ADDITIONAL INFORMATION

Zoning Appeal
COUNCIL ITEM #3
DATE 1/11/10

LAW OFFICES OF JOHN L. DI MASI, P.A.
801 N. ORANGE AVENUE, SUITE 500
ORLANDO, FLORIDA 32801-1014
PH: 407-839-3383 • FX: 407-839-3384

JOHN L. DI MASI
jdimasi@orlando-law.com

MARY DOTY SOLIK
PARTNER
msolik@orlando-law.com

FRANK J. LACQUANITI
flacquaniti@orlando-law.com

TIFFANY MOORE RUSSELL
ORANGE COUNTY COMMISSIONER
tmrussell@orlando-law.com

WENDY SHAY TEMPLE
wtemple@orlando-law.com

January 5, 2010

VIA OVERNIGHT MAIL

Ms. Karen A. Phillips
City Clerk
City of Port St. Lucie
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984

RE: Zoning Appeal 10-1

Dear Ms. Phillips:

This firm serves as outside counsel to T-Mobile in referenced appeal. Enclosed are backup materials that we wish to have included in the agenda packets. The documents, specifically identified, are as follows:

1. City of Port St. Lucie Code of Ordinances Article XV-Variances.
2. City of Port St. Lucie Code of Ordinances Article VI-Open Space Districts.
3. City of Port St. Lucie Code of Ordinances Article VII- Institutional Districts.

Sincerely,

Mary D. Solik

Mary D. Solik

CC: Deeah Riley
Karen Osbourne

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ARTICLE XV. - VARIANCES

Sec. 158.295. - Planning and Zoning Board or Zoning Administrator (Director of Planning and Zoning) to hear Variances; Powers and Duties of Board and Zoning Administrator.

Sec. 158.296. - Allowable Variances; Use Variances Prohibited.

Sec. 158.297. - Application for Variance.

Sec. 158.298. - Public Hearing.

Sec. 158.299. - Requirement for Decision by Planning and Zoning Board.

Sec. 158.300. - Action Contrary to Administrative Decision Prohibited.

Sec. 158.301. - Application for Reconsideration or Rehearing.

Sec. 158.302. - Appeal from Decision.

Secs. 158.303—158.314. - Reserved.

Sec. 158.295. - Planning and Zoning Board or Zoning Administrator (Director of Planning and Zoning) to hear Variances; Powers and Duties of Board and Zoning Administrator.

(A)
The Planning and Zoning Board or Zoning Administrator shall hear and consider requests for variances from the provisions of this chapter.
(B) (1)
The Zoning Administrator has the authority to hear and decide the following administrative variances:
a.
Variances of less than thirty-six (36) inches (three (3) feet) to height and front, rear and side yard setbacks for existing structures. Such an administrative variance does not permit reconstruction of a destroyed structure.
b.
Variances of less than thirty-six (36) inches (three (3) feet) to front, rear and side yard setbacks for existing accessory structures. Such an administrative variance does not permit reconstruction of a destroyed accessory structure.
c.
Variances of six (6) inches or less to height restrictions and front, rear and side yard setbacks for existing main, or accessory structures shall be approved at the discretion of the Zoning Administrator without formal application.
(2)
The Planning and Zoning Board is authorized to hear and decide all other variances; including any

referred to it pursuant to subsection 158.298(D).
(C)
Duties of the Zoning Administrator and Planning and Zoning Board in authorizing a variance. The Planning and Zoning Board and Zoning Administrator may authorize the variance from the provisions of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary and undue hardship. In order to authorize any variance from the terms of this chapter, the Planning and Zoning Board or Zoning Administrator should consider:
(1)
That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
(2)
That the special conditions and circumstances do not result from any action of the applicant;
(3)
That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district;
(4)
That literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant;
(5)
That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
(6)
That the granting of the variance will be in harmony with the general intent and purpose of the chapter and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
(7)
That there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both.
(D)
Before making his/her decision on a request for an administrative variance, the Zoning Administrator shall notify adjacent property owners within three hundred (300) feet of the site in question. If a written objection is received from adjacent property owners within thirty (30) days of the notice, then the variance shall be heard by the Planning and Zoning Board. In addition, the Zoning Administrator, at his/her discretion, may forward any variance request to the Planning and Zoning Board for final action.

(Ord. No. 98-84, § 1, 3-22-99; Ord. No. 00-104, § 1, 11-27-00; Ord. No. 05-100, § 1, 7-25-05)

Sec. 158.296. - Allowable Variances; Use Variances Prohibited.

(A)
A variance is authorized only for height, area, and size of structure, yard size, building setback, lot size requirements, and other applicable development regulations, excluding use.
(B)
In its consideration of a request for variance, the Planning and Zoning Board or the Zoning Administrator shall not utilize the existence of nonconforming use of neighboring lands, structures, or buildings in the same or adjacent zoning districts as grounds for the granting of a request for variance, nor shall the Planning and Zoning Board or the Zoning Administrator utilize any permitted use of lands, structures, or buildings within the same or adjacent zoning districts as a basis for approval.

(C)
No variance or approval of use shall be granted so as to permit a use not specified as a permitted use or permissible as a special exception use within this chapter for the particular zoning district involved.

(Ord. No. 98-84, § 1, 3-22-99)

Sec. 158.297. - Application for Variance.

(A)
Application Limitations.
(1)
No application for a variance shall be accepted for filing if all or any portion of the land which is the subject of the application was part of a previous application meeting any of the following conditions:
a.
An application denied by the Planning and Zoning Board or by the Zoning Administrator for the same variance within the previous 12-month period, where the applicable circumstances relating to the variance have not changed;
b.
An application allowed to be withdrawn by the Planning and Zoning Board or by the Zoning Administrator within the previous 12-month period and relating to the same variance, where the applicable circumstances relating to the variance have not changed.
(2)
The time limits set forth above may be waived by the Planning and Zoning Board or by the Zoning Administrator when the action is necessary to prevent injustice or to facilitate the proper development of the city.
(B)
Application Requirements. Application for all variances shall be filed with the Zoning Administrator upon a standard form as may be provided therefor and shall include all necessary information and drawings as may be required to clearly describe the nature and extent of the variance sought. The applicant shall be required to pay any fee as may be established to defray processing costs relative to the review and hearing of the application.

(Ord. No. 98-84, § 1, 3-22-99)

Sec. 158.298. - Public Hearing.

(A)
Hearing Required. Before making its decision on a request for variance, the Planning and Zoning Board shall hold a public hearing thereon.
(B)
Notification Requirements. The following notification procedures shall be utilized with respect to appeals, and requests for variances:
(1)
Requests for variances filed in proper form shall be numbered serially, docketed, and placed upon the agenda of the Planning and Zoning Board. Having thus been established, the agenda of the Planning and Zoning Board shall be posted as soon as practical upon a public notice board normally utilized for such notice within the offices of the City.
(2)
Notice of public hearings shall be published at least seven (7) days prior to the hearings, in a newspaper of general circulation in the City. The notice shall include the dates, times, places, and locations of hearing, and shall contain a description of the relief or action sought and the subject property.

(3)
In addition to the required notices heretofore set forth, other methods of notification may be utilized by the Planning and Zoning Board at its option. These methods may include, but not be limited to, mail notification to owners of property within a maximum of three hundred (300) feet to property forming the subject of the public hearing, and notice may be posted upon the property which is the subject of the public hearing. The Zoning Administrator is authorized to post any notice upon property, and it shall be unlawful for any person to remove or tamper with that notice during the time period as may be established for the maintenance of the notice.
(C)
Conduct of Hearings. Any interested person shall have the right to submit oral or written testimony at the hearings. All testimony and exhibits submitted at the hearing, including the request for variance, shall be incorporated into the application file and shall be considered a part of the record on the application. Evidence which is immaterial, irrelevant, or unduly repetitious may be excluded. The hearings may be adjourned from time to time to dates established by public announcement at those hearings and shall be the earliest practical date for resumption of the hearings.
(D)
Notification. Before making his/her decision on a request for an administrative variance, the Zoning Administrator shall notify adjacent property owners within three hundred (300) feet of the site in question. If a written objection is received from adjacent property owners within thirty (30) days of the notice, then the variance shall be heard and decided by the Planning and Zoning Board. In addition, the Zoning Administrator, at his/her discretion, may forward any variance request to the Planning and Zoning Board for final action.

(Ord. No. 98-84, § 1, 3-22-99)

Sec. 158.299. - Requirement for Decision by Planning and Zoning Board.

A decision by the Planning and Zoning Board with respect to a request for a variance shall be rendered within sixty (60) days following the close of the public hearing thereon. A vote of approval by five (5) members of the established Planning and Zoning Board is required to grant a variance from this chapter. All decisions of the Planning and Zoning Board shall be made in open session and the action embodying the decision approving, denying, or dismissing any application shall not be valid unless it is incorporated into the minutes of the meeting at which the action is taken. A decision of the Zoning Administrator with respect to an administrative variance shall be rendered within thirty (30) days following expiration of the time period which adjacent property owners had to object. A record of all actions taken by the Planning and Zoning Board and by the Zoning Administrator shall be maintained within the office of the Zoning Administrator.

(Ord. No. 98-84, § 1, 3-22-99)

Sec. 158.300. - Action Contrary to Administrative Decision Prohibited.

It shall be unlawful for an appellant or petitioner to proceed with any action which has been disapproved or denied by the Planning and Zoning Board or by the Zoning Administrator and it shall be equally unlawful for an appellant or petitioner to proceed with any action contrary to that specifically approved by the Planning and Zoning Board or by the Zoning Administrator, including any conditions and safeguards which the Planning and Zoning Board or the Zoning Administrator may have imposed.

(Ord. No. 98-84, § 1, 3-22-99)

Sec. 158.301. - Application for Reconsideration or Rehearing.

An application for the reconsideration or rehearing of a petition may be made in the same manner as provided for an original consideration or hearing. However, no appeal or petition requesting the same relief or approval for the same property shall be accepted by the Planning and Zoning Board or by the Zoning Administrator for reconsideration or rehearing for a period of twelve (12) months following the date of any action taken by the Planning and Zoning Board or by the Zoning Administrator in the matter if, from the record, it shall appear that there has been no substantial change in facts, evidence, or conditions.

(Ord. No. 98-84, § 1, 3-22-99)

Sec. 158.302. - Appeal from Decision.

A decision of the Planning and Zoning Board or the Zoning Administrator to deny or approve a request for a variance may be appealed by an affected party with standing to the Board of Zoning Appeals within fifteen (15) days of the date of the Planning and Zoning Board's or the Zoning Administrator's decision; provided, that written notice of the appeal shall be filed with the City clerk within that period of time. Decisions by the Board of Zoning Appeals, or unappealed decisions by the Planning and Zoning Board or Zoning Administrator, shall be considered final.

(Ord. No. 98-84, § 1, 3-22-99)

Secs. 158.303—158.314. - Reserved.

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Port St. Lucie, Florida, Code of Ordinances >> TITLE XV - LAND USAGE >> CHAPTER 158. - ZONING CODE >> ARTICLE VI. - OPEN SPACE DISTRICTS >>

ARTICLE VI. - OPEN SPACE DISTRICTS

Sec. 158.100. - Open Space Recreational Zoning District (OSR).

Sec. 158.101. - Open Space Conservation Zoning District (OSC).

Secs. 158.102—158.109. - Reserved.

Sec. 158.100. - Open Space Recreational Zoning District (OSR).

(A)
Purpose. The purpose of the open space recreational zoning district (OSR) shall be to locate and establish areas within the City which are deemed to be uniquely suited for the development and maintenance of public open space and recreational activities, and other public and semi-public facilities necessary to provide services to the citizens of Port St. Lucie and to promote the public welfare; to designate those uses and services deemed appropriate and proper for location and development within said zoning district; and to establish development standards and provisions as are appropriate to ensure proper development and a high degree of land use compatibility.
(B)
Permitted Principal Uses and Structures. The following principal uses and structures are permitted:
(1)
Park or playground, or other recreation or cultural facility (public);
(2)
Golf course and clubhouse (public and private) with or without an alcoholic beverage license for sale of alcoholic beverages to members and guests of the clubhouse in accordance with Chapter 110.
(C)
Special Exception Uses. The following uses may be permitted only following the review and specific approval thereof by the City Council:
(1)
Marina (public or private);
(2)
Wireless communication antennas and towers, as set forth in section 158.213.
(D)
Accessory Uses. As set forth within section 158.217. Accessory uses within this district shall be construed to include incidental retail uses such as cafeterias, gift or variety shops, soda bars, and similar use activities conducted solely for the convenience of patrons or visitors.
(E)
Minimum Lot Requirements. Site of adequate size and proportions to accommodate the intended use, but not less than twenty thousand (20,000) square feet and having a minimum width of one hundred (100) feet.
(F)
Maximum Building Coverage. Thirty-five (35) percent, provided that the combined area coverage of all impervious surfaces shall not exceed fifty (50) percent.

(G)
Maximum Building Height. Thirty-five (35) feet.
(H)
Minimum Living Area. Not applicable.
(I)
Setback Requirements and Buffering. All yard requirements shall be established for each specific use as part of the site plan review process, provided that the minimum building setback line shall be twenty-five (25) feet abutting property zoned residential. Where applicable, buffering shall be provided in accordance with the landscape requirements of subsection 153.04(G).
(J)
Off-Street Parking and Service Requirements. As set forth in subsection 158.221.
(K)
Site Plan Review. All permitted and special exception uses shall be subject to the provisions of sections 158.235 through 158.245.

(Ord. No. 98-84, § 1, 3-22-99; Am. Ord. 02-130, § 1(Exh. A), 2-10-03)

Sec. 158.101. - Open Space Conservation Zoning District (OSC).

(A)
Purpose. The purpose of the open space conservation zoning district (OSC) shall be to locate and establish areas within the City which are deemed to be uniquely suited for the conservation of open space and the natural environment, while allowing the limited use of said areas for recreational and open space activities.
(B)
Permitted Principal Uses and Structures. The following principal uses and structures are permitted:
(1)
Open space devoted to the conservation and maintenance of natural waterways, vegetation, and wild life;
(2)
Hiking and/or bicycle trails;
(3)
Nature study areas and boardwalks;
(4)
Picnic areas.
(C)
Special Exception Uses. The following uses may be permitted only following the review and specific approval thereof by the City Council;
(1)
Boat ramps or docks;
(2)
Camping area (public or non-profit);
(3)
Drainage areas serving adjacent development;
(4)
Experimental stations (public or private);
(5)
Observation towers or platforms;
(6)
Pavilions for outdoor exhibits and special nature study instruction.
(7)

Wireless communication antennas and towers, as set forth in section 158.213.
(D)
Accessory Uses. As set forth in section 158.217.
(E)
Minimum Lot Requirements. No minimum requirements.
(F)
Maximum Building Coverage. Building coverage shall be limited to that specifically approved under special exception review.
(G)
Maximum Building Height. Maximum building height shall be limited to that specifically set forth within special exception approval.
(H)
Setback Requirements and Buffering. All yard requirements shall be established for each specific use as part of the site plan review process. When applicable, buffering shall be provided in accordance with the landscaping requirements of section 153.04(G).
(I)
Off-Street Parking and Service Requirements. As set forth in section 158.221.
(J)
Site Plan Review. All permitted and special exception uses shall be subject to the provisions of sections 158.235 through 158.245.

(Ord. No. 98-84, § 1, 3-22-99; Am. Ord. 02-130, § 1(Exh. A), 2-10-03)

Secs. 158.102—158.109. - Reserved.

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Port St. Lucie, Florida, Code of Ordinances >> TITLE XV - LAND USAGE >> CHAPTER 158. - ZONING CODE >> ARTICLE VII. - INSTITUTIONAL DISTRICTS >>

ARTICLE VII. - INSTITUTIONAL DISTRICTS

Sec. 158.110. - Institutional Zoning District (I).

Secs. 158.111—158.119. - Reserved.

Sec. 158.110. - Institutional Zoning District (I).

(A)
Purpose. The purpose of the institutional zoning district (I) shall be to locate and establish areas within the City which are deemed to be uniquely suited for the development and maintenance of uses of an institutional nature to serve the residents of the City; to designate those uses and services deemed appropriate and proper for location and development within that development within said zoning district; and to establish development standards and provisions as are appropriate to ensure proper development and functioning of uses within that zoning district.
(B)
Permitted Principal Uses and Structures. The following principal uses and structures are permitted:
(1)
Cemetery, including mausoleum;
(2)
Church or other place of worship;
(3)
Club or lodge (private), with or without an alcoholic beverage license for sales of alcoholic beverages to members and guests of the club or lodge in accordance with chapter 110;
(4)
Day care center;
(5)
Park or playground, or other public recreation or cultural facility (public);
(6)
Civic, or cultural facility (private);
(7)
School (public), kindergarten and grades 1 through 12;
(8)
Service club;
(9)
Youth organization or club (nonprofit);
(10)
Congregate living facility, as set forth in section 158.224;
(11)
Group care home, as set forth in section 158.224.
(12)
Funeral homes, with or without a crematory.
(C)