

# MINUTES

## PLANNING & ZONING BOARD

### REGULAR MEETING AND VARIANCE HEARING

Wednesday, October 17, 2018, 9:30 a.m.

Marble Hall

**Call to Order:** The meeting was called to order at 9:30 am by Chairperson Troiano.

**Roll Call:** *Present:* Trudy Troiano, ,George Lancaster, Gary Furtak and Steve Decrow.  
*Excused:* Joey Raspe, Gail Cortelyou, and Ron Anderson. Also present: City Administrator Chris Moonis, City Clerk Kathryn McCullough, City Attorney Tom Wright, and Building Official Gerard Roussin . Public – 4

**Approval of Minutes:** The Planning & Zoning Board minutes of the September 19, 2018 were approved as corrected. Date changed from July 18, 2018 to September 18, 2018 and top line on page three changed from according shutters to accordion shutters.

**MOTION:** Motion made by Board Member Lancaster, seconded by Board Member Decrow, to approve the September 19, 2018 minutes as amended.

**ON THE MOTION:** Roll call vote. Unanimous approval

### **VARIANCE REQUESTS:**

#### **Swear in Witness to Testify**

Attorney Wright asked all persons giving testimony in the variance requests to stand and raise their right hand. He asked all to swear the testimony they will give is the truth, the whole truth and nothing but the truth. All replied yes.

**Notice of Ex-Parte Communication** None

#### **Variance Request**

##### **Sea Edge Properties – 340 – 350 East Ocean Drive.**

City Clerk McCullough reported the applicant has asked for a continuance to the January 2019 Planning and Zoning Meeting. There is an illness in the family and he has family in Mexico Beach.

**MOTION:** Motion made by Board Member Furtak, seconded by Board Member Decrow, to continue 340-350 East Ocean Drive to the January 2019 Planning and Zoning meeting.

**ON THE MOTION:** Roll call vote. Unanimous approval

**Laura & Patrick West -- 1038 West Ocean Drive**

Patrick West told the Board he is applying to build a 20' x 3' finger dock perpendicular to the existing dock. Mr. West explained the property to the east has a finger dock and the property to the west has a rather wide catamaran which makes it difficult to maneuver to his dock.

Chairperson Troiano asked if the proposed finger dock is on the property line. Mr. West answered yes. Chairperson Troiano asked the setback required from the property line. Building Official Roussin answered the setback is 10'. Ms. Troiano explained the applicant would also need a variance for the side setback. Building Official Roussin asked if the property to the west would be at the end of 11<sup>th</sup> Street. The answer was yes. Attorney Wright explained the applicant owns a property at the end of the canal. The property the applicant is referring to runs up the side of the canal. Board Member Lancaster asked if there is a property on the corner without water access. Attorney Wright answered there is a small bit of seawall but that property does not have access to the water. Board Member Furtak stated the neighbor to the east has a lift. Board Member Decrow stated the finger dock will not work because of the property with the lift. Chairperson Troiano no asked how long the applicant owned the property. The applicant answered about 9 months. Attorney Wright stated the application says Mr. Oskvarek, on 11<sup>th</sup> Street, supports the variance request. However, the City Clerk received a letter from Mr. Oskvarek in strong opposition to the variance. Chairperson Troiano said the Board has received several letters in opposition to the variance. Attorney Wright said the applicant should be given access to letters so he is aware of the opposition and has an opportunity to respond. Chairperson Troiano called a 5 minute recess to allow the applicant time to review the opposition letters received by the Board. After reading the opposition letters, Mr. West withdrew the variance request.

**Ocean Front Apartments Condo Association -- 721 West Ocean Drive.**

Will Campbell, Campbell Engineering Consultants, stated the structure was severely damaged by Hurricane Irma with complete failure imminent within the next 5 years. The plan is for demolition of the structure and to rebuild an elevated structure. Chairperson Troiano asked for an explanation of Option A. Board Member Lancaster reported the blueprints submitted are so small they are difficult to read. Chairperson Troiano asked how far back, from the current position, is Option A. Mr. Campbell replied 16'. Chairperson Troiano asked how far from the mean high tide. Mr. Campbell replied 30.7'. Mr. Campbell said the building code says if a structure is condemned it can be rebuilt in the same profile, the same footprint. Attorney Wright confirmed a structure can be moved back as long as it in the same footprint of the original structure. If the intent is to make the building wider a variance would be required. Board Member Lancaster asked if the length and width remain the same a variance is not needed, but if the length and width are changed it needs a variance. Attorney Wright said, as an example, if the building was 16' shorter it would not need a variance because it would still fit inside the original footprint. Attorney Wright asked if the width of the building is changing. Chairperson Troiano answered not on Option A, on Option B the width of the front building would change. If you have the documentation of the 50% rule, and you are within the setbacks, a variance would not be needed, but if not, a variance would be required. Building Official Roussin said as long as the building is within the 50% rule it can be rebuilt in the same footprint as long as it is built up

to current code. The foot print is being changed in Option B. Attorney Wright suggested the request be continued until January, it could be dropped at that time but it would leave it open. The City would not have to re-notice and if there is anything to be decided you can take it up at that time. Mr. Campbell stated to comply with ADA requirements it will be necessary to widen the balconies. Attorney Wright indicated better schematics would be needed to show a little more than the current submittal. The concern is, when a variance is granted, you need to know exactly what is being granted. Chairperson Troiano asked, since ADA is requiring the wider balconies, is any latitude granted. Attorney Wright answered that could be considered when granting a variance. Chairperson Troiano said, the building would be wider than just the ADA balconies. Chairperson Troiano calculated a 79' variance would be required for Option A and a 34'3" variance would be required for Option B. Attorney Wright asked how much wider would the building be. Chairperson Troiano called for a 10 minute recess for Mr. Campbell to determine the width needed for a variance. Sue Palguta, 721 West Ocean Drive Apartment 1, reported her unit was the only one completely destroyed by Hurricane Irma. Ms. Palguta asked the name and location of the firm representing Ocean Front Apartments. Mr. Campbell responded Campbell Engineering Consultants located in Gulfside Village. Ms. Palguta asked if Ocean Front Apartments was condemned. Mr. Campbell answered yes, that was his professional opinion. Chairperson Troiano reported she had not seen anything stating Ocean Front Apartments were officially condemned and that was a discussion on that needed to be done somewhere else. Ms. Palguta said she had been told Ocean Front Apartments would be replaced with a Next Gen Pre-Fab structure and asked if a variance would be needed for that. Attorney Wright replied the current discussion is too preliminary to make that decision. Board Member Lancaster restated the only issue for this hearing, based on the plans submitted, was the setback of the building. Mr. Campbell explained the current width of Option A is 42.7' and the proposed width is 50'. The distance from mean high water is 31.5', therefore the setback variance request is for 68.5'. On Option B, the proposed width is the same and the setback variance would be 34.1' from the ocean. Attorney Wright explained only Option A would need the variance as it is the greater distance from the ocean. However, approval of Option B would restrict the distance from the ocean to 34.1'. He also explained Option A would put the entire structure in the VE flood zone, while Option B would put the structure in the AE flood zone. The VE flood zone is the least desirable. Mr. Campbell reported a building in the VE zone must be designed to stricter standards to resist floatation from buoyancy forces, and impact, say from a floating dock. He also stated the mean high water location is determined by a surveyor. City Clerk McCullough read the following correspondence into the record.

1. An email from Richard Hughes: My Wife and I are Owners at the Tall Condo 755 W. Ocean Dr. directly next door to the Ocean Front Condo property. We currently reside in Pennsylvania and will not be able to attend the variance hearing. We have concerns regarding the variance request as it will directly impact our complex. In the hearing notice it is explained that the Ocean Front condo would move the building to the West away from the property line and further back from the ocean. They also mention Option A and Option B. 1) Will there be an option to attend the hearing remotely? 2) What is option A? 3) What is option B? 4) Who's property line will be impacted? 5) Obviously Ocean Front has Plans made for option A and B, are those plans available for us to see and review before the hearing? Ms. McCullough said she emailed the plans in the agenda packet to Mr. Hughes.

2. An email from Helen Bezwuszcak: To Planning and variance committee, I am writing to voice my preference of Plan A to just move the building closer to the street and over closer to our property line next to 711 W. Ocean Dr., our neighbor. This simple adjustment would be acceptable to all because they would all keep the same locations of their units. The other plan B, suggested by our engineer, would cause much drama and problems for everyone. It would mean a shift of all units to other spots that were not chosen by them. This was not what we discussed or what we want. Thank you all in advance for any and all considerations. Helen Bezwuszcak unit 13.

3. An email from William and Sally Gill: To Planning and Zoning, I am writing in regards to the variance that was submitted for consideration regarding Ocean Front condos. As a 29 year owner occupied resident of this complex I respectfully ask that Option A is approved. Moving the building toward the street and over towards our residential neighbor, makes it an easy rebuild transition. Everyone will remain in their current position within the buildings. I do not agree with proposal B which would move units and cause disruption and drama among owners. Regards to all, William & Sally Gill

4. An email form Lin Walsh: City of Key Colony Beach Planning and Zoning Board RE: Variance Ocean Front Application. Public Safety trumps everything as we have all had first hand experience with during this past year. The parcel of real estate related to the variance certainly has sufficient footage to accommodate a shift of the proposed structure to the left/West of it's current location. However, by allowing a setback less than the current required 100 feet from the high tide water line could easily put occupants and their neighbors in imminent danger at times of in-climate and future stormy weather. I feel in the best interest of property owners and visitors the planning commission should enforce the current setback footage from the high tide water line of ocean side/beach front of said parcel. To the planning and zoning board I appreciate your service and for being good stewards in protecting the safety of our community. Thus protecting the future of safety and integrity of our city in the years to come. Lin Walsh

5. A telephone call from Charles Brown. City Clerk McCullough reported receiving a telephone call from Charles Brown of 711 West Ocean Drive. Mr. Brown has a problem with the tress on the shared property line. They hang over his property and make a real mess. The fence is his and he knows it is in need of repair but has been waiting to see what Ocean Front Apartments intends to do.

Post Hearing Questions for a variance to LDR Section 101-15(6) for the rear setback of 68.5' to remove and relocate buildings per Option A.

Question 1: Has the applicant shown good and sufficient cause to grant the variance?  
George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 2: Will denial of the variance result in unnecessary hardship to the applicant? George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 3: Granting this variance will not result in public expense, a threat to public health & safety and it will not create a threat to or nuisance, or cause fraud or victimization of the public? George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 4: The property has unique or peculiar conditions or circumstances to this property that do not apply to other properties in the same zoning district. George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 5: Granting this variance would not confer any special privileges in terms of established development in the immediate neighborhood? George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

**MOTION:** Motion made by George Lancaster, seconded by Chairperson Troiano, to approve a 68.5' variance on the rear setback and an 8' in width increase to the current footprint.

**ON THE MOTION:** Roll call vote. Unanimous approval.

Attorney Wright told the Planning and Zoning Board their variance approval was for the footprint plus 8 feet but not to move the entire building. He explained the footprint of the building is what is grandfathered. If the building is to be moved somewhere else a variance for the entire width of the building would be needed. City Administrator Moonis asked Attorney Wright if it was appropriate to discuss a variance for which there is no set of plans yet? Chairperson Troiano said the plans received were too small to read and a side setback was not mentioned until just now. Attorney Wright said, without legible plans, it put staff in a bad position. Mr. Campbell said his interpretation is the non-conformity is not being increased by off-setting the building from the property line. He further stated the proposal today reduces the non-conformity on all levels. Shifting the building off to the side creates a driveway so people can park beneath the structures. It would be very challenging to park without shifting the building. Attorney Wright said it bears on the questions when the Board considers the variance. For example, would approval confer a right to this property owner, unique to them, and not to other properties cause issues for the City? The Board may want to consider the entire list of questions if the proposal is to move the entire building. Special considerations given for grandfathered footprints is a significant matter. It could create a new nonconforming footprint. Board Member Lancaster said the Board thought the request was for a setback, now it is also for a width variance and a side variance. Attorney Wright answered special consideration is given to an existing building by allowing it to be rebuilt within the same footprint even if it doesn't comply with the current setbacks and codes. Attorney Wright stated the Board need not take further action as this will go to the City Commission for approval. Board Member Furtak reported he is not prepared to vote on any other changes because the Building Department needs to see the plans and understand them first. Mr. Campbell, re-read for clarity, the variance request. "Remove and relocate buildings per Option A and/or B attached. The buildings will be moved away from the property line to the west and further back from the ocean in each option. Applicant requests both options be approved in order for the members of the association to choose which one is the more cost effective and/or desirable". Mr. Campbell said, therefore, it

was the intent to move the building to the west. Chairperson Troiano told Mr. Campbell if that was the intent the variance should have read remove and relocate the building for Option A which would require this, this and this with the square footage included. She agreed the Board may have missed the request to move the building to the west, but the plans were so tiny you couldn't read them and the distance looked the same on the side. She strongly stressed the information needed is upon the applicant to provide.

Bradley Boersma - 48 Sadowski Causeway – Continued from 09/19/2018

Note: (This item was not on the agenda. Mr. Boersma distributed paperwork to the Board Members at the meeting)

Mr. Boersma told the Board this variance request is 3 components to replace approximately 120' seawall and dockage around 48 Sadowski that was destroyed by Hurricane Irma. The first component of the variance is to bump out the seawall 18" and build along the prior lot line. Mr. Boersma said the State allows for an 18" bump out which he has further clarified with his Project Manager, Debra Evans with Glen Boe and Associates. Chairperson Troiano asked if there was actual proof the State owned that bay bottom. Mr. Boersma reported Ms. Evans located prior histories along the Causeway which indicated the State owns the bay bottom. Chairperson Troiano reminded Mr. Boersma the Board had asked him for a deed or confirmation of the ownership of the bay bottom at the last meeting. She asked if he had gotten that confirmation. Mr. Boersma answered he had tried several times, unsuccessfully, to contact Attorney Waldera regarding the bay bottom ownership. Mr. Boersma has his application ready to submit to the State which will confirm ownership of the bay bottom through their approval process. Attorney Wright said Mr. Boersma is creating title problems with these improvements beyond the platted lot line. When Key Colony Beach was built a large deed was granted to Mr. Sadowski by the State of Florida, for what became Key Colony Beach by dredging and filling. Attorney Wright further stated he had a strong suspicion the property surrounding Mr. Boersma's property was probably deeded to Mr. Sadowski. The Board could make the variance approval contingent on State approval. Chairperson Troiano said the first post hearing questions are based on building the seawall 18" out from the property line.

Question 1: Has the applicant shown good and sufficient cause to grant the variance?  
George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 2: Will denial of the variance result in unnecessary hardship to the applicant? George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 3: Granting this variance will not result in public expense, a threat to public health & safety and it will not create a threat to or nuisance, or cause fraud or victimization of the public?  
George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 4: The property has unique or peculiar conditions or circumstances to this property that do not apply to other properties in the same zoning district. George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 5: Granting this variance would not confer any special privileges in terms of established development in the immediate neighborhood?

George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

**MOTION:** Motion made by Chairperson Troiano, seconded by Gary Furtak, to approve a 97' long seawall 18" out from the property line conditioned on official approval from the State of Florida. This does not grant any height above the existing height. That would be a separate variance.

**ON THE MOTION:** Roll call vote. Unanimous approval.

Mr. Boersma told the Board Member the second component of his variance request is to rebuild a former dock to be shifted 30' to the east, out into the bay 6' by 30'. He said this will also be contingent on approval from the State. Attorney Wright answered the permissible width of a dock, in that subdivision, is 6'. Board Member Furtak asked if the dock would have to be lighted? Building Official Roussin answered he did not think it had to be lighted as the dock is not in a navigable waterway. Mr. Boersma said the hardship is a \$150,000 to \$200,000 rebuilding cost. Approval of the variance request would give Mr. Boersma more utility of the dock. Chairperson Troiano asked Building Official Roussin if there is a dock height restriction. Building Official Roussin responded the docks are to be the same height across adjoining properties. There is not supposed to be an "up and down" of dock heights. Chairperson Troiano explained the second part of the request is to make the seawall 24" higher which means he would want to make the dock, as it comes around the corner 24" higher as well. Chairperson Troiano said there are actually 4 factors to this variance request because of the request to rebuild the dock 24" higher. Mr. Boersma reported research of other South Florida municipalities which were increasing height requirements. Board Member Furtak asked if the new heights were for new construction. Mr. Boersma replied yes, or anything that was damaged and needed to be replaced. Attorney Wright reported the Key Colony Beach ordinance 5-51 requires a dock to be 5.5' above mean sea level, and it shall be constructed to the height of the higher of the two adjoining seawalls. Attorney Wright said a variance would be required to allow the increase in height. The post hearing questions are on the variance request to rebuild a former dock to be shifted 30' to the east and out into the bay 6' by 30'.

Question 1: Has the applicant shown good and sufficient cause to grant the variance?

George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 2: Will denial of the variance result in unnecessary hardship to the applicant? George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 3: Granting this variance will not result in public expense, a threat to public health & safety and it will not create a threat to or nuisance, or cause fraud or victimization of the public?

George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 4: The property has unique or peculiar conditions or circumstances to this property that do not apply to other properties in the same zoning district. George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

Question 5: Granting this variance would not confer any special privileges in terms of established development in the immediate neighborhood?

George Lancaster, yes. Gary Furtak, yes. Steve Decrow, yes. Trudy Troiano, yes.

**MOTION:** Motion made by Chairperson Troiano, seconded by Board Member Furtak, to recommend approval of a to rebuild a former dock to be shifted 30' to the east and out into the bay 6' by 30'.

**ON THE MOTION:** Roll call vote. Unanimous approval.

Chairperson Troiano said the next issue to be considered is the request to rebuild the dock 24" above the existing adjoining seawall. Attorney Wright stated this generally goes against City policy, however, there is a letter from the adjoining neighbor stating he has no objection to this request. Chairperson Troiano said the adjoining neighbor's dock does stop because of a boat launch. However, this height difference could potentially cause flooding and/or pooling of water.

Mr. Boersma said his dock would step down, on his property, to meet the adjoining dock. Chairperson Troiano asked at what point would the step down occur. Building Official Roussin reported the 'taper down' would have to be a rather long taper as you cannot taper down 24" in 4'. He further stated it would create a walking hazard and ADA hazard especially because this is going to be a rental unit. Chairperson Troiano asked the width of the property. Mr. Boersma answered the property width is 32.5'. Mr. Boersma stated the footprint of the dock, what people visibly see, is not changing. What does happen is the existing seawall, under the dock, would be extended out 18" from the current location. Chairperson Troiano stated she does not understand why the request. Board Member Furtak stated, if he heard correctly, it is because the construction is less expensive and better than tearing the old seawall out and putting a new one in. Mr. Boersma said it would also lessen the impact on the adjoining neighbor's seawall. Building Official Roussin said Mr. Boersma is moving the seawall 18" out into the bay so as not to have to replace the existing seawall. Attorney Wright reported, Mr. Boersma says, Sean Kirwan of Glen Boe's office indicated the State will approve a dock that extends 18" out into State owned bay bottom. Attorney Wright said approval would need to be contingent on State approval. Chairperson Troiano asked if the motion to recommend approval of the 97' long dock, 18" out from the property line could be amended to include the length of the east dock 18" out from the property line. Attorney Wright answered yes.

**MOTION:** Motion made by Chairperson Troiano, seconded by Board Member Furtak, to adopt the previous post hearing questions and to amend the previous motion recommending approval of the 97' long dock on the north side of the property to include approximately 32' on the east side of the property, stopping 5' from the adjoining property, both out 18" from the property line, contingent on written approval from the State of Florida.

**ON THE MOTION:** Approved by acclamation.

Chairperson Troiano reported the final component of this variance request is to rebuild the seawall 24" above the existing seawall. The post hearing questions are:

Question 1: Has the applicant shown good and sufficient cause to grant the variance?  
George Lancaster, yes. Gary Furtak, no. Steve Decrow, yes. Trudy Troiano, no.

Question 2: Will denial of the variance result in unnecessary hardship to the applicant? George Lancaster, no. Gary Furtak, no. Steve Decrow, no. Trudy Troiano, yes.

Question 3: Granting this variance will not result in public expense, a threat to public health & safety and it will not create a threat to or nuisance, or cause fraud or victimization of the public?  
George Lancaster, yes. Gary Furtak, no. Steve Decrow, yes. Trudy Troiano, no.

Question 4: The property has unique or peculiar conditions or circumstances to this property that do not apply to other properties in the same zoning district. George Lancaster, yes. Gary Furtak, no. Steve Decrow, yes. Trudy Troiano, yes.

Question 5: Granting this variance would not confer any special privileges in terms of established development in the immediate neighborhood?  
George Lancaster, yes. Gary Furtak, no. Steve Decrow, yes. Trudy Troiano, no.

Attorney Wright informed the Board Members as they have found the request not to meet all the criteria a 4/5 vote of the Commission will be required for approval of this component of the variance.

**MOTION:** Motion made by Board Member Furtak, seconded by Chairperson Troiano, to deny the request to rebuild the seawall 24" above the existing seawall.

**ON THE MOTION:** Roll call vote. Board Member Lancaster, yes; Board Member Furtak, no; Board Member Decrow, yes; Chairperson Troiano, yes.

**ANY OTHER BUSINESS** - None

The meeting adjourned at 12:38 a.m.

Respectfully submitted,



Kathryn McCullough  
City Clerk

There may be attendance and participation of city commission members at this meeting.

If a person decides to appeal any decision made with respect to any matter considered at any meeting, that person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.