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Town of Ponce Inlet Planning Board Regular Meeting Minutes September 22, 2020

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** pursuant to proper notice, Chairman Cannon called the meeting to order at 5:30 PM in the Council Chambers, located at 4300 S. Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

2. **ROLL CALL AND DETERMINATION OF QUORUM:**

Board members present:

Mr. Kaszuba, Seat 2 (via Zoom technology)
Mr. Barrow, Seat 3
Mr. Cannon, Seat 4
Mr. Thompson, Seat 5
Mr. White, Alternate 1

Board member(s) absent:

Mr. Mauldin, Seat 1

A quorum was established with five board members present; Mr. Mauldin was absent.

Staff present:

Mr. Disher, Assistant Director, Planning & Development Department
Ms. Frazier, Senior Planner
Ms. Hugler, Office Manager
Ms. Hunt, Board Secretary
Mr. Joulani, Director, Planning & Development Department
Mr. Shepard, Town Attorney (via Zoom technology)

3. **ADOPTION OF AGENDA:** Chairman Cannon asked if there were any changes to the agenda; there were none.

Chairman Cannon moved to adopt the agenda as presented; seconded by Mr. Barrow. The motion PASSED 5-0, consensus.

4. **APPROVAL OF MINUTES:**

A. July 28, 2020 Regular meeting - Chairman Cannon asked if there were any changes requested to the minutes; there were none.

Chairman Cannon moved to adopt the July 28, 2020 minutes as presented; seconded by Mr. Thompson. The motion PASSED 5-0, consensus.

5. **REPORT OF STAFF:** Mr. Disher reported that an administrative variance request has been submitted by the Battelle Institute, to replace the fence surrounding the property on S.

47 Atlantic Avenue. They are requesting a variance to construct a fence eight feet in height, as
48 required by their contracts. They have also submitted a request for a text amendment to the Land
49 Use and Development Code, to allow barbed wire on top of the fence - which will be brought
50 before this board next month. Mr. Disher reminded the Board of a virtual training opportunity for
51 Planning Officials termed *Five Thursdays in October* and noted that the town will pay the cost for
52 board members to attend. Staff is currently working on amendments to the second part of the
53 town's landscaping and tree ordinance requirements and this will be brought to the board at its
54 November meeting. Staff has received an application from the Marine Science Center for a new
55 bird hospital building and that will be brought before the Cultural Services Board on October 5th,
56 this board on October 27th, and then to the town council in November. Mr. Thompson asked if
57 staff has a set of criteria when considering administrative variances and if the application is public
58 record. Mr. Disher stated yes, but the criteria is slightly different from that of a standard variance.
59 Mr. Thompson asked if the mobility ordinance has been brought to council. Mr. Disher stated not
60 yet given current priorities and deadlines.

61
62 **6. CORRESPONDENCE & DISCLOSURE OF EX-PARTE COMMUNICATION:**
63 None.

64
65 **7. HEARING OF CASES:** Chairman Cannon reminded board members that quasi-judicial
66 worksheets will be distributed after presentation of the case and must be completed before he calls
67 the vote.

68 **A. VAR 22-2020; property address: 100 Anchor Drive**
69 Owner(s): Dr. Craig Silberstein
70 Represented by Daniel Troian, Principal of DCT Construction & Design, LLC
71 Request: Variances (two) to allow construction of a new dock on property with less
72 than 65 feet of waterfront frontage.

73
74 Ms. Frazier provided a presentation (Attachment 1) of the variance requests and reviewed the staff
75 report dated September 14, 2020 (Attachment 2). She stated the requests include a variance from
76 the required minimum waterfront frontage width from 65 feet to 24 feet to allow construction of a
77 new dock; and a variance to reduce the minimum setback required for the dock from the side lot
78 line or side lot line extended into the waterway from 25 feet to 0 (zero) feet. She stated that for the
79 Board to grant a variance, all seven criteria must be met. She reviewed the criteria and staff's
80 findings:

81
82 *A. Special conditions and circumstances exist which are peculiar to the land, structure, or building*
83 *involved and not typical of other lands, structures or buildings in the same zoning classification -*
84 ***this criterion has been met;***

85
86 *B. The special conditions and circumstances do not result from the actions of the applicant -*
87 ***this criterion has been met;***

88
89 *C. Literal interpretation of this code would deprive the applicant of rights commonly enjoyed by*
90 *other properties in the same zoning classifications and create an unnecessary and undue hardship*
91 *on the applicant -****this criterion has not been met;***

92
93 *D. Strict adherence to the provision does not promote the purpose for which it was intended -****this***

94 ***criteria has been met;***

95

96 *E. The variance does not conflict with a town policy such as preservation of dunes, water*
97 *conservation, or preservation of natural vegetation - **this criteria has been met;***

98

99 *F. The variance is the minimum variance that will make possible the reasonable use of the land,*
100 *building, or structure - **this criteria has not been met;***

101

102 *G. The variance is in harmony with the general intent and purpose of the LUDC and does not*
103 *injure the area involved - **this criteria has not been met.***

104

105 She concluded that based on staff's analysis, three of the seven required criteria have not been met
106 and therefore staff recommends denial of both variance requests. Ms. Frazier noted that a letter
107 was received from the adjacent property owner, Portia Mallack, 102 Anchor Drive (Attachment
108 3), who opposes both variance requests. Mr. Thompson referenced the slide regarding
109 "continuance" and asked if that was presented as an option. Ms. Frazier stated yes, it is being
110 offered as an option based on feedback from this board. Mr. Barrow asked when the letter from
111 Ms. Mallack was received and if the applicant was provided a copy. Ms. Frazier stated the letter
112 was received on September 15th and forwarded by email to the applicant. Chairman Cannon asked
113 if the property owner has riparian rights, owning land beneath the water. Ms. Frazier stated in this
114 subdivision they do not. Ms. Frazier explained "riparian rights." There was a brief discussion
115 regarding access, boat sizes, and safety. Mr. Barrow asked if the homeowner decides where the
116 riparian line would be, asking if it was a legal definition included in the property deed. Ms. Frazier
117 stated the line was drawn by the applicant based on FDEP guidelines. Mr. White clarified that the
118 board is not determining riparian rights. Mr. Disher stated that the riparian lines as drawn by the
119 applicant have not been independently reviewed or verified. Mr. Thompson referred to "reasonable
120 use of property," noting there is an existing dock and asked if the owners have "reasonable" use
121 of the property. Ms. Frazier stated yes, although the existing dock is non-conforming, it can be
122 repaired and/or improved so long as the cost to do so does not exceed 65% of its assessed value.

123

124 Chairman Cannon invited the applicant to provide his testimony. Daniel Troian, DCT Construction
125 and Design, LLC provided a printout of the Florida Department of Environmental Protection's
126 Guidelines for Allocation of Riparian Rights (Exhibit 'A'), which helps explain the methodology
127 behind for how the riparian lines in the water were drawn. Chairman Cannon asked Mr. Troian if
128 his drawings are based on the "Gibson Study". Mr. Troian stated no and he's not referencing that
129 in any way. He explained that FDEP allows properties with less than 65 feet of waterfront frontage
130 to have zero setbacks, which is what he is seeking. Chairman Cannon noted the proposed dock is
131 on the riparian line, and the lines intersect at the thread of the canal, so it appears that the
132 applicant's "riparian rights" would terminate before the middle of the canal. Mr. Troian stated the
133 lines for 101 Anchor and the adjoining S. Peninsula Drive address join at the end of the canal.
134 Chairman Cannon asked if the proposed dock is the minimum necessary for what the owner wishes
135 to do. Mr. Troian stated the proposed dock could be further minimized but that doing so would
136 create an inequitable use. Mr. Thompson noted that there are docks in that area that do not have
137 catwalks on both sides of the dock; and noted there is a marginal dock and a property with no dock
138 all in that area; it appears there are other reasonable uses being enjoyed here. Mr. White asked if
139 the contractor could shrink the design of the dock, and still allow a catwalk on both sides. Mr.
140 Troian said yes, it could be shrunk, but it would be small. Craig Silberstein, 100 Anchor Drive

141 provided photos (Exhibit ‘B’) of the dock area. He noted that he and his wife bought the house
142 about a year ago and have put a lot of money into the property because it was in disrepair. He
143 stated he owns a 21- foot boat and is looking to have a boat dock and lift to store the boat. He
144 noted that he has reached out to both adjoining neighbors and one neighbor told him the dock
145 “looked great”; the other neighbor (Ms. Mallack) has not responded. He commented that Ms.
146 Mallack’s dock is dilapidated and hazardous. He noted that he cannot rebuild his existing dock to
147 achieve a reasonable use, if limited to 65% or less than the assessed value. Mr. Thompson noted
148 that regardless of what is done, this is a tight area and asked Ms. Frazier if she knew how many
149 docks in town have two-sided access. Ms. Frazier stated some docks in the area have a walkway
150 on only one side and noted that the pilings and all accessories have to meet the setback
151 requirements. There was a brief discussion regarding reasonable use, water access, and marginal
152 docks. Mr. White asked if the code definition of “dock” includes the pilings; Mr. Disher stated
153 yes, it includes all parts of the structure. Mr. Silberstein commented that no matter what he chooses
154 to do, he will need a variance. Mr. Thompson stated it appears all the docks in that area are non-
155 conforming. Chairman Cannon opened public comment - hearing none, he closed public comment.
156 A 10-minute recess was called while the variance worksheets were distributed to board members.
157

158 Chairman Cannon moved to approve variance #1, to reduce the required minimum waterfront
159 frontage width to allow construction of a dock, per LUDC section 3.17.2.H.4, from 65 feet to 24
160 feet; seconded by Mr. Thompson. The motion FAILED 4-1, with the following vote: Mr. Kaszuba
161 - no; Mr. Barrow - no; Mr. Cannon - no; Mr. Thompson - yes; Mr. White - no.

162
163 Chairman Cannon moved to approve variance #2, to reduce the minimum setback requirement for
164 the dock from the side lot line or side lot line extended into the waterway, per LUDC section
165 3.17.2.K from 25 feet to zero feet; seconded by Mr. Barrow. The motion FAILED 5-0, with the
166 following vote: Mr. Kaszuba - no; Mr. Barrow - no; Mr. Cannon - no; Mr. Thompson - no; Mr.
167 White - no.

168
169 Mr. Disher stated that the applicants have 30 days to appeal the Board’s decision to the Town
170 Council; request must be received by October 22, 2020.

171
172 **8. BUSINESS ITEMS/PUBLIC HEARINGS:**

173 **A. Ordinance 2020-XX, Exterior Lighting regulations** - Mr. Joulani explained that
174 a resident expressed concerns about neighbor’s lighting trespassing into their living quarters.
175 During his research, he discovered that the existing Town codes do not address “nuisance lighting”
176 or “light trespass.” He referenced his staff report dated September 14, 2020 and stated the proposed
177 ordinance creates a new section of the Code of Ordinances (Sec. 34-99) entitled “Nuisance
178 Lighting”; he then reviewed each proposed sub-section (34-99.1 through 34-99.6). He noted that
179 this ordinance applies to residential and non-residential properties. Mr. Joulani stated this
180 ordinance is being presented for the Board’s comments and feedback, and a revised draft will be
181 brought before this Board at a future meeting for final review and recommendation to the Town
182 Council. Mr. White asked if this would be enforced during special events. Mr. Joulani stated yes;
183 it would be a condition of the special event permit. Mr. Barrow commended Mr. Joulani on his
184 work on this ordinance. He asked that “direct illumination” be changed to “direct light,” as that is
185 defined. Mr. Thompson expressed concerns with how staff would be able to enforce the new
186 regulations, noting that some requirements appear subjective. He referred to lines 122 and 123 and
187 asked if landscape lighting is implicitly allowed. Mr. Joulani stated landscape lighting should be

188 shield and is typically low voltage. Mr. Barrow noted that “flood lights” are defined. Mr.
189 Thompson stated there are many up-lit trees in town, as well as motion-activated lighting and dusk-
190 to-dawn lighting. Mr. Joulani stated that the light must be directed towards the property. Mr.
191 Thompson expressed concerns that “unshielded light fixtures” could be subjective. Mr. Joulani
192 stated that this comes down to “expertise” and technology. Mr. Thompson asked how staff would
193 investigate. Mr. Joulani stated this is complaint-driven and explained that the building inspector
194 would inspect the light to ensure it is not a prohibited light, and then grant the property owner time
195 to repair or replace. If the situation is not corrected within the timeframe, the property owner will
196 be taken to the Code Board. Mr. Joulani confirmed that once there is an investigation, there has to
197 be action, enforcement, and standards. Chairman Cannon had the following questions, comments
198 and suggestions:

199 Line 22 - “illuminate” should be changed to “adversely impact”;
200 Line 50 - “visible light” - why use the word “visible,” and does this refer to the fixture? Mr. Joulani
201 stated yes, it could be a light fixture that is blocked by a buffer;
202 Line 74 & 75 - how is the “detrimental” effect on the environment measured? Attorney Shepard
203 noted that Code Enforcement staff would be trained and become the experts.
204 Line 83 - change “do” to “does”
205 Line 87 - insert the word “ensure” before “reasonable”
206 Line 121 and Section 34-99.4(a) - “floodlights” - it appears that the town is dictating fixtures;
207 Line 125 - “unshielded light fixtures” are not the nuisance, the glare is the problem;
208 Line 129 - “high intensity” should be defined;
209 Line 133 - “shielded” appears to dictate the type of fixture; the town should not be telling residents
210 what type of lights are allowed;
211 Line 134 - replace “target area” with “property”
212 Line 142 - “architectural or decorative lighting” - seems to dictate type of lighting;
213 Line 146 - “sixty-two (62) degrees” - where did that come from and why should it be included?;
214 Mr. Joulani stated the regulations are not trying to control what residents do, but are trying to
215 reduce the nuisance; Mr. Cannon commented that the town should not be in the business of
216 regulating fixtures.
217 Line 149 - can a sign be up-lighted? Mr. Joulani stated that the current code requires signs to be
218 down-lit; there was a discussion of low-wattage versus low-voltage; Mr. Thompson stated
219 landscape lighting is referred to as low-voltage lighting. Chairman Cannon suggested that the
220 language be kept consistent and to differentiate between low-wattage and low-voltage lighting.

221
222 Mr. Thompson asked if the proposed regulations are consistent with other municipalities. Mr.
223 Joulani stated yes, there are very limited lighting standards addressed in the town’s LUDC and this
224 ordinance tightens up those standards. Mr. Thompson urged caution with using the words “should”
225 as opposed to “shall,” and “shielded” and “architectural” because the town should not be in the
226 business of regulating types of fixtures. Mr. Kaszuba thanked staff for their work on this project.
227 He asked, if someone up-lights a flagpole for example, how would the proposed regulations affect
228 that. Mr. Joulani reiterated that this would be based on complaints; if no one is complaining then
229 there is no issue; if someone complains, then staff will investigate. He added that there is no
230 nighttime Code Enforcement presence, so the Police Department would have to investigate the
231 complaint. Mr. Thompson expressed concerns with municipal lighting being exempt while holding
232 business owners to a different standard. Mr. Disher stated there are separate regulations for
233 businesses already established in the Code. Mr. Joulani concurred and stated he would reference
234 those sections in this ordinance.

235
236 Mr. Joulani will incorporate suggestions and recommendations into a revised document and
237 provide to the board at a future meeting for further consideration.
238

239 **B. Discussion, Proposed regulations for wireless facilities in the right-of-way** - Mr.
240 Disher noted that the town is very limited in what it can do to regulate these facilities based on
241 state and federal law. He reviewed his staff report dated September 14, 2020, outlining what local
242 governments can do and cannot do. He noted that these regulations apply to town-owned public
243 rights-of-way, not South Atlantic Avenue as that is under Volusia County jurisdiction. He noted
244 that these regulations are based in part on those adopted by Volusia County and the City of
245 Daytona Beach. He noted that the town does not have the ability to override the County's
246 regulations on S. Atlantic Avenue; the County standards apply to County thoroughfares both inside
247 and outside of municipalities. He stated these regulations have been reviewed by the town
248 attorney's office and are good to go. Mr. Thompson asked if the Town can require the companies
249 to bury the power lines in an area with existing buried power. Mr. Disher stated that the facilities
250 themselves are wireless but must be connected to an existing power source whether that is buried
251 or overhead. Mr. White asked if the cut-off wooden poles will be removed (that are next to the
252 new concrete power poles) as these have been abandoned for several years. Chairman Cannon
253 noted the legislative constraints and stated that there seems to be no recourse for the town to take
254 if they fail to remove the poles in a timely manner. Mr. Disher confirmed that the timeframes
255 throughout the ordinance are dictated by state law. Chairman Cannon noted concerns with liability
256 insurance. Mr. Kaszuba asked if anyone knows how many of these facilities could be placed in
257 town. Mr. Disher stated it is estimated at ten. Mr. Kaszuba referenced negotiations and asked if
258 the company is obligated to negotiate in "good faith". Mr. Disher stated he is not aware of any
259 obligation.

260
261 **9. PUBLIC PARTICIPATION:** Chairman Cannon noted there was no one present for
262 public participation.

263
264 **10. BOARD DISCUSSION:** Chairman Cannon stated he has spoken with Attorney Shepard
265 to request a class on variance criteria for board members and to invite the Council. Chairman
266 Cannon suggested the class be held on the same day as a Council meeting or Planning Board
267 meeting for convenience and will speak with Council members to determine interest. Mr.
268 Thompson referenced "grandfathering" and the lighting ordinance and asked if these regulations
269 will create problems. Attorney Shepard noted that "grandfathering" is a term of art (example -
270 build backs). He mentioned *ex post-facto* (applying the law retroactively) where you cannot hold
271 someone accountable for a regulation not yet in place.

272
273 **11. ADJOURNMENT:** the meeting was adjourned at 8:57 p.m.

274
275 Prepared and submitted by,

276
277 _____
278 Peg Hunt, Board Secretary