

CITY OF ST. AUGUSTINE

Planning and Zoning Board Regular Meeting March 5, 2019

The Planning and Zoning Board met in formal session Tuesday, March 5, 2019, at 2:00 p.m. in the Alcazar Room at City Hall. The meeting was called to order by Grant Misterly, Chairperson and the following were present:

1. Roll Call:
Grant Misterly, Chairperson
Karen Zander, Vice Chairperson
Sarah Ryan
Carl Blow
Jon DePreter
Christina Opsahl
Maurice Morrisette

City Staff:
David Birchim, Director, Planning & Building Department
David Harrell, Senior Development Review Planner
John Cary, City Attorney
Candice Seymour, Recording Secretary

2. General Public hearings for Items Not on the Agenda

The Board heard comments from the following members of the public:

- Ron Rose
- B.J. Kalaidi¹

3. Approval of Minutes

Ms. Ryan asked that the fourth bullet under Board discussion for item 8(a) be reviewed and reworded for clarity.

Mr. Blow MOVED to APPROVE the February 5, 2019 minutes as amended. The motion was SECONDED by Mr. DePreter and APPROVED BY UANIMOOS VOICE VOTE.

Modifications to the Agenda

Mr. Harrell announced that the applicant for Item 4(a) had requested a continuance and

the request had been included in the meeting packet.

MOTION

Ms. Zander MOVED to CONTINUE application 2018-0167 to the May 7, 2019 meeting. The motion was SECONDED by Ms. Opsahl and APPROVED BY UNANIMOUS VOICE VOTE.

4. Conservation Overlay Zone Development

4. (a) 2018-0167 – Ryan Carter, Carter Environmental Services, Inc. – Applicant Fish Island Development, LLC – Owner PIN#: 1622100016 (Area roughly bounded by Plantation Island Drive S. projected to the Matanzas River, Matanzas River, State Road 312, then Plantation Island Drive S.)

To approve removal of preserved trees (Oaks & Cedars) for a linear retention pond to serve the neighboring parcel locate at PIN#: 1622100021.

¹ Notes attached to original minutes

Applicant requested a continuance to the May meeting. See Modifications to the Agenda for motion to continue.

**4. (b) 2019-0002 – Atlantis Holdings LLLP
– Applicant and Owner
21 Barcelona Avenue**

To approve removal of more than fifty (50) percent of the tree canopy, including one (1) preserved tree (Cedar) within Conservation Overlay Zone 3.

Mr. Harrell read the staff report and said based on the lack of evidence that this property is a buildable lot, staff finds the Board can **DENY WITHOUT PRJUDICE** until sufficient evidence is presented to consider this application.

Applicant was not present.

The Board provided their ex parte communications.

20 certified notices were sent, 6 were returned opposed and 4 had comments.

Public hearing was opened.

B.J. Kalaidi agreed with staff recommendation and asked if there was a way for the parcel to become a buildable lot.

Gail Rolleston gave details regarding the lot subject lot which was adjacent to hers and noted that it was unlike any other lot in the subdivision and shared her address. She was concerned with flooding if the lot were developed.

Public hearing was closed.

David Birchim noted that the Property Appraiser assessed two different Parcel IDs to allow for the City and County portions of the lot. He noted that the portions of the lot were auctioned separately but did not appear to have been legally subdivided. He concluded from his research that the subject property was not a buildable lot-of-record.

He said he had spoken to the property owner's attorney, but they had not advised how they wanted to proceed with the application.

The Board discussed property history with lack of evidence that the property was a buildable lot.

MOTION

Mr. Blow MOVED to DENY WITHOUT PREJUDICE Conservation Overlay Zone Development application 2019-0002 due to the evidence that the property is not a buildable lot. The motion was SECONDED by Jon DePreter.

VOTE ON MOTION:

AYES: Blow, DePreter, Morrisette, Opsahl, Ryan, Zander, Misterly

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

**4. (c) 2019-0009 – Ryan Carter, Carter Environmental Services, Inc. – Applicant
Ernest Little – Owner
5 Lighthouse Avenue**

To approve placement of a new dock with associated boat lift in Conservation Overlay Zone 1.

Mr. Harrell read the staff report and said based on a review of Section 11-29 and without the support of evidence to the contrary, staff finds that the Board can **APPROVE** placement of a new dock with associated boat lift in Conservation Overlay Zone 1 located at **5 Lighthouse Avenue**.

Ryan Carter reviewed the application.

The Board provided their ex parte communications.

20 certified notices were sent, 3 were returned in favor, 2 returned opposed and 4 had comments.

Public hearing was opened; however, there was no response.

The Board discussed:

- Interaction of the proposed residential dock with the existing City mooring field
- DEP issued permit indicated that the dock did not cross the permitted mooring field
- No proposed mooring on the east side of the dock that would interfere with ingress/egress and the mooring field
- Lighting intended to be shielded, directional lighting and condition as such would be acceptable to the applicant
- Dock designed in the middle of the property to make the shortest distance from land to deep water
- Rotating the dock or moving it to one side of the property could impact the view of neighboring properties
- Length of dock determined via length of neighboring docks and reaching mean low tide depth of four feet
- Questions as to whether the proposed dock would impede mooring field protection zone

MOTION

Mr. DePreter MOVED to APPROVE Conservation Overlay Zone Development application 2019-0009 Contingent upon verification that the proposed dock does not infringe upon the perimeter of the mooring field. The motion was SECONDED by Mr. Blow.

VOTE ON MOTION:

AYES: DePreter, Blow, Morrisette, Opsahl, Ryan, Zander, Grant

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

5. Use by Exception

5. (a) 2019-0017 – Kamala Corbett, Foley & Lardner LLP – Applicant

J & BFLP Ltd. – Owner **160 King Street**

To approve a use by exception allowing a 3,500 square foot medical marijuana dispensary.

Mr. Harrell read the staff report and said based on a review of Section 28-29 and without the support of evidence to the contrary, staff finds that the Board may **APPROVE** a permitted Use by Exception, as allowed by Sec. 28-209, in order to allow a 3,500 square foot medical marijuana dispensary located at **160 King Street**.

James Whitehouse reviewed the application with a presentation.²

There was a brief discussion to confirm that Mr. Whitehouse was an authorized representative of the applicant.

The Board provided their ex parte communications.

7 certified notices were sent, 1 was returned in favor, with comments. Additional e-mails in opposition and support were also included within the response packet.

Public hearing was opened.

B.J. Kalaidi gave a brief history of the property and spoke against the application because of the properties location on the King Street Entry Corridor.

Jeffrey Leibovitz cited concerns regarding the property's prominent location along the King Street Entry Corridor. He recommended that the Board put controls on the exception.

Melinda Rakoncay was not opposed to the dispensary but was concerned with the proposed location along the entry corridor and within close proximity to the Flagler College dormitory. She recommended

² Attached to original minutes

putting the dispensary along US1 South in a plaza or medical park.

George Anne Gillespie spoke in favor of the application. She stated that the medical marijuana process did not allow for students or the general public to purchase product from the dispensary. She noted rent may not be reasonable in other locations.

Charles Pappis felt that whether this was a dispensary or a pharmacy the location would not be appropriate. He noted that the ordinance may reference that medical marijuana dispensaries may require an address along US1.

Doreen Daugherty spoke in favor of the application citing that a prescription was required to receive medical marijuana. She stated she was in favor of having the drug available for those who needed it in St. Augustine.

Isabel Dickson spoke in favor of the application citing that the liquor store previously located at the property also sold controlled substances and other businesses would be located on the property as well.

Dan Allan Ditmore spoke in opposition citing that he felt marijuana was an addictive substance and should not be encouraged by such a location.

Public hearing was closed.

Mr. Cary read state law regarding medical marijuana facilities. He noted that the address did not have to be along US1 but the property did need direct vehicular access to US1.

The Board discussed:

- Bills submitted to the Florida Legislation to legalize marijuana could allow applicant to sell recreational marijuana without additional exception application

- Whether the existing medical marijuana facility could service the current population in the area that had medical marijuana prescriptions
- Only visual appearance of the structure was considered in Entry Corridor Guidelines
- Data which proved whether a medical marijuana dispensary had less traffic than a liquor store was not provided
- Signage would not indicate marijuana on the premises per state law and appearance may not be a concern
- Possibility of restricting activity to the sale of medical marijuana only

MOTION

Mr. DePreter MOVED to APPROVE the application 2019-0017 with the caveat that the signage will meet state code. The motion was SECONDED by Ms. Ryan

Mr. Misterly and Ms. Zander felt that the application did not meet the criteria for an exception as there was already an existing facility just north of the proposed location along US1 and therefore they would not support the application.

VOTE ON MOTION:

AYES: DePreter, Ryan, Opsahl

**NAYES: Morrisette, Blow, Zander,
Misterly**

MOTION FAILED 3/4

MOTION

Ms. Zander MOVED to DENY Use By Exception application 2019-0017, 160 King Street, to approve a use by exception allowing a 3,500 square foot medical marijuana dispensary because the application did not meet the criteria for an exception because it was too close to the pre-approved medical marijuana location and it did not

promote appearance. The motion was **SECONDED** by Mr. Morrisette.

Mr. Misterly concurred that the application did not meet the criteria for location based on its close proximity to the previously approved dispensary.

Mr. Blow said he would have approved the application had the applicant agreed to restrict their activities to medical marijuana only.

VOTE ON MOTION:

AYES: Zander, Morrisette, Blow, Misterly
NAYES: Opsahl, DePreter, Ryan
MOTION CARRIED 4/3

**5. (b) 2019-0012 – Gerald & Julie Ruling,
Life's a Beach Auto – Applicant
Vista Hotel IV Inc. – Owner
164 San Marco Avenue**

To approve an exception to allow automobile rental and sales business on the premises.

Mr. Harrell read the staff report and said based on a review of Section 28-29 and without the support of evidence to the contrary, staff finds that the Board may **CONTINUE** an Exception to allow automobile rental and sales business on the premises.

There was discussion and consensus of the Board to continue the application if the applicant was amenable to the continuation.

Gerald and Julie Ruling felt there was sufficient parking; however, based on the opinion of the Board they agreed to continue the application.

MOTION

Ms. Zander MOVED to CONTINUE the application 2019-0012, 164 San Marco Avenue, to approve an exception to allow automobile rental and sales

business on the premises to the April 2, 2019 meeting. The motion was SECONDED by Mr. DePreter and APPROVED BY UNANIMOUS VOICE VOTE.³

6. Comprehensive Plan Amendment

**6. (a) 2018-0170 – Ellen Avery-Smith,
Rogers Towers – Applicant
Charles J. David, Bishop of the Diocese
St. Augustine, Bishop of the Diocese
Catholic Center & Roman Catholic
Church – Owner**

**PIN #'s: 1920900000, 1920700000,
1959600000, 1959300000, 1959200000,
1958500000, 1920800000, 1908800000,
1909000000, 1909100000, & 1908900000
(Area roughly bounded by Ocean Ave.,
points immediately north of Ocean Ave.
near the Matanzas River, Matanzas River,
Pine Street, & San Marco Avenue.)**

To amend Future Land Use Map designations from Public/Semi-Public, Open Land and Residential Low Density to Commercial Low Intensity.

Mr. Misterly announced that the applications for items 6(a) and 7(a) would be heard together, and there would be a single public hearing for both items.

Ellen Avery-Smith and Joanna Stark reviewed the applications with a presentation.⁴

The Board provided their ex parte communications.

92 certified notices were sent, 1 was returned in favor, 16 returned opposed and 13 had comments.

Public hearing was opened.

The following members of the public spoke in opposition to the application:

³ Brief recess from 3:55p.m. to 4:07p.m.

⁴ Attached to original minutes

- Bruce Williams
- Steven Fox
- Victoria Sicuranza
- Ross Sicuranza
- Kevin Partel
- Chuck Gillingham
- Jeffery Leibovitz
- Don Heine
- Steph Manofsky
- Constance Gaitanis
- David Pepper
- Gina Burrell
- Steve Hill
- Nancy Bertogli
- Mike Piesco
- John Danahy
- George Miller
- Rick Spence
- Dan Allan Ditmore
- Guy Van Doren
- Gaere MacDonald
- Michele Van Doren
- Nancy Pellicer
- Yolanda Garcia Ditmore
- Jeff Yeomans
- Patrick Thomas
- Johnnie Simmerson
- Diana Kabus
- James Merritt
- Theresa Merritt
- Melinda Rakoncay
- Matthew Shaffer
- Patricia Merritt
- B.J. Kalaidi
- Emily Genovar

Members of the public voiced the following concerns and comments in opposition to the application:

- Negative traffic impacts and DOT requirements
- Noise and use of amplification on the property
- Further large events on the property
- Intensification of use and density

- Diocese use of money could be allocated differently
- Removal of green space and public access
- Alterations to a sacred and historic area
- Proposed parking garage
- Recommendation of PUD application
- Negative impacts to surrounding residential neighborhood
- Current bus parking issues
- Necessity of a buffer area indicated more intense use
- Possibility of future sale of the property
- Environmental impacts of proposed changes

Father John Guillespi spoke in favor of the application stating that the use would not be intensified due to approval of the application and the proposed events were the same that have been continuous in the recent past. He encouraged neighboring residents to be active participants in planning the project.

Public hearing was closed.

Ms. Avery-Smith responded to public concerns. She noted that the property was privately owned and the current Public/Semi-Public land use designation did not prohibit fencing of the property which could still be accessed for free during regular hours of operation. She added that other repairs to structures and retaining walls on the property were approved to rebuild and protect the property after hurricane damage. She addressed concerns regarding the amphitheater clarifying that it would be an earthen amphitheater with an altar at the center for religious services which would comfortably fit a maximum of 800 people for services that were already occurring seasonally. She reiterated that the Land Use Designation issue was an ongoing problem to which the application was meant to be a solution. Ms.

Avery-Smith proposed, since the Board would be considering amendments to the subject property's Land-Use Designation in the subsequent discussion item, the application be continued to the June Planning and Zoning Board meeting in the event that the Board recommended approval of the text amendment change to include churches under Public/Semi-Public Land Use which would fix the underlying problem and main reason for the applications.

There was Board discussion regarding consideration of continuing the application as suggested by the applicant.

Mr. Birchim discussed the text amendment under item 8(a), concurring with the applicant that approval of the change would fix the applicant's concerns and may allow them to proceed with construction of the proposed amphitheater as a religious use due to State regulations. He noted that sufficient parking would still be necessary on the property for the amphitheater as well as other uses on the property and the proposed parking garage could be the answer. He added that the lease of parking spaces by a neighboring hotel caused additional legal questions which would need further research.

Discussion continued regarding continuing the application to June with concerns about changes to the application and proper public advertising. Staff responded, clarifying that any changes to the application would prompt re-advertising.

Board discussion continued regarding the following:

- Denial of the applications would trigger an appeal
- Possibility of PUD application
- Options to achieve required parking including a parking garage, surface area parking in existing greenspace, or filling in a portion of the lake on the property subject to storm water

- Possibility of changing the land use designation to Open Land
- Density and intensity of Open Land and Residential Zoning categories
- Open Land designation may be more intense than residential zoning
- Whether, in retrospect, the applicant should have requested a continuance prior to the hearing to allow the staff-initiated discussion regarding Public/Semi-Public Land Use to proceed first
- A denial of the application would continue an existing Land Use inconsistency and be appealable by the applicant

MOTION

Ms. Zander MOVED to CONTINUE application 2018-0170 to amend the Future Land Use Map Designation from Public/Semi-Public, Open Land, and Residential Low Density to Commercial Low Intensity to the June 4, 2019 meeting. The motion was SECONDED by Ms. Opsahl.

VOTE ON MOTION:

**AYES: Zander, Opsahl, Morrisette,
DePreter, Blow, Ryan, Misterly**

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

7. Rezoning

7. (a) 2018-0171 – Ellen Avery-Smith, Rogers Towers – Applicant

Charles J. David, Bishop of the Diocese
St. Augustine, Bishop of the Diocese
Catholic Center & Roman Catholic
Church – Owner

PIN #'s: 1920900000, 1920700000,
1959600000, 1959300000, 1959200000,
1958500000, 1920800000, 1908800000,
1909000000, 1909100000, & 1908900000
(Area roughly bounded by Ocean Ave.,
points immediately north of Ocean Ave.
near the Matanzas River, Matanzas River,
Pine Street, & San Marco Avenue.)

To approve a rezoning from Open Land (OL) and Residential Single Family 2 (RS-2) to Commercial Low-Two (CL-2).

Heard with Item 6(a).

MOTION

Ms. Zander MOVED to CONTINUE application 2018-0171 to approve a rezoning from Open Land (OL) and Residential Single-Family 2 (RS-2) to Commercial Low 2 (CL-2) to the June 4, 2019 meeting. The motion was SECONDED by Mr. Morrisette.

VOTE ON MOTION:

AYES: Zander, Morrisette, Opsahl,
DePreter, Blow, Ryan, Misterly

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

8. Other Business

8. (a) Discussion and recommendation to amend the text of Future Land Use Policy 1.3 related to the definition of the Public/Semi-Public Land Use Category

Mr. Birchim introduced the subject, noting the changes made based on previous Board discussion.

The Board discussed the following:

- Definitions for certain uses such as art-facility and whether the definitions may be too broad
- Desire to have an inventory of properties with Public/Semi-public Land Use Designations and their corresponding zoning categories
- Possibility of creating a new Land Use that was more restrictive, or making the subject Land Use designation more restrictive by removing some uses

- Consideration of striking the following to make the land use more restrictive:
 - Hospitals
 - Supportive Health Care Units
 - Nursing Homes
 - Arts and Cultural or Civic Facilities or Similar Activities
- Consideration of adding churches only to the existing Land Use language
- Desire to research and determine all related non-conformities

Public comment was opened and the following members of the public spoke:

- Melinda Rakoncay
- Ross Sicuranza
- J.D. Hodgin
- Steve Hill
- B.J. Kalaidi
- Ellen Avery-Smith
- George Miller
- Patricia Merritt
- Greg Jackson

Public comment was closed.

Mr. Cary responded to public comments regarding a court case which he considered not applicable to the current situation.

City staff agreed to research current zoning for all properties under Public-Semi-Public Land Use.

There was Board consensus to further discuss the item at the April meeting.

Board Member Comments

Ms. Zander thanked former Mayor Nancy Shaver for her commitment to the City.

9. Adjournment

Having no further business, Mr. Misterly adjourned the meeting at 7:37 P.M.⁵



Grant Misterly, Chairperson

⁵ Transcribed by Candice Seymour