

**CITY OF PORT ST. LUCIE
BOARD OF ZONING APPEALS MEETING MINUTES
JUNE 18, 2012**

A meeting of the CITY COUNCIL OF THE CITY OF PORT ST. LUCIE serving as the BOARD OF ZONING APPEALS was called to order on June 18, 2012, at 1:30 p.m., at PORT ST. LUCIE CITY HALL, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

1. CALL TO ORDER

2. ROLL CALL

Council Members

Present: Mayor JoAnn M. Faiella
Vice Mayor Linda Bartz
Councilman Jack Kelly
Councilwoman Shannon M. Martin

Members Not

Present: Councilwoman Michelle Lee Berger

Others Present:

Gregory J. Oravec, City Manager/CRA Director
Pam E. Booker, Senior Assistant City Attorney
James Angstadt, Acting Assistant City Engineer
Milton Collins, Assistant City Attorney
Sherman Conrad, Parks and Recreation Director
Anne Cox, Assistant Planning and Zoning
Director
Edward Cunningham, Communications Director
Joel Dramis, Building Official
Daniel Holbrook, Planning and Zoning Director
Renee Major, Risk Management Director
Jesus Merejo, Utility Systems Director
David K. Pollard, OMB Director
Karen A. Phillips, City Clerk
Pat Selmer, Acting Community Services Director
Tonya Taylor, Facilities Administrator, Parks &
Recreation
Carol M. Heintz, Assistant City Clerk

Mayor Faiella said, "I want to introduce Maria Schwab, who won a ticket in a fundraiser we did. She won 'Mirror the Mayor for a Day.'"

3. PUBLIC HEARING - ZONING APPEAL 12-2, APPEAL THE DECISION OF THE PLANNING & ZONING BOARD ON APRIL 3, 2012, DENYING A VARIANCE TO CHAPTER 158.221 OFF-STREET PARKING AND LIGHTING - HANDICAPPED PARKING SPACES OF THE ZONING CODE, P12-029.

Mr. Holbrook said, "The applicant is Zarknap, LLC, Mr. Pankraz, and

the location is 1679 to 1691 SW South Macedo. The zoning of the subject property is CS, and the request is a variance to the requirement for 12 parking spaces. The original approval for Phase B approved 7,500 square feet of total building space. The retail at the time of approval was 1,800 and warehouse was 5,700. Since then a number of internal build outs have occurred over the years. With that there have been some citations from the Building Department and since the property owner has been noticed, he has removed over 2,400 square feet of office. As part of that removal, he has also requested a variance to maintain and keep a certain amount of office. This is only dealing with the parking request, though. If this variance is approved, a Site Plan amendment will have to come back and amend the approved Site Plan to correct the square footage. The new request, which is being proposed, is 5,062 square feet for office and 3,888 square feet for warehouse. The initial building did receive a CO in 1985 for the shell. The second floor, which was never contemplated in the original approval, has been installed for a number of the bays. Originally, the staff reviewed the recommendation and recommended denial based on the criteria of variances established in the Zoning Code. The Planning and Zoning Board unanimously recommended denial. It's before the Board for your approval, approval with conditions, or to deny. The applicant is present." Councilman Kelly asked, "What was the vote on the Planning and Zoning Board?" Mr. Holbrook replied, "It was unanimous."

Mayor Faiella opened the Public Hearing.

JOHN PANKRAZ, Elite Electric & Air, stated, "The building is under the name of Zarknap. We purchased the building, and it had a certain amount of square footage of build outs. We learned a little over a year and a half ago that the building had no permits pulled on it. Then we started going through the process of trying to figure it out. We got a demolition permit and started tearing down the end bay. Then we found out that there were no permits on the entire building after we had just started that. I got disgusted and didn't do anything for a while. Then the Building Department said that I had to get moving on it. They sent me a letter, so I started getting reactive with it. Mr. Finizio was instrumental in trying to put it all together. He said that there wasn't enough parking for the number of offices that are in the building based on the initial zoning, so here we are today. I would like you to take into consideration that I purchased the building about eight years ago. When I purchased the building the title company didn't say that there were no permits pulled on the building. I learned several years later that there were no permits pulled. In the zoning, it says that new businesses are supposed to be inspected. I think they're being inspected now, but when I bought the building and for the 20 years prior to that, the building was never inspected by zoning or the Building Department itself. I wouldn't have purchased the building if I knew that the offices were not in compliance as a whole. The bottom line is that we have 28 parking spaces on our

property. Eight of them are zoned for the building next to me. The building next to me never uses those spaces. It's a Gentleman's Agreement. This is my property. He doesn't pay taxes on it, and he knows that he doesn't pay taxes on it. I don't rent them."

Councilwoman Martin stated, "I went out there today and met with you. From what I can see, you don't use half of the spaces you have there now. Many of them are empty, and I realize there are no tenants in there." Mr. Pankraz noted, "That's correct. Right now they're not being used, but if we had the end two bays rented, then yes, they could all be used." Councilwoman Martin asked, "How much have you spent so far on trying to come into compliance?" Mr. Pankraz replied, "So far about \$7,000 in the past year and a half. We had about \$2,000 for demo permits, and then \$1,000 in dump fees." Councilwoman Martin asked, "If this variance is not granted, would he have to rip out the inside of what he did in his office space upstairs with all of the improvements that he made?" Mr. Holbrook replied, "That's the next step to come into compliance." Councilwoman Martin asked, "He would have to rip out all of that?" Mr. Holbrook replied, "The original approval didn't contemplate a second floor, so that's additional square footage. We had discussed in the past applying for a parking variance. One of things we pointed out was that there is parking on Macedo from 6:00 a.m. to 6:00 p.m., so the worst-case scenario is that parking will have to occur on street, but on the west side of Macedo." Councilwoman Martin asked, "So will he have to essentially destroy his entire office in order to comply without getting a variance?" Mr. Holbrook replied in the affirmative. Mayor Faiella asked, "Did we go there and just notice a violation? How did this come about?" Mr. Dramis replied, "The Building Department went out to do an inspection on that property, because there were some air conditioners that were added without permits. During the discovery of the air conditioner work without a permit, it was determined that there was an upstairs being used that didn't have any permits. That's how this all got uncovered."

Vice Mayor Bartz asked, "Were there no permits pulled ever since the shell of this building?" Mr. Dramis replied, "No. Actually there was a permit that was issued for one unit, which I assume is the unit that Mr. Pankraz is occupying for his business." Vice Mayor Bartz asked, "If the permits were pulled for there, is his office area in jeopardy?" Mr. Dramis replied, "The permit was for Unit #10, and the address does coincide with Mr. Pankraz's office. We assume that Unit #10 is the one that he's occupying according to the CO, and that does have a permit. Now the question is whether the upstairs portion is permitted or not, and we don't have any record of the upstairs portion. So the downstairs portion was. Now is it in the same condition as it was when it was permitted? I would have to go out and physically compare the plans to the construction." Vice Mayor Bartz pointed out, "Part of my confusion is that I'm hearing from Mr. Pankraz that there were no permits, and then I'm hearing from Mr. Dramis that there were permits." Mr.

Dramis remarked, "As the statement was made by one of the investigators, the confusion that comes up with this property is that there were several buildings built under one parcel, and they were built at the same time. The confusion is that when he went to go look it up under one address in an old permit file, he couldn't find any permits. Further investigation by my permit supervisor did find a permit for the one bay, or the 1691, which is the unit that he occupies." Councilwoman Martin asked, "Before Mr. Pankraz purchased the property, air conditioning was put in and no air conditioning permits were ever pulled for that? Did this start before he even owned the building?" Mr. Dramis replied, "No. These are brand new units that were discovered." Councilwoman Martin asked, "So there was never air conditioning there before?" Mr. Dramis replied, "To my knowledge, no. This is permitted as a warehouse shell. There were no walls, and there was nothing added inside the buildings."

Councilman Kelly said, "You're a busy man, you employ a number of people, and you're an asset to the City. However, when you buy a piece of property, next time you're going to do better due diligence. There is a hardship here. I'm going to be supporting this appeal, and the reason is because you try to stay consistent with these. We approved one very similar to this several years ago. In trying to be consistent, I'm going to support this." Councilwoman Martin stated, "Even if Council decides to approve the variance, there are still steps to take. He has to amend the Site Plan. Mr. Pankraz would still be encumbered by spending a lot of money in the future to get everything correct. He's here. He's a business owner. He employs people. He's making improvements, which from what I see are tremendous improvements. He spent \$7,000 on demolition already to comply with what the City wanted. Still he has all of these out-of-pocket costs to really do what we want him to do. From what I see, I don't think it was just his fault. I think it was partly the City's fault as well, so I'm going to be supporting Councilman Kelly in this." There being no further comments, Mayor Faiella closed the Public Hearing. Councilman Kelly **moved** to approve the appeal with the caveat that he finishes all of the other compliances that are necessary. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: for approval of Zoning Appeal 12-2, with the caveat that the owner continues with the improvements required. The **motion passed unanimously** by roll call vote.

The City Manager pointed out, "The City has no ability to know what's happening inside of a building. In response to Councilwoman Martin's comment about it being the City's fault, until we have reason to have access to the building or a suspicion to get an administrative warrant, we don't know what's happening inside a building. Owners, over time, can do any number of things, and we often find that they do. Second stories have to be permitted, because if the second story comes tumbling down life is at risk. Those requirements are there for a reason, and then they have to be

followed, even if a good guy gets caught up in those rules." Councilwoman Martin remarked, "I understand that, and I understand the reason why this is being done now is because we have good leadership in our Code Department. We need to make sure the City is doing what it should be doing, and make sure that everyone is in compliance in the community. These things were not happening prior to Mr. Dramis. In essence, I do believe the City is partially responsible for that. That's why I made the comments I made." The City Manager noted, "This would have always been Mr. Dramis's responsibility, because of the Building Code issue. I think the important lesson for our citizens and those watching is buyer beware, and do your due diligence."

4. **PUBLIC HEARING - ZONING APPEAL 12-3**, APPEAL THE DECISION OF THE PLANNING & ZONING BOARD ON MAY 1, 2012, DENYING 1) A VARIANCE TO CHAPTER 158.217(C)(2)(I) TO ALLOW A SECOND GARAGE, 2) A VARIANCE TO CHAPTER 158.217(C)(2)(I) TO ALLOW A SECOND GARAGE OVER 300 SQUARE FEET THAT DOES NOT CONFORM IN APPEARANCE, MATERIAL, AND DESIGN OF THE HOUSE, AND 3) A VARIANCE TO CHAPTER 158.217(C)(2)(H) TO ALLOW A STORAGE SHED OVER 300 SQUARE FEET THAT DOES NOT CONFORM IN APPEARANCE, MATERIAL, AND DESIGN TO THE HOUSE, P12-025

Mr. Holbrook said, "This application is a variance that contains three variances. The applicants are Mr. and Mrs. Brown, and they are both here. The location of the subject property is 2799 SW Ensenada Terrace, and the property is zoned RS-2. The first variance was to permit a second garage. The second and third variance is for the two structures that are over 300 square feet, not the primary structure, that they have to be similar in appearance, material, and design of the house. This was reviewed by staff and the staff recommendation based off of the variance criteria of the Zoning Code found it non-compliant and, therefore, staff recommends denial. This went to the Planning and Zoning Board and they had three separate motions. The first one was for the permit of the second garage. A motion to approve failed, with a vote of 4 to 1. The second variance request for the second garage not being of the same appearance, material, and design of the house was denied with a vote of 4 to 1. The third was for the storage building that didn't have the appearance, material, and design of the house, and that was denied with a vote of 3 to 2."

Mayor Faiella opened the Public Hearing.

MR. BROWN, owner, said, "It's not located next to the house. It's separate. I think there was some confusion at one time. When they were voting, several people made comments and the other people didn't listen to them. It's not attached to the house." Mayor Faiella stated, "Just to shed some light on this, I attend a majority of the Planning and Zoning meetings if I don't have anything else scheduled. I've been monitoring this to see how things were going. I came to your house today to actually see the site, the house, where the shed is, and the other canopies. I'm

proud to say that the property looks fantastic. I don't have any problems with the shed, and I will be supporting this today." Mr. Brown noted, "I haven't had any of the neighbors complain." Mayor Faiella pointed out, "There has been tremendous improvement made to the property from the first photos that I saw, and I thank you for that."

There being no further comments, Mayor Faiella closed the Public Hearing. Councilman Kelly remarked, "I've never voted for one of these in 12 years. It's not a hardship that the City has caused. You're fortunate to have your neighbor's support on this, because most neighbors do not. I wouldn't want to live next door to a shed like that, and I won't be supporting this today." Councilwoman Martin said, "I was at the Planning and Zoning meeting as well. You stated that you were going to get a permit, but because it didn't comply with what the City wanted you decided not to get the permit. I'm surprised knowing that you had to do certain things to get the permit that you wouldn't want to do what you had to do in order to comply with that." Mr. Brown stated, "They didn't like the one thing, and I've taken that down." Councilwoman Martin asked, "What about the issue with the garage having to look the same as your house?" Mr. Brown noted, "I couldn't do that. That would be impossible. It's the same color, but has far as the material that would be like building a big building. It's a prefab material that meets all of the requirements, but it's not the same as the house. It's 200 to 300 feet from the house." Councilman Kelly **moved** to deny Zoning Appeal 12-3. Councilwoman Martin **seconded** the motion. Ms. Booker commented, "I would ask for clarification on that since there were three different motions. I would recommend that this Board take them separately. There are actually three different variances." Councilman Kelly asked, "Can I deny all three in the first motion?" Ms. Booker replied, "I would ask that it's done separately. Everyone else may not be on the same page with that."

Councilman Kelly said, "I **move** to deny Zoning Appeal 12-3 on #1, the variance to Chapter 158.217." Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: to deny the variance appeal for 12-3, Item #1. The **motion tied** by roll call vote, with Councilwoman Martin and Councilman Kelly voting in favor, and Vice Mayor Bartz and Mayor Faiella voting against. Councilman Kelly pointed out, "Because it's a 2-2 vote, it does not go through." Councilman Kelly **moved** to deny Zoning Appeal 12-3, a variance to Chapter 158.217(C) to allow a second garage over 300 square feet that does not conform in appearance, material, and design of the house. Councilwoman Martin **seconded** the motion. The City Clerk restated the motion as follows: to deny the variance appeal for 12-3, Item #2. The **motion tied** by roll call vote, with Councilman Kelly and Councilwoman Martin voting in favor, and Vice Mayor Bartz and Mayor Faiella voting against. Councilman Kelly **moved** to deny Zoning Appeal 12-3, a variance to Chapter 158.217 to allow a storage shed over 300 square feet that does not conform in appearance, material, and design of the house. Councilwoman Martin

seconded the motion. The City Clerk restated the motion as follows: to deny the appeal for 12-3, Item #3. The **motion tied** by roll call vote, with Councilwoman Martin and Councilman Kelly voting in favor, and Vice Mayor Bartz and Mayor Faiella voting against. Councilman Kelly noted, "It is a beautiful house. There's nothing wrong with the appearance. With me it's just consistency, and I don't think I've ever supported having that second garage."

ADJOURN

There being no further business, the meeting adjourned at 2:00 p.m.

Karen A. Phillips, City Clerk

Carol M. Heintz, Assistant City Clerk

(**CLERK'S NOTE:** The tie votes for Zoning Appeal 12-3 resulted in the decision of the Planning and Zoning Board as the final decision).