

**BOARD OF ADJUSTMENT
WEDNESDAY APRIL 4, 2018
5:30 P.M.**

1. CALL TO ORDER:

The City Attorney called the Board of Adjustment Meeting to order at 5:30 p.m., on Wednesday, April 4, 2018, at Destin City Hall Boardroom.

2. ROLL CALL:

Present:

Tom Weidenhamer
David Emerson
Jay Roberts
Casey Waterhouse
Kimberlee Vann Damme
Dena Critch

Absent

Jan Lipscomb

Staff Present:

Kim Montgomery, Deputy City Clerk
Stuart Campbell, Planner
Jennifer Bryla, Community Dev. Director
Jeff Burns, City Attorney

3. ELECTION OF CHAIRMAN & VICE CHAIRMAN

Motion by Board member Emerson to nominate Tom Weidenhamer as Chairman, seconded by Board member Roberts. With no other nominations, Board member Weidenhamer accepted the nomination and the motion passed with a 6-0 vote.

Motion by Chairman Weidenhamer to nominate David Emerson as Vice Chairman, seconded by Board member Roberts. With no other nominations, Board member Emerson accepted the nomination and the motion passed with a 6-0 vote.

4. APPROVAL OF MINUTES:

A. March 7, 2018

Board member Weidenhamer moved to approve the minutes of the March 7, 2018 meeting as written. Board member Emerson provided the second to the motion which passed 4-0.

The Land Use Attorney provided the new members of the Board an explanation of the functions of the hearing which is are both Quasi-Judicial Hearings.

5. NEW BUSINESS:

- A. 18-15-VA - The applicant, Ryan A. Cleveland, PE, Cleveland Engineering Services, representing the property owner Blanchita, Inc., Allen Miller Phillips, is requesting a variance from the South Harbor Mixed Use (SHMU) maximum front yard setback requirement relating to the proposed building addition located at 414 Harbor Boulevard.**

The City Attorney swore in the following people that will be providing evidence for the hearing.

- Tommy Norred
- Miller Phillips

- Ryan Cleveland
- Stuart Campbell

Mr. Campbell explained that the applicant is seeking a Variance from the front setback requirements from a maximum of twenty-six (26') to a maximum of eighty-feet (80') for a total of fifty-four-feet (54') and is considered a Minor Deviation to a Development Order for Beauchamp's Restaurant in order to build Lucky Dog's Seafood, a proposed five hundred thirty-six (536 sq. ft.) building addition located in the front of the main entrance of the existing restaurant. He explained further that the location is eight feet (8') from the front property line, which exceeds the maximum setback requirement of twenty-six feet (26').

In regards to the authorizing a Variance, Mr. Campbell explained that in Article II, Section 2.25.03 of the Land Development Code, to authorize such an appeal of any variance from the terms of any zoning ordinance that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of a provision of such ordinance would result in unnecessary and undue hardship to the applicant. And in order to authorize any variance from the terms of the conditions, the board of adjustment must find that the six (6) required conditions must be met by the applicant.

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.

- **The current building previously establishes the front yard setback of 55-feet.**

2. That the special conditions and circumstances do not result from the actions of the applicant.

- **The current zoning regulations is something that did not happen from the action by the applicant.**

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by any zoning ordinance to other lands, buildings, or structures in the same zoning district.

- **This setback variance will not provide the applicant with any special privileges or deny future development in the zoning district therefore, staff is in agreement that the request will not confer any special privilege on the applicant.**

4. That literal interpretation of the provisions of any zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of any zoning ordinance and would work unnecessary and undue hardship on the applicant.

- **Its staff's opinion that the literal interpretation of the setback requirement of the provision in this particular zoning ordinance does not deprive the applicant the right commonly enjoyed by other properties in the same zoning district. The applicant's preference to locate the proposed free standing building in close proximity to the restaurant's main entrance is a matter of convenience and not property rights.**

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

- **The applicant does have other options that do not require a variance to make this particular request possible.**

6. That the grant of the variance will be in harmony with the general intent and purpose of any zoning ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

- **It is staff's finding in regards to this request that the South Harbor Zoning District accomplishes the Goals and Objectives for walkable communities and tourist oriented uses and goals to encourage tourist commercial development design to preserve the water front views and preserve water dependent activities, foster a pedestrian oriented environments and promote convenient public access to the harbor boardwalk and charter fishing opportunities for the public. And the proposed request will be in harmony of the general intent of the South Harbor Zoning District. The variance does not appear to be injurious to the area or otherwise detrimental to the public welfare.**

According to Mr. Campbell, it is staff's opinion that to authorize such a variance from the front yard setback requirement of the South Harbor Mixed Use zoning district will not be contrary to the public interest when considering the special conditions of the city's provisions. The previous approval of the restaurant's setbacks and enforcement of the South Harbor Mixed Use setback will result an unnecessary hardship.

Chairman Weidenhamer asked Mr. Cleveland about the location and intent. Mr. Cleveland, the engineer for the project, explained that the proposed building is an addition to the existing restaurant for a wholesale fish market and the reason why they made the decision to build it as it is proposed is because they have already met the South Harbor Mixed Use requirements for the boardwalk on the backside of the building that they didn't want to disturb as well as they discovered flooding issues would come into play if built behind the restaurant. And, if they built it to the current front setback requirements, it would have to be in the middle of the front parking lot and take parking spaces, which they can't afford to lose. He explained further that they chose the current proposed location because it will be easy to access from the ramp that is on the harbor side to bring the fish in from the docks and the new structure will be located just off the kitchen. He then provided the members a copy of their proposed building reflecting the location for the proposed Lucky Dog's Wholesale Seafood.

Board member Emerson asked Mr. Cleveland to explain the detached portion of the project even though it shows that it is attached. According to Mr. Cleveland, the building is just attached by a screen wall to hide the cooler system and will only be attached by an inch.

Board member Roberts suggested to the applicant that the correct answers should be the following; the granting of the variance will not confer any special privileges, "It will not." And, would it deprive the applicant of his rights for commonly enjoyed his answer should be, "Yes it would deprive him of the same commonly use that is enjoyed all along the South Harbor Mixed Use" suggesting that would answer succinctly those two questions.

The City Attorney suggested a motion for a 5-minute break so that the applicant could confer with his client in regards to their answers.

The Chairman made the motion to call for a 5-minute break. Board member Roberts

provided the second. A roll call vote of 6-0 was taken and the motion passes unanimously.

****5-minute break****

Upon reconvening from the break, the applicant agreed and stated that it was a misunderstanding on his part since this is the first time that he has had to apply for a variance and he wasn't sure how to answer that question correctly and was informed to just not answer the question if he was unsure of his answer.

The applicant, Mr. Cleveland stated that for the record and in their opinion, granting the variance requested will not confer on the applicant any special privilege that is denied by any zoning ordinance to other lands, buildings, or structures in the same zoning district; they feel that there are special circumstances in their case because the existing building is already out past where they are proposing to locate the structure by about thirty feet (30') and would not impede any more than what is currently existing.

He then responded to item "D" by stating that the literal interpretation of the provisions of any zoning ordinance would deprive the applicant of common rights that are already enjoyed by other properties in the same zoning district under the terms of any zoning ordinance and would it result in unnecessary and undue hardship of the applicant. According to Mr. Cleveland, there would be a hardship if they were required to put the building out into the current setbacks which would make it be out into the middle of the exit of the existing parking lot which would render the parking inadequate and not meet the city's code requirements for parking.

Board member Waterhouse asked Mr. Cleveland if he believed that it would deprive the applicant their rights that are commonly enjoyed by other properties in the area. According to Mr. Cleveland, it more fits with unnecessarily hardship than necessarily depriving the applicant of something that someone else may have.

With no other witnesses or comments from the Board or staff, the Chairman opened the hearing to the public to speak.

Mr. Tommy Norred, owner of 501 Highway 98 a.k.a Norred Plaza which is across the street, spoke of parking being his biggest concern; which is a big mess in the city. He pointed out that looking at the aerial view of the property, it looks like they would have to give up some parking and asked if that is a true statement. According to Mr. Cleveland, they will not be using any existing parking, only the landscaping will have to be removed.

Mr. Norred again spoke of parking being his main concern for being at this hearing and he wanted assurance that no parking spaces would be used and was addressed properly by Mr. Cleveland.

Mr. Miller Phillips, owner of Beauchamp's explained that the Lucky Dog's Seafood Building will be exclusive to Beauchamp's only and they have no intention of selling seafood to the public or anyone else. He spoke of how they have essentially run out of room in their kitchen and need more space for prepping the seafood they serve in their restaurant. He talked of how he has obtained his license from the State of Florida and has a dealer license from the FWC so that he can manage his own seafood and would manage it better with this new building. He spoke of how there will be window installed so that his customers will be able to view the seafood being prepped and that this new building is not creating additional business for the restaurant, since will have the same employees he currently has who will work out of this new building, which will create a smoother ran business for himself and his staff.

The Chairman called for any further input from the public. With no one else coming forward, he closed the public portion of the hearing and entertained a motion.

Motion by Board member Emerson that the Board of Adjustment approve the front yard setback Variance application 18-15-VA located at 414 Harbor Boulevard with Board member Roberts providing the second. A roll call vote of 6-0 the motion passes.

B. 18-17-VA - The applicant, Vintage Destin, LLC (C/O Ross Bradley), representing the property owner 98 Palms LTD, is requesting a variance from the Town Center Mixed Use (TCMU) front yard setback requirement along the western property boundary of the property located at 117 Palm Street.

The City attorney swore in the following for testimony:
Ross Bradley
Jamie Eubanks
Lockwood Wernet

Mr. Campbell explained the subject property is 18.11 acres and is located off of 98 Palms Blvd. behind the Winn Dixie Grocery Store and Palm Station Shopping Center in the Town Center Mixed Use (TCMU) zoning district. Additionally, the request is only for a Variance from a front yard setback requirement along the westerly property line and will be the focus of the discussion for this request.

In the Land Development Code, Section 7.12 Table 7-3 in the schedule of dimensional requirements it references a specific minimal setback requirement for all new developments in this zoning district which is a minimal of ten feet (10') with a maximum of twenty feet 20-feet (20'). He explained further that the intent of the request is to allow the applicant to go forward with their development request with some design options for a proposed apartment complex. He reiterated that the request tonight is to only consider a variance to a setback requirement that is mandated in the TCMU zoning district and is not an approval for anything other than this request and that the three main special conditions that need to be considered are:

- On the NW corner of the property there is an existing wetlands and in the Comprehensive Plan, Conservation Element Requirements for buffering and setbacks and what and what cannot be done in and around an existing wetland.
- Destin Water Users Easement along the western boundary of the property line and a portion of that easement is on this property with a 16-inch force water main and no improvements can be made within that area of the easement.
- An existing ingress/egress that dictates where they would have to merge and design their property improvements to align with that ingress/egress feature.

According to Mr. Campbell, the literal interpretation with the request is it further allows for the building design to be out and away from the existing wetlands which furthers the Goals and Objectives of the TCMU zoning district as well as the Comprehensive Plan's Conservation Element. It is staff's opinion that the variance request that will not adversely impact the existing wetlands, it will be in harmony with the purpose and intent of the TCMU zoning district, as well as the conservation element of the Comprehensive Plan, and does not appear to be injurious to the area or otherwise detrimental to the health and welfare of the general public. And that granting the variance will not be contrary to the public interest when owning to the special conditions of the subject parcel utility easement.

In reference to the site plan, Board member Emerson asked which building the setback request would be affecting. According to Mr. Campbell, it would be building seven (7) on the plans and the applicant can answer any further questions they may have.

Mr. Jamie Eubanks with Jenkins & Associates Engineering briefly explained they are required to align up the drive with the southernmost drive that ties into Hobby Lobby and Target. And they chose to design 70-feet out from the 30-foot easement strictly for the protection of the existing utility lines and also that would take it completely outside of the toe of the slope of the existing dune in the northwest corner so that the development would not impact it at all.

The Chairman asked if Destin Water Users is in agreement with the amount of space that is being left. Mr. Eubanks stated that he believes so since they have completely satisfied Mr. Lockwood Wernet's concerns.

Mr. Lockwood Wernet representing Destin Water Users at 218 Main Street explained that they submitted a letter to the applicant requesting that they stay as far off from the easement as possible because of the existence of three lines that run through the immediate area. One being a 16-inch force main, a 12-inch reclaim line and a 16-inch waterline present in the easement and are critical to the service for the city. He also explained that they were placed after a grant of easement by the Henderson Family well before the current property owner took possession of the land, as noted in the plats for 98 Palms Development and asked the Board to consider the variance since the easement is a condition of the land and would create a hardship for the applicant, if not granted.

Board member Emerson asked Mr. Wernet if the access road would affect the force main any. Mr. Wernet stated that it would not.

Ms. Joanne Cogenhall who lives in Twin Lakes subdivision expressed her concern for flooding that could potentially take place if this development would take place because all of the cement that would be placed. She spoke of the scenery and the woods for the birds and squirrels and how Destin does not need any more apartments or concrete.

The Chairman pointed out to Mr. Cogenhall that this request for the variance has nothing to do with the actual development of the proposed apartments.

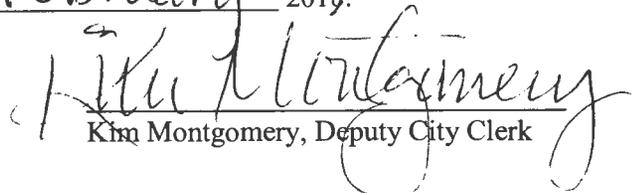
Board member Roberts moved to approve the request for a Variance from the Town Center Mixed Use (TCMU) front yard setback requirement along the western property boundary of the property located at 117 Palm Street with Board member Emerson providing the second. A roll call vote of 4-2 was taken the motion passed with Board members Waterhouse and Van Damme dissenting.

6. ADJOURNMENT:

There being no further business the meeting was adjourned at 6:45 p.m.

Adopted and approved this 16th day of February 2019.


Tom Weidenhamer, Chairman


Kim Montgomery, Deputy City Clerk