

Public Hearing and Special Meeting of the Planning and Zoning Commission of the Town of Ocean Ridge held on Monday, January 13, 2003 in the Town Hall Meeting Chambers.

The meeting was called to order at 8:00 AM by Chair Bruce Gimmy and roll call was answered by the following:

Gerald Goray	James Bonfiglio
Ward Northrup	Peggy Smith
Chairman Bruce Gimmy	

III. APPROVAL OF DECEMBER 16, 2002 MINUTES

Mr. Bonfiglio moved to approve the December 16, 2002 minutes, seconded by Mrs. Smith.

Motion carried – Yea (5)

IV. APPLICATION SUBMITTED BY ORLANDO AND LILIANE SIVITILLI, 5011 N. OCEAN BLVD., OCEAN RIDGE FL 3435 REQUESTING A MODIFICATION OF AN EXISTING SITE PLAN FROM THE PROVISIONS OF THE LAND DEVELOPMENT CODE, ARTICLE IX; SITE PLAN REVIEW PROCEDURES, SECTION 26-135(a)(4) SITE PLAN APPROVAL OF MINOR OR MAJOR DEVELOPMENT APPLICATION OR MODIFICATION AND SECTION 26-135(b)(2) MAJOR DEVELOPMENT REVIEW FOR WHAT WAS ORIGINALLY KNOWN AS THE 5011 STORES AND NOW PROPOSED TO BE CONVERTED TO THREE TWO-STORY RESIDENTIAL UNITS PRIMARILY WITHIN THE EXISTING FOOTPRINT. THE PROPERTY CURRENTLY HAS FOUR 2ND FLOOR APARTMENT UNITS AND 1ST FLOOR STORES AND WAS BUILT IN THE LATE 1950'S. THE PROPERTY IS LOCATED AT 5011 NORTH OCEAN BLVD. OR GENERALLY DESCRIBED AS BLOCKS, A, B, & Z PALM BEACH SHORE ACRES PT OF LOTS 18 & 19 IN OR 1432 P282 (BRING LOT 13 OF UNREC PL OF BLUE OCEAN) BLK A (EXACT LEGAL DESCRIPTION LOCATED AT TOWN HALL).

Town Clerk Hancsak read the application by title and advised that no additional correspondence had been received and all fees had been paid.

Town Clerk Hancsak read the administrative comments from Town Manager Dailey. The comments included a brief history on the property because of the present litigation and also the unique nature of the proposal. She advised that the property was built in the late 1950's and was purchased by the current owner in 1982 and has operated as a mixed commercial and residential use. She advised that this property was annexed into the Town in 1962 and subsequent to that the Town adopted Ordinance No. 229 phasing out all commercial 40 years from the date of construction.

She stated that according to the Town the property was required to convert to completely residential no later than early 2000, however, the property owners claimed that the Town could not enforce the ordinance. She added that in 2000 the Sivitillis filed a complaint in Circuit Court seeking a declaratory judgment regarding their rights with respect to the use of the property. In an effort to resolve the legal issues the Town has agreed to this procedure and agreed to defer enforcement of the code until a total ruling from the court of which a partial ruling was received in favor of the Town.

Town Manager Dailey commented that the Town and Sivitillis have arrived at a potential settlement of the dispute, however, the Town cannot make any commitments to make particular zoning decisions as part of the settlement agreement, nor can the Commission ask the Board to do so. She added though that a process has been agreed to that would permit the Sivitillis to present a proposed site plan modification to this Board and ultimately to the Town Commission for approval and then if necessary any variance requests to the Board of Adjustment. She stated that if the plans meet with approval by the various boards that the Town would enter into a settlement agreement that would allow the Sivitillis (or their successors) up to ten years to convert the property to strictly residential and if these plans are approved they would be vested for a ten year period and they would also agree to convert completely to residential. She added that the terms of the settlement agreement are not particularly relevant to the proposal before this board, however, it was felt by staff that some background information should be provided.

Town Manager Dailey advised that staff has done its independent review of the plans that have been presented and they utilize the existing structure to convert to a townhouse concept. She added that since the plans do not increase the nonconformity of the residential use of the property, that use remains grandfathered and the number of units is permissible and thus the reason for a site plan modification and not a zoning change. She advised that staff is of the view that the plans presented are consistent with the comprehensive plan and meet the requirements of the Town's land development regulations and actually present a use and appearance which are an improvement on the present use and would be in conformity with the non-commercial requirements of the Code. She concluded by recommending approval of the site plan modification.

Town Atty Spillias reiterated the Town Manager's comments regarding an ongoing settlement negotiation and that no commitment had been made on behalf of the Town Commission or anyone else and that this board should evaluate this proposal and make their own recommendation.

Mr. Bonfiglio questioned what options the applicant would have if the Town proceeds with annexation of the properties to the south. Atty Spillias advised that the Sivitillis would agree not to come before the Town and ask to undue the agreement but if the Town decides to amend the Comprehensive Plan and provide for commercial then the Sivitillis are not precluded from requesting a commercial zoning.

Mr. Bonfiglio asked if they had ten years to convert if the plan were approved to which he was advised that they would, however, if they wanted to bring forth a different plan at a later date then the new codes would apply. He added that the current plan utilizes the existing footprint, which is already grandfathered.

Mr. Goray questioned if there are any negative aspects that this board needed to consider. Atty Spillias advised that from a legal standpoint there was not and the structure is grandfathered. He added that he was also not concerned that this would set precedence. Mr. Goray commented that on an aesthetic aspect the area would improve. He did state that he was concerned with the ten-year period. Atty Spillias stated that the applicant's intent was to convert sooner than later and there was more incentive for them now, considering interest rates and building codes. Atty Spillias commented that the ten-year period was not actually part of this request and should not be considered in their decision. He also advised that the litigation has been abated until March 2003.

Tim Bessette, architect for the applicant, stated that he felt he and his client had created a design that betters the Town. He added that the landscape plan actually softens the street view and increases the greenspace. He also stated that the vehicles would actually be located further from the street. When asked if he was aware of the square footage for each unit he advised that he was unsure.

Speaking from the public, George Bierlin, 26 Hudson Ave., advised that this property has been a long ongoing issue and he thought one of their concerns with converting in the past was that the health department standards could not be met. Mr. Bessette commented that this plan actually reduces the amount of gallons used because the units have been reduced.

Earl Jones, 14 Sailfish Lane, expressed his concern also that health department standards could be met. Town Manager Dailey reminded the board that the landscape space was actually increasing. Atty Spillias stated that the plans would be required to meet any other agency approvals.

Mr. Bonfiglio moved to recommend approval the site plan modification as submitted to the Town Commission. Mrs. Smith seconded the motion.

Motion carried – Yea (5)

Town Clerk Hancsak advised that the applicant would receive a letter from the Town and their request would be on the Town Commission meeting on February 3, 2003 commencing at 6:30 P.M.

V. DISCUSS PROPOSED ORDINANCE NO. 540; A TOWN-INITIATED REQUEST FOR ADOPTION AND ENACTMENT OF A NEW LAND DEVELOPMENT CODE AND A NEW CODE OF ORDINANCES, FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED

THEREIN AND IN CONFLICT THEREWITH, PROVIDE FOR A PENALTY FOR THE VIOLATION THEREOF, PROVIDE FOR THE MANNER OF AMENDING SUCH CODE, PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE

Atty Spillias provided a brief summary of the events leading up to this point for the proposed code revisions. He stated that when he was originally hired by the Town as the Town Attorney in May 1999 there was already a strong desire by the Commission to completely revise and rewrite the codes. He stated that Municipal Code Corp. reviews the legal statutes of the code and the Commission realized that there were many loopholes, inconsistencies, and conflicts in the code. He stated that the Town then hired his firm, Lewis Longman and Walker, to revamp the code. He added that one of his associates, Bob Diffenderfer, specializes in land development codes.

Atty Spillias stated that approximately two years ago there was a joint meeting with the Town Commission and Planning & Zoning Commission (P&Z) and based on comments relayed, subsequent Town Commission meetings, staff input, comments from individuals, and the Board of Adjustment several drafts were completed and the draft before this board now was actually the third draft of the Land Development Code.

Atty Spillias advised that the code book was being rearranged in various ways such as combining to make one definition section and the combination of Section 14 and Section 26 in the Land Development Code. He stated that this revision was a significant undertaking, however, they could not guarantee a cliché free, problem free project. He added that it should be realized that some of the proposed sections would not satisfy everyone but it is important that the code provide proper consistent interpretations. Atty Spillias commented that the Town Commission had expressed that the intent of the code was to prevent certain human scale massing through the various regulations of the code and the changes made in 1996 have not totally met that goal.

Atty Spillias advised that his office had prepared a summary of the substantive revisions but it does not include all the changes reflected in the proposed code. He commented that one of the changes not included in the summary was a definition of attic, which had never been in the original code. He advised that the Board could use the summary as a guide. He added that he has reviewed two letters that had been received from James McAndrews and Earl Jones and he was prepared to respond to them. He added that some of the comments were well taken and there should be changes made.

The board agreed to utilize the summary (as attached) as the guide for this meeting and address the questions raised in the letters at the time the items are discussed.

Atty Diffenderfer summarized item 1(A) of the summary by stating that the current 75% requirement for the second floor was an attempt to deal with the large building

issue. Atty Spillias commented that another method to control the massing is reduced setbacks for the second floor. Town Clerk Hancsak advised that at one time the code had second floor reduced setbacks but it was changed to 75% after input was provided on the difficulty for engineers and architects to design the homes.

Mr. Goray expressed his concern with limiting the architectural style of a home by changing the 75% second floor to be reflected in the front of a building and also the 75% habitable space. He stated that this would prevent classical styles. He added that he felt this and other changes may severely affect the economic input of the community and may alter the utilization of the second floor in placing the location of the bedrooms or baths. He added that he felt the second floor should be based on the gross first floor area. Mr. Bonfiglio agreed and stated that it may be difficult reflect the 75% in the front. He added that he doesn't like the thought of dictating tastes.

Speaking from the public, Barry Harris, 127 Marlin Drive, stated that he found the proposed copy of the code difficult to read and he had several issues of concern. Mr. Harris continued by stating that the substantive changes were more restrictive than the present code and he felt it was impossible to legislate morality and taste. He added that he felt what is occurring is that the economy is dictating what is happening now and there were inequities in the code.

Mr. Harris stated that he disagreed with not being permitted to use the property separated by a street in calculating lot size. He commented that he felt the revisions were drafted too quickly considering they were much more restrictive and, and in his opinion, would result in an economic impact to the property owners. He suggested a cost impact analysis be completed to determine if the economic impact was equal to the economic benefit and felt this should be done before the adoption of these revisions. He also commented that including the chimney in maximum height would change the roofline by lowering the roof height.

Carl Casio, attorney representing James McAndrew, stated that unfortunately his client could not be present and he requested that his client's letter be placed in the record. He stated that his clients' letter provided questions of which the Town Attorney answered some. He stated that he understood that in changing the philosophy he was sure that the Town Commission provided input, however, he felt it important that citizen input and feasible studies be provided prior to new code adoption. He added that some of the proposed changes were very significant and several of them would directly impact his client and he hoped the Town would address these concerns now rather than later. He stated that in addition to the items listed in his client's letter he also had a concern regarding flagpoles.

Earl Jones, 14 Sailfish Lane, commented that while two individuals spoke of the rapidity of this process his anger was the opposite because he recalls discussing some of his concerns two years ago with still no change. He stated that this process has been anything but rushed. He did state that he felt covered areas should not be

included in the FAR. It is to be noted that Mr. Jones letter was made a part of these minutes.

Shield Ferber, 134 Island Drive, stated that he wanted an understanding of the process. Chairman Gimmy advised that this process has been ongoing for a long time and advised the public that Hank Skokowski, Urban Design Studios, had been hired approximately six years ago to review several sections of the code and assist with developing a human scale element that was eventually adopted by the Town. Town Clerk Hancsak commented that it was the Town Commission's belief that some of the changes implemented in 1996 were not conveyed as their original intent for the code. Mr. Ferber was advised that this board was reviewing the proposed changes and would make recommendations to the Town Commission that they may or may not agree with. Atty Diffendorfer advised that the nature of the process was to include P & Z recommendations, comments from constituents, and Town Commission comments and added that public comment was a critical part of the process.

Mr. Goray stated that it seemed that there were actually two issues to deal with including cleaning up the existing code and a first time review of substantive changes that could ultimately affect the size of a house that could be built. He commented that he did not feel the second item should be rushed. Atty Spillias advised that the language before them was drafted based on the workshops and put in the proposed form to hear comments from the public. Chairman Gimmy commented that changes to the size of the house should be of no surprise because the discussions have been in place for a long time.

Chairman Gimmy left at approximately 9:45 AM and passed the gavel to Vice Chair Bonfiglio.

Shelly Sipp, 53 River Drive, clarified that porches and entries would now be included in the floor area ratio.

Comm Willens, 9 Hudson Ave., thanked the public for attending and stated that in order for the public to give input a draft was necessary. He stated that for the three years he has served on the Commission there have always been questions based on whether the Commission was led by the residents or developers. He believes he has realized what the code was supposed to accomplish based on a lot of input received over the last few years and this proposed code was an attempt to address the original intent of the code.

Shield Ferber, 134 Island Dr., questioned Comm Willens if the FAR was changed for larger lots or smaller lots. Comm Willens commented that he has heard people say that homes are being built too large, however, they technically meet the code because the language is not clear enough. He cited a home currently under construction that actually has a second floor over 100% which was partly an error by a previous administrator and also the code not being explicit enough and the Town needs to respond to these unclear issues.

Carl Casio, attorney representing James McAndrews, questioned if the intent of the Town Commission is now actually an over reaching. Vice Chair Bonfiglio stated that it is a general feeling that the character of the Town is being changed by larger homes, that have slipped through with loopholes in the code, being built and dwarfing the older homes.

Carol Harris, 127 Marlin Drive, questioned whether it was proper for the Town Attorney's firm to be commissioned to complete the code rewrite. Atty Spillias advised that there was no wrong-doing in hiring his firm for this type of work and stressed that Atty Diffenderfer specialized in land development issues. She advised that one of her major concerns was the 75% being reflected in the front of the building. She cited a street in Salem that was voted as having the prettiest homes and these homes would be prohibited here if the new code were adopted. She added that the pitch of a roof could change the look of a home in itself. She also clarified that there was not a building moratorium in place but a zoning in progress.

Mrs. Harris also commented that she agrees that some homes are oversized, however, she places the blame on the building inspector or the individual that approved the plans. She stated that she did not agree with including patio roofs in the FAR. She asked what the Town was doing to correct these problems. Town Manager Dailey stated that it was for the reasons stated by Mrs. Harris that the Town has hired a professional company, Hybrid, Inc. to review all the zoning plans.

Mr. Jones summarized his memorandum to the Town Commission and Planning & Zoning Commission (attached). He stated that he would change his first comment to maintain the 75% anywhere on top of the first floor as currently enforced.

Mr. Northrup stated that he did not feel any recommendations should be made at this meeting and the board should concentrate on comments received from the public. Atty Spillias suggested that the P & Z make some recommendations today whether whole or in part.

Mr. Goray again reiterated that the clean up items could be addressed separately from the substantive changes that may suggest a cost benefit analysis be completed. Mr. Jones commented that 100% of the code was cleanup and added that as a whole there was very little new proposed language.

Vice Chair Bonfiglio inquired if an additional meeting could be scheduled. Atty Spillias advised that there could be additional meetings held within a sixty-day period. Town Manager Dailey commented that she felt the Town Commission would be favorable to postpone their meeting in order to provide for the public input to the P & Z. The board then agreed to conduct several meetings and use the Summary as an outline. Mr. Northrup commented that some items need to be addressed that are not in the summary.

Vice Chair Bonfiglio declared a break at 10:50 AM and the meeting was reconvened at 11:10 AM.

Mr. Bonfiglio stated that before the summary was discussed he would like to clarify that the setbacks are not changing other than waterfront which will now be 25' from any side, which is the way the code has always been interpreted.

Concerning 1(A)(4) of the summary which states that calculation of maximum floor area will now include the floor area occupied by balconies, bay windows, chimneys or other nonhabitable architectural features, Atty Spillias advised that the reason for this change was to remove any doubt of interpretation, however, it does slightly diminish the total floor area. A question was raised if even the roof overhangs would be included in the FAR to which Atty Spillias advised that the zoning administrator could answer what should be comparitably included.

Vice Chair Bonfiglio questioned whether 1(A)(3), which states that for calculation of maximum floor area of a structure, total lot area will no longer include any lot separated by a street or right-of-way, is actually a taking of property. Atty Diffenderfer stated that it was not because there is always an area on a lot that cannot be used and he believed it was totally defensible. Town Clerk Hancsak mentioned the last home that was permitted to use the lot area was located on Old Ocean Blvd. Mr. Harris mentioned that this could definitely affect taxes. Vice Chair Bonfiglio commented that nothing prohibits the use of the property for accessory uses.

Mr. Goray moved to recommend the removal of item 1(A)(1) in the summary stating that the second floor of residential structures will not be placed so that the reduction in square footage of the second floor is visible from the front of the structure and to keep the 75% requirement as it is currently in the code. Mr. Northrup seconded the motion.

Motion carried – Yea (4).

Regarding item 1(A)(2) of the summary Mr. Goray suggested deferring this item at this time. He commented that this was a major change because the code has changed the first floor to first floor living area where the current code includes everything. It was agreed that the board needed to determine whether they should recommend that an exterior balcony should be included in the FAR. Atty Spillias mentioned that the intent of the current code was that it be included, however, architects raise a point on the way the code is written regarding the first floor and second floor living area.

It was determined that item 1(A)(3) of the summary has already been changed by the Commission and if the public still wanted to address this item they should approach the Commission directly.

Concerning Item 1(A)(4) of the summary states that the maximum floor area will now include the floor area occupied by balconies, bay windows, chimneys or other

nonhabitable architectural features, Mr. Goray stated that his concern was that utilizing the exterior balconies in the FAR would reduce the air conditioned space thereby possibly creating an economic impact. He questioned whether using a scalpel rather than an axe could capture the intent of the code. Atty Spillias stated that the board could recommend that certain types not be included in the FAR but cautioned that the code is currently very broad. Mr. Bonfiglio stated that he would rather more clear provisions be instituted than less to eliminate arguing later. Mr. Goray again stated that the balcony issue was the hardest to accept.

Mrs. Smith moved to recommend the approval of item 1(A)(4) exempting out balconies, seconded by Mr. Goray.

Motion carried – Yea (4)

The board unanimously agreed that the word balcony should have its own definition.

After a brief discussion Mrs. Smith moved to continue this meeting on Thursday, Jan. 16, 2003 at 8:00 A.M. Mr. Goray seconded the motion.

Motion carried – Yea (4).

The board also mentioned that if possible an alternate should be present at future meetings in the event they need to assume a space at the dais.

V. ADJOURNMENT

The meeting was adjourned at approximately 12:30 P.M.

Vice Chair Bonfiglio

Attest:

Town Clerk