



**MINUTES
CITY OF LAKE WORTH BEACH
PLANNING & ZONING BOARD MEETING
CITY HALL COMMISSION CHAMBER
WEDNESDAY, SEPTEMBER 18, 2024 -- 6:03PM**

ROLL CALL and RECORDING OF ABSENCES: Present were- Juan Contin, Chairperson; Daniel Walesky, Vice-Chair; Mark Humm, Zade Shamsi-Basha; Dave Mathews; Henry Pawski. Also present were- Karina Campos, Senior Community Planner; Scott Rodriguez, Asst. Director for Planning & Preservation; Annie Greening, Principal Planner; Elizabeth Lenihan, Board Attorney; Sherie Coale, Board Secretary.

PLEDGE OF ALLEGIANCE

ADDITIONS / DELETIONS / REORDERING AND APPROVAL OF THE AGENDA None

APPROVAL OF MINUTES:

A. August 7, 2024 Meeting Minutes

Motion: M. Humm moves to approve August 2024 Regular Meeting minutes as presented; Z. Shamsi-Basha 2nd.

Vote: Ayes all, unanimous.

CASES:

SWEARING IN OF STAFF AND APPLICANTS and Affected Parties: Board Secretary administered oath to those wishing to give testimony.

PROOF OF PUBLICATION None required, the two cases requiring advertising are continued from previous meetings.

WITHDRAWALS / POSTPONEMENTS None

PUBLIC HEARINGS:

BOARD DISCLOSURE None

UNFINISHED BUSINESS:

A. **PZB Project # 24-01500006:** 1724 North Lakeside Drive Additional information requested by the PZB at the August 7, 2024, meeting on a Variance to allow the placement of a standby generator between the principal structure and the right-of-way.

Staff: K. Campos – At the August 7, 2024 meeting, additional information was requested of staff. In particular, the code language for Mechanical Systems for existing residential structures. Fire and Building also re-reviewed the recommended location as it applies to NFPA 37 and elevation requirements. The Fire Dept deferred to the Building Division as the Florida Fire Prevention Code is not enforceable on single-family homes. The enforcement falls on the Building Official.

Staff contends the generator can be placed in the southeast corner of the property as previously presented and only one of the variance criteria has been met. LDR Section 23.4-17 does not allow for installation of a generator in the front setback or between the principal structure and the right-of-way. LDR Section 23.4-16- *Mechanical systems/equipment for existing structures* only allows for the installation in the front yard between the principal structure and the public right-of-way if there is insufficient room in either the rear or side setback. If the applicant installs the generator prior to December 2024, the current flood plain requirement would require a one-foot thick pad. The Building Division determined the generator were to be placed at the staff recommended position, the concrete pad would only need to be 8.5 inches to meet current flood plain requirements.

Since the Section for Mechanical Equipment indicates the front shall only be utilized if there is insufficient space in the side or rear; the Building Official confirmed the staff recommended side location will meet NFPA 37 requirements and it is a feasible space, the need for a variance is supported. Email correspondence from both PBC Fire Dept and COLWB Building Official support staff findings.

Wes Blackman CWB Associates: representing the property owners (Ken and Barbara Campbell) Appreciates the conclusion that the height of the generator can be at a substantially lower height than was previously mentioned. This will allow for easy screening. States the LDR Section 23.4-16 was amended as recently as May 2024 adding the line referencing not allowed in the front. Refers to letters of support from neighbors. The noise level will be negligible because when the generator is in operation, everyone's generator will be running. Contends the four variance criteria have been met. The depth of the lot with the location of the generator so far off street; reasonable use is a hard standard to meet; the requested spot is as close as they can get to the window; staff agrees with criteria #4 being met.

Board: J. Contin mentions PBC Fire does not decide how the LDR's work in the City. Correspondence from both PBC Fire and LWB Building Official indicate staff recommended location of side yard meets requirements. Is the aforementioned amended LDR now in effect ? **Response:** yes. **Board:** Within the City there are few, if any, generators in the front yard. Is the staff recommended location not feasible?

Barry Schultz COLWB Building Official: There is plenty of space on the southeast location. It is a non-issue and installation of the generator can work in either location including the back.

Board: PBC Fire staff are not planners; the locating of generators in the front yard is a planning issue. Variance approvals such as this can lead to setting precedence. Meeting only one of four criteria for a variance is not how the variance process works. Fire and Building can deal with it in the front or back. D. Walesky believes they meet criteria 1, that special circumstances exist as the structure is setback @ 70 feet. Code language pertaining to 23.4-16 and 23.4-17 should be combined/amended/cleaned up.

Board Attorney: The goal is to comply with local Code. The process exists for when applicant cannot meet Code. It entails meeting these four very stringent criteria. When you can meet Code, the variance process should not be utilized. Does it prohibit the applicant from reasonable use of the property as a Single-Family home? Can the Code be met in another way? Is a generator a reasonable use? In Florida a swimming pool can be characterized as a reasonable use, is a generator any different? Can they meet the Code in any way? Is the applicant denied the use of the property which is Single Family residential? Can they meet the strict application of the Variance criteria?

Z. Shamsi-Basha – Criteria #1 - It is set-back so far, it is a waterfront property which is not the majority in the City. Criteria #2 has not been met. The burden is on the applicant to meet the criteria.

M. Humm- The structure sits to the rear of the property, a great distance from the street.

D. Walesky – Criteria #1 is met. If you agree with Criteria #2 being met, it follows that Criteria #3 is also met. Variances are granted everywhere around the State that do not meet this standard.

J. Contin – Why does staff recommend against? The Building Official stated it could be either place. Do the LDR's prohibit the placement of the generator in the front yard? If so the Board would be going against the Code by approving it in the front yard. Other Board members believe there are special circumstances peculiar to the land. It is not peculiar to the land. The strict application would not deprive the applicant of the reasonable use as there is an alternate location and it's not peculiar.

Z. Shamsi-Basha- Applicant must win on all four criteria. Would a denial result in an unlawful taking in court? Condition #2 is not met at 100%. If the applicant wants to pursue the application, Board is allowed to grant the variance, has not heard any solid reason not to grant the variance, even though that is not the 100 % correct analysis under the Code.

D. Mathews- The generator would be easier to place in the front yard than the side of the house. Could agree with the front location due to the lot size.

H. Pawski – The applicant has another choice of where to place the generator.

Motion: D. Walesky moves to approve PZB 24-01500006, with the criteria reasoning as stated in the discussion, and with staff recommended Conditions of Approval; Z. Shamsi-Basha 2nd.

Vote: 4/2 motion passes; J. Contin and H. Pawski dissenting.

B. PZB Project Number 24-00500007: A Conditional Use permit request for a ±3,600 square foot Minor Vehicular Service and Repair use located at 1969 10th Avenue North. This item is a continuation from the July 17, 2024, PZB meeting.

Staff: K. Campos provides background information and analysis of the request by the applicant. The continuance from the previous meeting allowed for further discussion between the applicant and the affected party (Property Owners Association) as well as to provide the affected party with additional time to prepare a response. The proposal meets the LDR's and staff recommends approval with Conditions. A minor site plan will be required to repair site issues such as replacement of the drive aisle, landscape island and parking (which previously occurred without benefit of a permit)

Public Comment: None

Meghhaa Kumaarr of Alexis Gonzalez PA for the applicant- The Conditions of Approval are understood and agreeable to the applicant. Reserves opportunity for presentation after Affected Party presentation in the interest of saving time.

Affected Party Representation Josh Loren of Kean Law for GasLight Property Owners Association- The POA did not receive an application for approval of the use from the applicant prior to them applying to the City. The POA Board has since met and denied the request for minor vehicle repair services. If approved Conditions would be placed on the POA as a result of action by the applicant. There should be no negative impact on the POA; the POA will not accept or grant authority for shared expenses. According to the Declarations, there is no right to change the use without approval of the POA. The proposal goes against the Strategic Plan in that it does not generate additional tax base.

Meghhaa Kumaarr: While the presentation is compelling, it does not fully represent the intent of Romano Tires, which is to install tires with no intent to perform oil changes as contended by the POA.. Not only do they not intend to provide oil change services but are willing to specifically preclude that with added Conditions if necessary. The issues being raised are between Romano and the POA and should not be factored into the Board decision with regard to the Conditional Use Permit approval. Internal costs etc. are concerns between Romano and POA. All work will be performed indoors, no lifts will be installed. The parking spaces exist only re-stripe, the landscape buffer was removed without permits; all that is being asked is to restore the property to the originally approved requirements. Romano's request will not impose a greater burden on the POA as the Conditions relate to the POA as a whole. These are common elements of which Romano does have partial ownership. The process shouldn't be hindered today by POA issues with Romano.

Josh Loren: The minor vehicle repair request will create Conditions above and beyond what the site plan would require. The POA represents the other owners who will be greatly impacted. Believes the application would be for minor auto repair and there is nothing precluding them from operating as such.

Meghhaa Kumaarr: The opposing counsel contends per the letter provided the POA Board met and voted. Finds it not believable that three members represented the entirety of the POA. The Declarations do not indicate that the use is prohibited and counsel has not presented evidence otherwise.

Board Deliberation: Z. Shamsi-Basha- the Affected Party status is based on Condominium Declarations. There is a different forum for those issues. Has heard very little about objecting to the Conditional Use Permit process.

Josh Loren: The Board has an obligation to hear the other Condo owners as the result will adversely affect the other members.

Board: J. Contin - The matter seems to have more to do with condo law, a civil matter between the applicant and the POA. Understands the Board represents the owners but it may have helped if the other owner's were here.

H. Pawski-Understands common elements and the responsibility toward all condo owners. Not here to vote on your common elements. Will be voting on something not affecting Condo Law.

D. Walesky – The minor site plan applicant would need a letter of support from the POA to apply.

Motion: H. Pawski moves to approve PZB 24-00500007 with staff recommended Conditions of Approval; D. Mathews 2nd.

Vote: Ayes all, unanimous.

NEW BUSINESS:

- A. Ordinance 2024-15:** Consideration of an ordinance amending Chapter 23 “Land Development Regulations,” Article 7 “Floodplain Management” to adopt the new FEMA Floodplain maps and required language.

Board Attorney: Reads the Ordinance Title into the record.

Staff: Barry Schultz, Building Official – In addition to updating the FEMA maps, the Ordinance also corrects/amends affected language in the LDR's. The existing maps will be super-ceded on December 20, 2024. The extent of flood areas has been pushed to the west, many believe it is a straight line but it is not. A three foot increase in some areas.

Motion: D. Walesky moves to recommend approval of Ordinance 2024-15 Floodplain Management to the City Commission; H. Pawski 2nd.

Vote: Ayes all, unanimous.

- B. Ordinance 2024-13:** Consideration of an ordinance amending multiple sections of Chapter 23 “Land Development Regulations” to address several housekeeping items and minor changes for clarity.

Board Attorney reads Ordinance Title into the record.

Staff: A. Greening briefly reviews specific areas the amendment will affect. The reason much of Article 3 is included is those zoning districts are affected by the roof overhang encroachment.

Accessory Indoor Storage, Fences & Gates (residential electronic and manual setback to five feet)
Pools (new section which is user friendly).

Board: D. Walesky -Line #330 regarding semi-pervious stopping 18 inches from property line add “unless parking being accessed by alleyway.”

Lines 745-747 re: Single Family fences prohibited from having gate access to the golf course. Residents of the area put lawn chairs on the golf course while viewing fireworks, a gate out onto the golf course is a standard thing; a lost ball or frisbee may need to be retrieved.

Discussion of unimpeded access from private to public area. People should enter through the proper entrance. Perhaps there is a concern with Liability. Would like to strike these lines and take forward in a separate action if needed.

Line 816-817 – Handicap access aisle should be shared between 2 handicap spaces.

Motion: D. Walesky moves to recommend approval of Ordinance 2024-13 to the City Commission with the 3 requested modifications; H. Pawski 2nd.

Vote: Ayes all, unanimous.

PLANNING ISSUES: Provided an update to the City Commission regarding the role of PZHP in the City.

S. Rodriguez announces the October meeting will be a busy meeting with potentially five items including a Ordinances, Plat, a Conditional Use and a Site Plan approval.

Staff is currently reviewing items to be considered for Spring 2025 LDR changes/modifications.

PUBLIC COMMENTS (3 minute limit) None

DEPARTMENT REPORTS: None

BOARD MEMBER COMMENTS: A question arose about the CRA being able to join and vote remotely/virtually. Staff advised that for Board votes to be valid, the Board member must be present in chambers.

ADJOURNMENT: 7:55 PM