increase the intensities in the tourist-based areas, and achieve a higher quality of design. He said the applicant must demonstrate that the requested variance met the established standards and must offer an alternative condition which would meet the purpose and intent of the FBO standards. Mr. Sale asked if the Planning Board's materials were the same as in the Council's Agenda package and Mr. Leonard replied yes.

Mr. Sale emphasized that unlike a typical hardship variance, the criteria in an FBO District must be considered in light of the purposes and intent of that FBO. He said those purposes would be the background of the standards as the Council made their considerations.

Mr. Robert Carroll, McNeil Carroll Engineering, 17800 Panama City Beach Parkway, said he represented the applicant who was requesting a front yard setback parking lot placement. He said during the Planning Board meeting, discussion had been that they were requesting a variance for parking but the parking requirements would be handled during the Development Order stage. He asked that this Hearing be limited to only the front yard and parking lot placement.

Mr. Carroll displayed Slide #1 and said the new LDC required the buildings to come to the front and the parking be placed to the side and rear. Most of the properties on the Gulf-side were limited by depth and parking could not be at the rear. He said they proposed a beach bar on the Gulf-side with the northern face of the building in line with nearby buildings. He said there were eleven parking places, loading zones, and dumpsters on the side, with the north side having thirty-five spaces. During the Planning Board meeting, the parking issue was discussed so they bought more property. He displayed a site plan which would promote being pedestrian-friendly and meet all of the aspects except for the dumpster which would have to go on the side of the building. This site plan would allow for the building to take advantage of the Gulf-side views.

He displayed other site plans with the building meeting the current Code without a variance, moving the building up within 5' of the front property line. He said from the roadway, people driving by the restaurant would see the eleven parking places but the view to the east would be a parking lot and the view to the west would be a hotel. If the variance was granted, the patrons would be able to see the Gulf. He agreed that the restaurant could be developed on site without the variance but this would not achieve the higher quality of design in order to be vibrant, sustainable, attracting visitors, and providing longterm economic and fiscal benefits to the City and its residents. By rotating the building, this would not increase congestion or the number of cars. Without the variance, the view would be worse and a longer distance for pedestrians to reach the front door.

Regarding the variance, Mr. Carroll said the site was small and not be big enough for a condo project or large restaurant. He said they planned a 2,716 square foot beach bar that would have the same landscaping and same number of parking spaces, no matter which way the restaurant was situated on the property. He said they could make the restaurant conform without the variance relating to health and safety but would lose the value of Gulf-front views.

Councilwoman Strange questioned adding more floors to the restaurant and Mr. Carroll said that would involve elevators, pilings, and allow no room for cars to circulate under the building. She asked how many employees they planned for the restaurant. Mr. Carroll responded twenty employees. She said some of the parking would be used by the employees and asked if they had considered the nearby neighborhood and the additional traffic that would be generated. Mr. Carroll said they had adequate parking and met the Code in that aspect, no matter how the building was oriented. He said the new Code also encouraged parking agreements with surrounding properties and they anticipated a lot of pedestrian traffic from the nearby resorts.

Councilman Curry said when developing the LDC, a lot of discussion had been about view corridors. The restaurant without the variance would still have a view corridor and the people walking up and down the street would have a larger view corridor to see the beach. He also said most of the buildings along Front Beach Road were pulled up to the street with parking on the northside. Mr. Carroll said most of those properties were much larger, much wider, with multiple stacks of parking decks. Councilman Curry said the City and Planning Board were not anti-business and were not limiting building the restaurant, just not exactly as they desired because it was a small parcel. Mr. Carroll said there was a premium for having Gulf-front and limiting the view corridor from 100' to 28' would not allow the owner to take advantage of the value of the site. He said without the variance, the site could not be developed to its fullest potential.

Councilman Reichard asked the approximate numbers of inside seating as opposed to the outside deck seating. He said it appeared the deck would have a majority of the seating available based on usable square footage. Mr. Carroll said he did not have a percentage or seating chart. Councilman Reichard said a large amount of that 2716 square feet would be used for halls, restrooms, kitchen, etc., not patron seating, and there would be open seating on the deck. He said no matter which way the building was situated, there would still be the deck view.

Mayor Oberst said driving or walking on Front Beach Road would have a better view with the required placement. She said she thought there would be a better chance of seeing the restaurant when driving if the building was placed north/south. Councilwoman Strange added the extra benefit about seeing all of the patrons eating on the deck.

The Mayor asked if there was anyone who wished to speak for the applicant.

Mr. Dennis Evans, architect at 3704 Thomas Drive, said it made no sense to have a Gulf-front property and not utilize the view. He said while the deck would probably be the same width in either scenario, the restaurant would not offer indoor seating with the same view and most people during inclement weather would not utilize the deck. He said it would be great to have the corridor view from the roadway but the deck would block a portion of that view. He said when they first began dealing with the FBO requirements, he thought they seemed cumbersome in that the buildings south of Front Beach Road were moved toward the roadway and the parking was moved towards the Gulf. He said that would work fine on the north side of Front Beach Road, but on the Gulf-side, this would lower property values. Mr. Evans said he thought this should be the owner's discretion for the building location on the property. Discussion had been about parking under the building which would mean elevating the structure and dealing with handicap access issues. Mr. Evans said he thought most people coming to the beach wanted to be at beach level.

Mr. Doug Gilmore, resident of 100 Villa Court, disclosed that Mr. Oakes was his nephew. He said as a Gulf-front property owner, he understood some of the problems these small lots posed to developers. He said the area across the street needed to be redeveloped and this site was key for developing the area. He asked the Council to approve the variance as it was a close vote at the Planning Board level, 3-2.

Mr. Jason Oakes said the Lawrence family owned the surrounding property and two national users were interested in nearby sites. He said the area would be cleaned up and high-end establishments built. He said his site was very important to this section of the road.

Mayor Oberst asked if there were any affected parties who wished to speak in opposition to this request.

Mr. David Haight, 12232 Lyndell Plantation Drive, said he favored development on the beach in many forms. He said it was a very complicated Code and had a few glitches which needed to be corrected and the proper way was to fix it prior to any applications being reviewed. Mr. Haight addressed one of the proposed drawings and said he had concerns about the parking which seemed to exceed 50% of the lot width. He said changes made after the Planning Board meeting should also concern the Council and he reminded that the Planning Board denied the Variance. He also disputed this design as being pedestrian-friendly. The Bennetts had asked him to speak on their behalf and he explained his experience as the former development manager for the Towne of Seahaven. Mr. Haight continued that he had participated in the development of the LDC because they had produced a model that was exemplary on the beach, Origins. This front image, the façade, was at pedestrian-scale with a front yard that met the Code at that time. The parking was hidden underneath and behind. He said Origins was an example of what the Overlay should be. He stated that all eight requirements must be met in order for a Variance to be approved, and read them into the record. (1) *There was a specific hardship which affected the development of the lot.* Mr. Haight said there was no specific hardship which affected the property imposed by the Code. The Planning Board found that the development of the site could be reasonably accomplished meeting the Code and no diminished capability. They further found that

the applicant did not demonstrate that the application met each of the Variance requirements. (2) *The hardship was not a result of the actions of the owner.* Mr. Haight said it was because they purchased the property which might be small for their desired project. (3) *The need for the variance was due to the physical shape.* Mr. Haight agreed with this reason as all lots on Front Beach Road were oriented north/south but the road was oriented northwest/southeast, and it was difficult to make an angle lot work for development because it was not oriented perpendicular to the street. He continued that in Section 7.02.03 e, the City was under no obligation to provide density or intensity bonuses or deviate from the standards in order to provide the maximum density or intensity. (4) *The proposed variance was necessary to preserve a substantial property right.* Mr. Haight disagreed because there were many ways to develop the property without varying from the Code. The Planning Board understood that there were options, one of which was offered today that had not been presented to the Planning Board. (5) *The variance will not substantially increase congestion on surrounding streets.* Mr. Haight said the plan had nine spaces open to the public, two handicapped, and conflict and congestion would result from cars having to park across the street. (6) *The proposed variance would be compatible with adjacent Uses.* He said a restaurant would be compatible if the patrons behaved well, and the plan with outdoor seating presented today might be used by walk-up customers. (7) *The effect of the variance was consistent with the purposes of the LDC.* Mr. Haight said the Planning Board and Council, after many years of debating design issues and ultimately creating the LDC, were now being asked to change the new rules after the first substantive variance was received. He said in his opinion this did not meet the test of time and was instead asking to live by the rules of the past. (8) *The effect of the proposed variance was consistent with the Comprehensive Plan.* Mr. Haight said there were several policies that were not consistent and he provided the Clerk with that written information for the record. He said many related to transportation and congestion.

Mr. Haight said the application did not address each requirement and the Planning Board did not impose any conditions or restrictions based on their ability to do so for Items 5 and 6. He said the site plan and statements in the application appeared to be based on the assumption that no alternative arrangement of building and parking on site could be accomplished that would be consistent with the strict application of the LDC and the Planning Board disagreed. If the variance was approved, elements of the proposed application and design would create unsafe conditions for both traffic and pedestrians.

At the recommendation by Mr. Sale, Mayor Oberst said this meeting would be adjourned, the Regular City Council meeting convened and adjourned, and then this Hearing was reconvened until a decision was made. The Hearing was adjourned at 2:00 P.M.

The Hearing was reconvened at 2:04 P.M. The Mayor asked if any affected party wished to speak.

Mr. Neel Bennett said he had looked at the site and Runaway Island was close to what the LDC required with the majority of the parking on the water. The building was close to the road. He said his building was 32' from the front property line and 25' was the required setback. He said he thought there was a way to build Gulf-front restaurants if the property was large enough. The challenge here was that the property was very small which would limit what could be built. Mr. Bennett said the rules should not be changed just to fit a piece of property that would affect surrounding properties. Mayor Oberst asked if there were any questions; there were none.

Mr. Dave Evans, resident of 16210 Sky Avenue and owner of the property east of the site, said the proposed building would be closer to the water than either the Bennett's property or his property. He said the density of the roadway was a nightmare for the pedestrians and this building would increase the number of pedestrians. Mr. Evans said with the proposed building, there would be no corridor view of the beach. He said that site could be developed. The Mayor asked if there were any questions for Mr. Evans and there were none.

Mr. Derrick Bennett said it was a bad idea to grant the variance. He asked the Council to consider the precedent an approval would set for the future. He said this was a massive variance request because a typical request was something that would be a detriment to be removed, such as roof overhang. He continued that this was a new site and to put the building as desired would require a variance. He said in his opinion from a legal standpoint, this was an abnormal variance request. He read Ms. Sara Young's letter dated October 20, 2014 into the record. In this letter, she urged the Council not to approve the request. Mr. Bennett recommended that the Council deny the request and uphold the decision of the Planning Board. Mayor Oberst asked if anyone wished to ask questions of Mr. Bennett and there were none.

Mayor Oberst asked for public comment and reminded if not sworn, the Council would not be able to consider the comments in making their decision. There were none nor Staff rebuttal.

Mr. Carroll said prior to the adoption of the new LDC, this proposed site plan would have been legal. He said until now, there were no projects in which to apply the new regulations and did not know how the new rules would affect property. He said they were not asking for anything which in the past had not been allowed. Mr. Carroll agreed that the site could be developed and it would come down to whether the building was to the rear or to the side. He asked for the Council to grant the variance.

There were no comments from those opposing the request.

Councilwoman Strange said she was for more restaurants and establishments on the beach that would bring more visitors but she thought the size of the property would limit the size of the restaurant. She said it was a wonderful idea but the lot was too small.

Mayor Oberst reminded that the Council was only considering the request for the variance, nothing else. She echoed Councilwoman Strange's comments in that she was excited to see Runaway Island come to the City and the prospects of two additional Gulf-front restaurants was great, something good for the City's residents and visitors. She said it would be wonderful for that section of the beach to be developed. She personally felt that if the restaurant could be built on the property and meet the Code, it should be built in that manner.

Councilman Reichard agreed with the Mayor and that if the building could be built, it should be built to Code because of the precedent it might create.

Councilman Curry said he agreed with all of the comments. He said the future of Panama City Beach should be considered in what our children and grandchildren would see.

Councilman Russell said he agreed that it would set a precedent if the Council agreed to the Variance request and recommended staying within the Code.

Councilman Reichard said the south side of Front Beach Road in many cases was different and this type issue would be presented more in the future. He said he thought the Council would have to deal with those type situations on an individual basis. However, a blanket change of the LDC would not work.

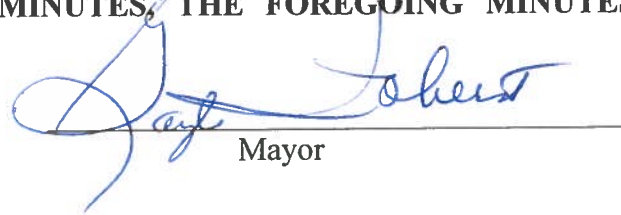
Councilman Reichard made the motion to deny the Variance. Second was by Councilman Russell. The Mayor called for comments; there were none. **The motion passed by unanimous roll call vote recorded as follows:**

| | |
|-----------------------------|------------|
| Councilman Reichard | Aye |
| Councilman Russell | Aye |
| Councilwoman Strange | Aye |
| Councilman Curry | Aye |
| Mayor Oberst | Aye |

The Hearing was adjourned at 2:25 P.M.

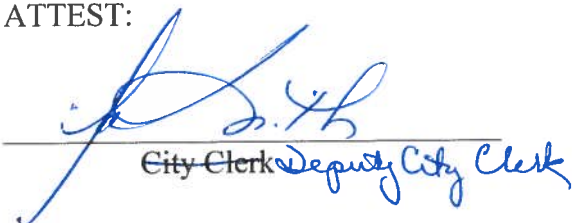
READ AND APPROVED this 12th of March, 2015.

IN THE EVENT OF A CONFLICT BETWEEN THE FOREGOING MINUTES AND A VERBATIM TRANSCRIPT OF THESE MINUTES, THE FOREGOING MINUTES SHALL CONTROL.



Mayor

ATTEST:



City Clerk Deputy City Clerk