



MINUTES OF THE PLANNING BOARD

November 10, 2020

MEMBERS PRESENT: Chairperson Paul Ritz, Board Member Grundhoefer, Board Member Murphy, Board Member Sampson

MEMBERS ABSENT: Vice Chairperson Larson, Board Member Powell, Board Member Wiggins

STAFF PRESENT: Planning Director Morris, Historic Preservation Planner Harding, Assistant City Attorney Lindsay, Network Engineer Johnston

OTHERS PRESENT: Robert Rushing, Matthew Hoffman, Kelly Hagen, Councilperson Myers

AGENDA:

- Quorum/Call to Order
- Approval of Meeting Minutes from October 13, 2020.
- **New Business:**
 - Carver Darden Sign Variance**
 - Open Forum
- Discussion on the Proposed Amendment to the Tree Ordinance
- Adjournment

Call to Order / Quorum Present

Chairperson Ritz called the meeting to order at 2:01 pm with a quorum present and explained the procedures of the quasi-judicial Board meeting.

Approval of Meeting Minutes

1. Board Member Grundhoefer made a motion to approve the October 13, 2020 minutes, seconded by Board Member Murphy, and it carried unanimously.

222 West Main Street Pensacola, Florida 32502

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New Business

2. Carver Darden Sign Variance –

A Variance application was previously submitted by Carver Darden to install a fifty (50) square foot sign on the second floor, northwest front of the building, at 151 Main Street. This request was brought before the Planning Board on October 13, 2020. The Planning Board subsequently made a motion to deny the Variance application to the maximum signage allowance requirements for this property.

A new Variance application has been submitted by Carver Darden requesting a sixty-four (64) square foot sign at this same location. The existing signage for the first-floor tenants currently occupies thirty-nine (39) square feet.

This property is located in the Waterfront Redevelopment District (WRD) and per Section 12-4-4, Signs and Section 12-2-12 (C) (4) (a), Redevelopment Land Use District, of the Land Development Code, the following regulations apply in the WRD:

- “Size: Ten (10) percent of the building elevation square footage (wall area) which fronts on a public street, not to exceed fifty (50) square feet. Buildings exceeding five (5) stories in height; one attached wall sign or combination of wall signs not to exceed two hundred (200) square feet and mounted on the fifth floor or above.

This request has been routed through the various City departments and utility providers with comments provided.

Chairperson Ritz advised this item was a quasi-judicial matter. Assistant Attorney Lindsay explained the Board would be acting as a court, gathering information from the witnesses and applying the law to those facts for a particular instance. The applicant would present their evidence to show they meet the criteria for a variance, there would be an opportunity for objections from the audience or by phone, and if anyone presented evidence against the variance, the applicant would have opportunity for rebuttal. At this time, the Board could ask questions of the persons making presentations. Once the facts had been gathered, the Chairperson would then close the hearing for gathering the facts, then the Board would be sitting as a Board to determine how the law applied to those facts. She stressed that the Board would allow due process and make findings, identifying why it agreed or disagreed with the request, citing the particular variance criteria. She explained the next step for this applicant would be the Circuit Court to review the Board's decision. Planning Director Morris advised that a variance of 50 sq. ft. was denied at the previous Board meeting. The applicant would not have been allowed to come before the Board with the exact same request, and they had revised the current request to 64 sq. ft. for a sign to be attached to the second floor. The other tenants had consumed the square footage and had 11 sq. ft. remaining. Regarding similar signage granted in previous years, she explained the language allowing the Board to approve signage in the WRD was relatively new and more stringent which allowed the Board to take in aesthetics and surrounding characteristics of the district, calling them into a different standard than adjacent properties. Assistant City Attorney Lindsay advised regardless of what was presented to the Board at the previous meeting, the applicant should be allowed to make their presentation today without the Board referring back to what it remembered in the last presentation; the evidence heard today needed to determine the decision, however, the Board could ask questions if they did not hear something in today's presentation that was presented earlier. Robert Rushing presented to the Board and stated his firm occupied the entire second

floor. He explained they had requested a 55 sq. ft. addition in the variance for a total of 64 sq. ft. He confirmed the first-floor tenants had taken up everything but 11 sq. ft. He emphasized clients were unable to locate their offices. They wanted the sign to go between the second and third floors facing Main Street for visibility purposes. In addressing the special conditions creating the need for the variance, he pointed out there were trees in the front which made it necessary for the sign to be located on the second floor. He noted other business in the area which had received variances beginning with the Blue Wahoos, Maritime Park and Nick's Boat House. He advised when the first-floor tenants took up their space, the second floor was occupied by real estate agents who worked out in the field, whereas they had clients coming in constantly for mediations, depositions, etc., thus needing the signage for location purposes. He explained other property owners in the area received variances for their signage, so they would not be receiving any special treatment but would be getting the same privileges as everyone else. He suggested their sign was the minimal request for the building structure. He pointed out they had no objections from the public utilities, police, fire or the general public, and their signage would not be injurious to anyone. He argued when individuals were slowing down on Main Street in order to locate their facilities or searching their cell phones, not having a visible sign presented more of a danger to the public.

Matthew Hoffman presented a visual of the signage granted in the past and pointed out the Maritime Park variance was 230 sq. ft. for a 180 sq. ft sign to identify the park, and they hoped their sign would do the same. He also submitted the Blue Wahoos Stadium and Nick's Boat House signage as approved sizable variances in the WRD. He suggested the requested signage would meet the architectural integrity of the look on Main Street.

Chairperson Ritz did not have any questions, but stated the tenants in the Blue Wahoos Stadium did have individualized signs. Board Member Murphy asked why 64 sq. ft., and Mr. Rushing stated originally, they had submitted 66 sq. ft., and they had chosen to make the signage smaller. He advised they had already paid for the sign, but could not pull the permit without a variance. Staff advised the tenant variances for Blue Wahoos Stadium were approved prior to the revised language for the WRD. It was noted that the Blue Wahoos Stadium signage was the catalyst for the change in language since a significant request could get approved without the notification process for neighboring properties. Procedures for the WRD now required a legal notice for the public and notification to adjacent property owners for input.

Board Member Grundhoefer asked if the WRD allowed illuminated signs, and staff stated this district did not prohibit that type of signage. It was also determined a cumulative total of 50 sq. ft. could be allowed on all sides. Mr. Rushing confirmed it was 50 sq. ft. of signage all around the entire building, and with this variance proper notice had been given, and no one had objected. Chairperson Ritz then closed the item for new evidence and opened it for deliberation.

Chairperson Ritz advised he found that all the variance items had been addressed by the applicants. He pointed out when people drive, they do refer to their cell phones for directions and felt this was a true case for safety. He suggested their criteria met the requirements for this requested variance. He stated this signage also fit with building aesthetically and was not significantly different from others in the area. Board Member Murphy questioned if the LDC would be revised for future tenants coming into that building. Staff advised if multiple situations were requested, the language might be reviewed. Chairperson Ritz suggested if the other buildable areas in this district get a building, this issue might be addressed again. Board Member Grundhoefer explained the whole district

would be built out, and if each one got a 64 sq. ft. sign because this variance was granted, it could be a hodge-podge of signs in that area. Assistant City Attorney Lindsay appreciated the policy questions being raised which could be addressed to Council to update the ordinance, but the role of the Board today was to apply the ordinance as it is written to the facts presented, and if the facts as they are presented are enough to meet the criteria as they are shown in the law today, then a motion to approve would be in order; if the Board did not agree that the facts support the variance as the Chairperson has stated, engage in the facts presented and debate whether that evidence is sufficient. Board Member Grundhoefer did not see that any changes needed to be made in the language; he referenced Item 3 in the variance criteria where they state three other businesses have been granted special privileges, and they should get the same privilege. The previous privileges were granted by other boards, and that did not mean they should get a special privilege. Those prior privileges were granted before the current LDC language which was designed to protect the city. Chairperson Ritz suggested other property owners were enjoying special privileges that would be denied this applicant. Board Member Murphy agreed that the first floor tenants did not get the special privilege, and they meet the square footage of the building which again went back to the LDC to allow everyone to have a certain amount or let the landlord tell the first floor tenants to reduce their signage so everyone can be fair. Board Member Grundhoefer was disappointed that the request was for 64 sq. ft. and not 50 sq. ft. Assistant City Attorney Lindsay stated the Board could place a special condition on its approval, but the applicant could go to the Circuit Court who would determine if the criteria was met and would either overrule the Board's decision or not. She also stated whatever the Board decided on this applicant would not affect what it decided on a different applicant for a different request. Staff clarified that the sign size requirements had not changed with the new requirements, but the notification and Board process had changed. Chairperson Ritz stated prior to now, the Board did not operate in the quasi-judicial format for this meeting. Board Member Murphy explained the applicants felt their rights were denied based on Nick's Boat House and the Blue Wahoos because the signage was based on the requirements back then and not the new Code, so then they would meet the legal terms.

Chairperson Ritz made a motion to approve on the variance requested, seconded by Board Member Sampson. Board Member Grundhoefer stated he would not support the 64 sq. ft. but would support a reduced version. Board Member Murphy asked if the sign could be reduced. Board Member Grundhoefer stated he would approve 50 or 49 sq. ft. that way if another applicant wanted to apply, at least they would know this Board did not approve an increase in the size. Assistant City Attorney Lindsay stated the applicants had already paid for the sign before they knew they needed a variance and reducing the size of the sign would incur additional costs to them. She also clarified that the applicants had submitted a variance based on a certain sized sign. Board Member Murphy indicated the applicants had met the criteria by law. Board Member Grundhoefer still felt it was a special privilege to give the applicants a 64 sq. ft. sign, but he would be agreeable to review it if they requested below the 50 sq. ft. Board Member Sampson had an issue with special privilege, but after the presentation today, she felt they met all the necessary criteria. **The motion then carried 3 to 1 with Board Member Grundhoefer dissenting.**

The quasi-judicial process was closed, and the Board returned to the normal formatted meeting.

Open Forum – Councilperson Myers addressed the Board and stated the last time she

was before the Board, she was there to speak on her amendments to part of the tree ordinance, and Council directed that those amendments be brought before this Board. She did not know that Mr. Bilby or that a counter amendment was going to be presented to the Board. She indicated the Board had been provided with bullet points, and the Board meeting went on so long she could not stay, so she went home and called in. She indicated she never saw those bullet points. She stated when Mr. Bilby advised he had incorporated her notice provisions in his ordinance, she indicated that was fine with her.

She was now taking back everything she said. After looking at those bullet points, which she obtained from Board Member Murphy later, the Board was not given some critical information in those bullet points and neither was she as a member of the audience. She stated she objected to this ordinance for a lot of reasons, especially the power grabbing part that takes away the authority of the City Council, especially the control of how those funds are being spent. And something they fought for on Council for many years was where trees would be planted. She stated there were reasons they wanted trees to go back into the area that they were taken from; this ordinance takes away that requirement and puts all of the power to control the funds and where those trees go really into the hands of the Mayor, and she would never, never support that and was prepared to vigorously fight it. All the gains that had been made – most of the Tree Trust Fund has come out of her district around Carpenters Creek. She advised when she got into Council in 2011, we had almost \$1 million in the Tree Trust Fund – almost all of that came from around Carpenters Creek and has continued to do so to this day. The Board was not given bullet points that addressed that issue; it was not mentioned, and there was a reason it was not mentioned in her opinion. So, it was a lack of transparency. The Land Development Code and our Comprehensive Plan speak to the issue of reforestation, and we are not doing any reforestation; that's why it is important that trees go back into the area that they are taken from because really and truly, the only areas or forests we have left are slivers along Carpenters Creek; and what they are cutting down around Airport and Grande by the time this ordinance, if it ever gets modified in order to have some meaningful notice, it will probably all be gone. So, the issue will pretty much be moot. A bigger issue now will probably be looking at all of the devastation from Hurricane Sally which is pretty extensive in her district and other areas she has driven to. She stated she had driven down every single street in District 2, and it is pretty devastating around the bayou and in certain parks that have devastated with long leaf pines that have been taken down by that hurricane. She explained she was interested in hearing the Board's conversation and hoped that they made modifications to the tree ordinance that protects urban and forest habitat and requires the reestablishment of urban forest and wildlife habitat. She just wanted the Board to know they had not been given all the facts in those bullet points.

Discussion on the Proposed Amendment to the Tree Ordinance

Ms. Murphy then presented to the Board as a citizen, and advised she had been looking for feedback from videos she had provided to Assistant Planning Director Cannon on information and background of the professor and the extension agent for the University of Florida for the Board's thoughts about their backgrounds, on what they have achieved and how they go about their process; they also wanted to know the Board's feedback so they could take it and build it into a personalized program for the City of Pensacola.

Chairperson Ritz explained the Board had moved one item before the Council, and if there was ever a near-term item on the tree ordinance, Ms. Murphy obtaining any of that information from the Board which related to that item would not be in the Sunshine Law.

The Board could not give the comments to Ms. Cannon to relay it to Ms. Murphy, since that would make her a conduit for two Board members to speak to each other outside the gavels. If the information comes back before the Board in some form, if some of what Ms. Murphy had worked on becomes either evidence or presentation, unless Ms. Murphy recused herself from that entire vote for that reason, Ms. Murphy could not vote on a tree ordinance should it come before this Board. He explained even though the Board had submitted one to Council and it became another agenda item, Ms. Murphy and the Chairperson could not have any communications and doubted if staff would facilitate that communication since it would become very questionable. He emphasized that Ms. Murphy and other Board members could not communicate.

Ms. Murphy explained she thought of herself as getting the process going to obtain a nice tree ordinance through the community and was recusing herself from the final vote since she did not want anyone to think she had a personal agenda. She did not know that in recusing herself from that vote meant recusing herself permanently from any tree ordinance even if it came from someone else. Assistant City Attorney Lindsay did not see any problem with Ms. Murphy voting on the other ordinance, but felt Chairperson Ritz was concerned about talking about outside of the Sunshine anything to do with trees because it could become unclear to the public whether there had been some discussion out of the Sunshine. She also advised the ordinance approved by the Board and going before Council needed some additional work from a staff prospective, not to change the content but the form, and it would not go before Council at this time. She also explained the Code itself was being recodified, so there could be some organizational changes where it might need to be brought before the Board again for review. Chairperson Ritz advised he felt uncomfortable talking about anything related to the tree ordinance outside of this venue. If he were to speak with Ms. Murphy and she spoke to Councilperson Myers, it would create a very clouded situation. Planning Director Morris suggested the Board members could provide feedback in this setting of a public meeting. Ms. Murphy advised she had voted on the previous tree ordinance which created the change in the language (arborist, updating departments). Chairperson Ritz suggested an appropriate action would be for Assistant Planning Director Cannon to forward the information to the Board, and they could send it back to staff who could collect the comments which could be addressed in the next Board meeting as long as she was not becoming a conduit for response from any Board member. Planning Director Morris explained the comments could be collected as part of the agenda, but the discussion would take place in the public Board meeting.

Ms. Hagan, Vice President of the Sanders Beach Neighborhood Association, addressed the Board as a private citizen to speak for the heritage trees. She was encouraged by the discussion on the proposed amendments to the tree ordinance, however, she proposed that we engage the citizens of Pensacola, open a public session and give the opportunity to hear from the people who care about protecting our trees. She also believed the new Council should be engaged in the discussion; she encouraged the Board and the City to abstain from adjudication and not to vote on this matter until all sides were considered.

Chairperson Ritz advised there was legislation that would be before the Council sometime in the future; however, this Board might not see this ordinance again unless Council sent it back. He explained there had been a public forum where citizens were allowed to speak on this ordinance. He suggested that Ms. Hagan monitor the Council agenda to have a chance to speak at that time.

Board Member Grundhoefer advised what the Board had voted on a month ago was dealing with arborists and some of the immediate needs the Board thought to be

necessary, and he did not see or hear anything that would take the power from the Council and give it to the Mayor in the Board's discussion. Chairperson Ritz stated without that document, he could not respond. Board Member Grundhoefer noted the main object was to notify the Council member in that particular district so they could do something about the trees being affected. He thought it was good language, and the amendments and changes that come from these workshops could be reviewed to put some more teeth into the document to make sure the trees were protected. Chairperson Ritz indicated this had been a discussion item for over a year, and this Board could create something on its own since it has that power which could be presented to Council. Planning Director Morris advised that the document being reviewed by the City Attorney was regarding formatting and to make sure that nothing was in conflict with the recodification effort, and to her knowledge, there was no change to content; if there was any significant change to content, it would return to this Board.

Board Member Sampson did not recall anything about the Mayor; Board Member Murphy stated originally when the document came about, there was a lot of clearcutting taking place in District 2, and Councilperson Myers was very concerned, and she wanted to place an immediate change forward to require a phone number on the signs; also, some of the positions in the document were outdated. She advised at the end of the document, before it gets to the list of trees, it states that the Mayor could have full power over the Tree Trust Fund to decide where the money goes, and if trees come out of Councilperson Myers' district, they could be placed in Councilperson Hill's district. Chairperson Ritz stated in the past, Council has chosen to spend Tree Fund monies on other than trees. Planning Director Morris advised that the tree ordinance approved by the Board originated in the Mayor's office. She explained that when staff brings something forward, it is considered a mayoral item. She explained we have a new Sustainability staff person under Public Works and Engineering, and there was some desire to streamline the Code as far as how things function internally, and the document presented to the Board was a collaborative effort between departments.

Assistant City Attorney Lindsay stated since she worked on the Vickery Tree Case on Spring Street, she had a recommendation that staff or Council look at the ordinance since we want to be able to protect the trees according to the law. The way the legislature wrote the ordinance with the property owners being able to remove dangerous trees, there was not a lot of definitions, and there was a lot of confusion in the way it could be applied. Any certified arborist or landscape architect could say a tree was dangerous without necessarily any evidence. According to industry standards, what is dangerous or not, is the inquiry that was considered for that case. Part of those recommendations were to protect trees under the standards we think the legislature intended.

Adjournment – With no further business, Chairperson Ritz thanked the Board for its patience and adjourned the meeting at 3:55 pm.

Respectfully Submitted,

Cynthia Cannon, AICP
Assistant Planning Director
Secretary to the Board