



Planning and Zoning Board Minutes

July 21, 2020 at 6:00 p.m.

Virtual | Winter Park, Florida

1. Present

Chairman Ross Johnston called the meeting to order at 6:00 p.m. Present: Jim Fitch, Laura Turner, Owen Beitsch, Ross Johnston, Michael Spencer, Richard James and David Bornstein. Also Present: City Attorney Dan Langley. Staff: Director of Planning & Transportation Bronce Stephenson, Principal Planner Jeff Briggs, Senior Planner Allison McGillis and Recording Secretary Kim Breland.

Election of Chair and Vice Chair

City Attorney Dan Langley addressed the Board and stated that he would oversee the election of Chair and Vice-Chair appointments and explained the process for nominations and voting.

Board member Jim Fitch asked for a discussion prior to the vote. He stated that the previous Planning and Zoning Board had 7 members appointed by the mayor, and the voters decided that was not a good idea and the appointment process was changed so that the Mayor now has 3 appointments, who are currently on the board (Ross Johnston, Laura Turner and Owen Beitsch). Each Commissioner has one appointment each. Mr. Fitch asked Mr. Johnston how many years he had been on the P&Z board and how many years he had been the Chairman. Mr. Johnston stated that he has been on the P&Z Board for 7 years, 3 of those years as Chairman. Mr. Fitch stated that he has been critical of the P&Z Board for some time and opined that Planning and Zoning was the rubberstamp to the Mayor. He stated that one of the most egregious examples of that, and of which he expressed his thoughts to the P&Z Board in person, was the Rollins Crummer Business School wherein it was stated that it was a night school only with evening classes and no students during the day. Mr. Fitch stated that the previous P&Z Board accepted the application and sent it on to the Commission which he found to be outrageous. He noted that Mr. Johnston was the Chairman of the P&Z board at the time the item was passed and because of that Mr. Fitch felt Mr. Johnston should be removed as Chairman and proposed that another person should be nominated.

City Attorney Dan Langley explained that the election was an open vote and anyone could server as Chair or Vice-Chair and it would be up to the Board to decide that. Mr. Langley opened the floor for nominations. Ms. Turner nominated Mr. Johnston for Chairman, Mr. Johnston accepted the nomination. Mr. Fitch nominated Mr. James, Mr. James declined citing that he was new to the Board. Mr. Fitch then nominated himself. There were no other nominations, the nominations were closed.

Mr. Langley then explained that the voting process and the roll call vote began.

Based on a roll call vote Mr. Johnston was elected Chairman of the Planning and Zoning Board. The vote carried with a 6-1 vote. Ms. Turner, Mr. Beitsch, Mr. James, Mr. Bornstein, Mr. Spencer and Mr. Johnston, voted in favor, Mr. Fitch voted against.

Mr. Langley moved on to open nominations for Vice-Chair. Mr. Johnston nominated Laura Turner for Vice-Chair, Ms. Turner accepted the nomination. There were no other nominations, the nominations were closed. The roll call vote began.

Based on a roll call Motion Laura Turner was elected Vice-Chair of the Planning and Zoning Board. The vote carried with a 6-1 vote. Ms. Turner, Mr. Beitsch, Mr. James, Mr. Bornstein, Mr. Spencer and Mr. Johnston, voted in favor, Mr. Fitch voted against.

2. Approval of minutes

Motion made by Owen Beitsch, seconded by Richard James, to approve the June 2, 2020 meeting minutes.

Motion carried unanimously with a 7-0 vote.

3. Public Hearing:

- SPR #20-09. Request of Benjamin Callahan for: Approval to construct a 1,549 square foot addition to the existing two-story, 4,129 square foot single-family home located at 275 Stirling Avenue on Lake Virginia, zoned R-1AAA.

Mrs. McGillis explained that the item was a lakefront site plan review request for approval to construct a 1,549 square foot addition to the existing two-story, 4,129 square foot single-family home located at 275 Stirling Avenue on Lake Virginia, zoned R-1AAA.

The property has a canal running along it on the east side of the lot. The applicant is proposing to construct a 1,549 square foot addition to the existing home which would result in a total home size of 5,678 square feet. Mrs. McGillis provided plans outlining the area of the proposed additions which are located along the western portion of the lot. The floor area ratio and impervious area ratios of the home with the addition are both within the code maximums at 30% and 31% respectively.

Mrs. McGillis noted that the Board was tasked with reviewing lakefront lot criteria (tree preservation, views from the lake, views of neighbors and storm water retention).

With respect to tree preservation, the applicant proposed to save all of the trees on the site with the exception of an Oak tree that is integrated into the existing structure. It was stated that a significant amount of the roots was removed when the original home was constructed and because the storm water retention required as part of the request will be on the western side of the structure, the tree would need to be removed. The City's Urban Forestry department assessed the tree and reviewed the construction that would take place on the property and determined that the tree would not survive long term since most of its roots would be deteriorated. The tree removal was recommended. Mrs. McGillis provided images showing the location of the Oak tree.

In terms of storm water, the applicant is proposing several swales throughout the lot on the western, eastern and lake sides of the property sized to meet code requirements.

With respect to lake views and views of neighbors, the areas of the two additions are located further from the lake and the canal than the existing structure at 50-feet from the canal front and approximately 150-feet from the lakefront, therefore the additions would not affect the existing lake views for the adjoining properties. In addition, the code allows pool deck areas to be located 25-feet from a canal front and 50-feet from the lakefront. The applicant is exceeding the code requirements in proposing the pool deck area at 25-feet from the canal and 85-feet from the lakefront.

Mrs. McGillis provided elevations of proposed additions and the existing home with views from the front of the lot and from the lakefront. She closed by stating that overall the home met all of the lakefront review criteria and no variances were requested. Mrs. McGillis reviewed the lakefront criteria for the new board members. Staff recommendation was for approval.

There were no questions for staff regarding the request. Board member Jim Fitch commented that the request was a great improvement for the property.

Applicant Benjamin Callahan, 8579 Andover Bridge Court, Winter Park, FL, addressed the Board and thanked them for their consideration of the request.

Architect John Youngman, 421 East SR 434 Suite 1015, Longwood, FL, addressed the Board. He stated that their approach to the home was to respect the canal and lakefront views. He reviewed updates that were made to the home and stated that all of the new additions to the home were located on the opposite side away from the canal and lakefront.

There were no questions for the applicant.

No one from the public wished to speak. The public hearing was closed.

The Board agreed with the Staff recommendation.

Motion made by Laura Turner, seconded by Owen Beitsch, for approval to construct a 1,549 square foot addition to the existing two-story, 4,129 square foot single-family home located at 275 Stirling Avenue on Lake Virginia, zoned R-1AAA.

Motion unanimously carried with a 7-0 vote.

- LDC #20-03 Request of the City of Winter Park for an Ordinance to adopt the Orange County Fertilizer Regulations, by reference.

Mr. Briggs explained that all Cities and Counties participate in the National Pollution Discharge Elimination System imposed by Federal Law and administered in Florida by the Florida Department of Environmental Protection (FDEP). The overall goal is to reduce pollution of our waterways from point sources (sewer plants or factories) and from non-point sources (streets, storm drainage systems, other properties). A requirement of the NPDES program, is that FDEP requires counties and municipalities to have fertilizer regulation as an ordinance.

The concern is to control the flow of dissolved fertilizer after rain storms going directly into streams and lakes and to reduce the fertilizer runoff from properties that enter the streams and lakes via the storm sewer system. The goal is to reduce the amount of phosphorus and nitrogen intended to fertilize a lawn from fertilizing the weeds and algae in a lake. Thus, the ordinance prohibits phosphorus, sets limits on the amount of nitrogen, prohibits fertilizing within 15 feet of a lake and prohibits application of fertilizer right before a forecast storm event such as a hurricane.

Currently, the City of Winter Park does not have such regulation and the City must adopt such regulation as a requirement of our NPDES permit. In essence these regulations already exist because in the County's ordinance, it states that "this ordinance is applicable throughout all of Orange County, except in municipalities that have minimum standards that are no less strict than their ordinance". Since FDEP requires that the City adopt an individual ordinance, the City Attorney recommends that we adopt Orange's County's, by reference as the easiest method of compliance.

Staff recommendation was for approval.

No one from the public wished to speak. The public hearing was closed.

The Board discussed the matter and agreed with the Staff recommendation that adopting Orange County's ordinance was the best solution for compliance with the State requirements.

Motion made by Mr. Beitsch, seconded by Mr. Bornstein, for an Ordinance to adopt the Orange County Fertilizer Regulations, by reference.

Motion carried with a 7-0 vote.

- ZTA #20-02 Request of the City of Winter Park for: An Ordinance to adopt regulations for the consideration of artificial turf as an impervious surface and to regulate the amount of fill added to residential lots.

Classifying Artificial Turf as Impervious.

Mr. Briggs explained as the single-family neighborhoods of the City continue to be redeveloped with new homes or substantial remodels, the City encounters drainage issues resulting from the larger homes and increases in impervious surfaces. This Ordinance addresses two issues related to the amount and runoff and controlling the flow of that runoff.

The City limits the number of impervious surfaces allowed, which for single family homes is 60%, if it is a one-story home and 50%, if it is a two-story home. Impervious surface is anything that water cannot get through to the underlying soil. In the last few years, there have been a growing number of situations where builders and homeowners want to use artificial turf as part of their pervious surface calculation. Their desire to use artificial turf is based on the lack of maintenance needed and the appearance. Based upon the direction from the St Johns River Water Management District, which treats artificial

turf as impervious, the policy of the City has been to do the same. This has resulted in issues as companies selling the products have shown that the products are pervious.

The purpose of the inclusion of this text is for conformity with the treatment of artificial turf as impervious, as is done by St. Johns River Water Management District. At this time, it is an implementation policy by the Public Works Dept. This will codify that policy. However, there is the ability for Public Works to grant a case by case exception. In essence, it makes the applicant demonstrate that the product and installation method will function as pervious.

Mr. Don Marcotte, Assistant Public Works Director provided more details on the matter and showed a video demonstrating that the typical application does not percolate sufficiently.

The P&Z Board discussed this issue with artificial turf and felt that a blanket prohibition was not the correct approach. The Board agreed that the type of product was important and especially the base materials upon which it was installed. The Board was in consensus that rather than finding the entire artificial product line 'guilty' subject to case by case approvals with no standards was not the way to go. The Board felt that staff should develop some performance standards for artificial turf to ensure that the product itself and the installation allowed sufficient percolation. After considerable discussion, it was agreed that this portion of the Ordinance should be tabled.

Prohibition on Excessive Fill for New Home Construction.

Mr. George Wiggins, Director of Building then described issues when significant amount of new dirt fill is added to a new home site. Often a proposal is to build up the entire lot (not just the house footprint) and then building a retaining wall causing the entire property/lot to be 3-4 feet above the neighbors' properties and homes. This Code change will limit the amount of fill brought in to no more than two feet of added grade to any lot and also preclude fill that necessitates a retaining wall. Staff recommendation was for approval.

The P&Z Board posed questions to Mr. Wiggins about situations where this has occurred and any alternatives to address this problem. While both of these matters addressed site drainage, the P&Z Board expressed interest in dividing these matters into two separate Ordinances.

Mr. Bronce Stephenson suggested that the Board table this matter as well as it could be separated. As this was a staff item, Mr. Stephenson withdrew the Ordinance and this no P&Z Board action was necessary. Mr. Dan Langley, City Attorney suggested a roll call and it was unanimous to support the tabling.

Prior to moving on, the Chairman asked if there was any public comment and none was presented.

- MOR #20-01. Request of the City of Winter Park for: An Ordinance declaring and implementing a contingent temporary moratorium on the acceptance, processing, and consideration of applications for development orders, conditional use applications, site plans, building permits and other development applications that would utilize the Orange Avenue Overlay District policies, regulations, codes, and provisions approved March 9, 2020 by way of Ordinance 3166-20 (Comprehensive Plan amendment) and Ordinance 3167-20 (Land Development Code amendment), providing the temporary moratorium to become effective if the city's Ordinance 3170-20 (rescission ordinance) is determined by a court of competent jurisdiction to be null, void, or of no effect, or if Ordinance 3166-20 or Ordinance 3167-20 are determined to be effective or valid; providing for extension or termination of the temporary moratorium by ordinance or resolution; providing for confirmation and re-adoption of the City of Winter Park Ordinance 3170-20 (rescission ordinance); providing for non-codification, conflicts, severability, and an effective date.

City Attorney Dan Langley explained that the Ordinance was a contingent, temporary moratorium that the City Commission directed Staff to move forward by bringing it to the P&Z Board. He stated that there was a process where the City considered and adopted an Overlay for the Orange Avenue District with a Comprehensive Plan amendment and Land Development Code regulations. He explained that

after the adoption, the Commission rescinded the Ordinances before they became effective, and there was litigation filed against the City contesting the validity of the adoption of the Rescission Ordinance. The Commission asked Staff to bring forward the Moratorium Ordinance to make clear to the public/property owners that they should not rely on the rescinded Ordinances, and that if the Moratorium Ordinance is adopted, business and property owners would still be able to develop their property under the existing Comprehensive Plan and Land Development regulations.

Mr. Langley added that the adoption of the Moratorium Ordinance was not to incite fear or prevent people from developing their property. He explained that the intent of the Ordinance was to serve as a “stop/gap” measure in the unlikely event that a court were to declare the Rescission Ordinance invalid or declare that the previously rescinded Ordinances were effective, the Moratorium would be effective automatically upon a judge declaring that either event occur. He stated that the Moratorium Ordinance would be in place for a nine-month period, and could be extended to provide the Commission additional time to work their legislative will to enact an Overlay District that the Commission is comfortable with, as well as balancing various factors and stakeholders involved. He reiterated that the Moratorium would not prohibit development in the Overlay District, the Ordinance would allow the “status-quo” to remain in place and is only considered a contingent moratorium because it is not automatically in place. It would go in place if a judge declares that the rescission order was deemed invalid or if the previously adopted and rescinded Orange Avenue Overlay (OAO) is effective, then it would not allow development under those Ordinances the Commission has rescinded. It would still allow development under the existing Comprehensive Plan and Land Development regulations and also allow for any property owner to move forward with a Comprehensive Plan amendment or rezoning for their property in particular for those newly adopted amendments to the zoning or comprehensive plan to be used for development purposes. The Ordinance does not take any rights away from anyone to develop their property under the existing Comprehensive Plan or the existing or any new Comprehensive Plan amendment or any new rezoning. This would only make it clear that the status-quo remains in place pending any determination by the judge that the Overlay District that has already been rescinded is unrescinded.

The Board asked Mr. Langley to define the status-quo as it related to the Moratorium Ordinance. Mr. Langley stated that the status-quo was the Comprehensive Plan and Land Development Code regulations that existed and continue to exist, at present, with the Comprehensive Plan amendment for the OAO, as rescinded. He explained that the OAO Comprehensive Plan and Land Development code amendments were never effective. Again, he reiterated that the status-quo allows development under the existing Comprehensive Plan and Land Development regulations.

The Board asked Mr. Langley to clarify the litigation component and asked him to explain what would happen to the status quo with a vote for the Moratorium as well as a vote against it. Mr. Langley explained that vote for the Moratorium or a vote against the Moratorium would keep the status-quo in place. He reiterated again that the Moratorium was to make clear that if a judge were to declare that the OAO Comprehensive Plan were to be revived, that no development can occur under it and that the existing Comprehensive Plan that predated the amendment remain in place as what controls the development of property.

Discussion was held regarding the information being compiled by Staff for the Commission as they work on the OAO Ordinance amendments. Mr. Stephenson explained that the Commission asked Staff to utilize consultants to provide additional traffic analysis, to be performed by Kimley-Horn & Associates, which will add to the extensive traffic and modeling of the corridor to look at more potential regional impacts related to traffic. He stated that the Commission would also be reviewing the residential density transfer and floor area ratio (FAR) components of the Ordinance. He added that a majority of the language for the Overlay is mutually agreed upon and informed the Board of a tentative schedule for meetings and work sessions between Staff and the Commission. He also stated there will be work sessions with the P&Z Board as well as more opportunities for public input with the final product being presented to the P&Z Board for a vote likely in December 2020, to the City Commission in January 2021 and then on to the Department of Economic Opportunity (DEO) with an effective date in Feb 2021. In addition, the Board discussed the DEO review process for the Ordinance once it is approved.

Extensive discussion was held regarding the use of a Moratorium Ordinance as it related to the Rescission Ordinance. The Board expressed concern that the reason for the Moratorium Ordinance was unclear and worried that the Board nor the public may not fully understand what was being voted on. There was discussion regarding the impact the litigation procedures would have on the Moratorium should a judge find the Rescission Ordinance invalid. After lengthy conversation, the Board expressed that it was important to hear from the public regarding the Moratorium.

The board heard public comment from following residents in opposition of the Moratorium Ordinance:

Michelle Heatherly, 940 West Canton Avenue, Winter Park, FL; Mickey Grindstaff, 1900 W Fawsett Road, Winter Park, FL; Frank Hamner, 1011 N Wymore Road, Winter Park, FL; Julie Von Weller, 641 Williams Drive, Winter Park, FL; Betsy Gardner-Eckbert, 151 W Lyman Avenue, Winter Park, FL and William Sullivan 1362 Richmond Road, Winter Park, FL. Staff received three letters from residents via email all of which were in opposition to the request for the Moratorium Ordinance.

In addition, the Board heard from Commissioner Marty Sullivan. Commissioner stated that he was voicing no opinion on the issue and was only present as he was deeply involved in the issue. He stated that he was present if there were any questions he could help to resolve.

No one else wished to speak. The public hearing was closed.

The Board further discussed the ramifications should a judge find the Rescission Ordinance invalid and the timeline for the OAO Ordinance amendments to go into effect. The Board expressed concern that voting on the Moratorium was not an action that the Planning & Zoning Board should be considering. It was noted that the mission of the Planning and Zoning Board was to deal with land use and development related matters as they appear with the Comprehensive Plan, Land Development code and any kind of approval that would come before the Board and the Moratorium Ordinance did not fit into any of those categories. Additionally, the Board expressed concern that voting on the Ordinance was not in their purview. The Board cited issues with unclear language in the Ordinance, issues with the noticing requirements, and possible legal maneuvering by the Commission. Overall, the consensus was that the Board was not in favor of the Ordinance.

Motion made by Laura Turner, seconded by Owen Beitsch, to deny an Ordinance declaring and implementing a contingent temporary moratorium on the acceptance, processing, and consideration of applications for development orders, conditional use applications, site plans, building permits and other development applications that would utilize the Orange Avenue Overlay District policies, regulations, codes, and provisions approved March 9, 2020 by way of Ordinance 3166-20 (Comprehensive Plan amendment) and Ordinance 3167-20 (Land Development Code amendment), providing the temporary moratorium to become effective if the city's Ordinance 3170-20 (Rescission ordinance) is determined by a court of competent jurisdiction to be null, void, or of no effect, or if Ordinance 3166-20 or Ordinance 3167-20 are determined to be effective or valid; providing for extension or termination of the temporary moratorium by ordinance or resolution; providing for confirmation and re-adoption of the City of Winter Park Ordinance 3170-20 (Rescission ordinance); providing for non-codification, conflicts, severability, and an effective date.

Motion carried unanimously with a 7-0 vote.

4. New Business: None

5. Planning Director's Report:

Planning Director Bronce Stephenson addressed the Board and provided updates on the following topics:

- Governor's Executive Order allowing for virtual meetings City Commission has chosen to make it mandatory for all meetings to be remote. The order expires on August 1, 2020 unless extended. In person meetings will be held at the Winter Park Community center with proper safety and social distancing measures in place.

- New Planning Senior Staff Assistant, Mary Bush, will start August 10, 2020.
- City Hall remodel for the Building and Planning/Transportation departments is close to completion.
- Energov software implementation will allow residents/contractors to apply for Building Permits, Business Licenses, and Planning and Zoning requests online.
- Staff continues to work diligently with the Commission to develop a new OAO Ordinance.
- Transportation team making positive impact in the City through traffic and transportation endeavors. A transportation master plan is being developed.

6. Board Update & Comments:

By consensus the Board requested Staff to schedule a work session as soon as possible, Staff will work to get a work session scheduled for August 11, 2020 at the Winter Park Community Center.

Meeting adjourned at 8:54 p.m.

Respectfully,

Kim Breland, Recording Secretary