



**MINUTES
CITY OF ST. AUGUSTINE BEACH
PLANNING AND ZONING BOARD
REGULAR MONTHLY MEETING
TUESDAY, JANUARY 19, 2016, 7 P.M.**

City Hall
2200 A1A South
St. Augustine Beach, FL 32080

I. CALL TO ORDER

Chairman Steve Mitherz called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

BOARD MEMBERS PRESENT: Chairman Steve Mitherz, Vice-Chairman Jane West, David Bradfield, Roberta Odom, Elise Sloan, Zachary Thomas, Karen Zander, Senior Alternate Jeffrey Holleran.

BOARD MEMBERS ABSENT: None.

STAFF PRESENT: Building Official Gary Larson, City Attorney James Whitehouse, City Manager Max Royle, Police Officer Ed Martinez, Recording Secretary Bonnie Miller.

IV. APPROVAL OF MINUTES OF NOVEMBER 17, 2015 REGULAR MEETING

Motion: to approve the minutes of the November 17, 2015 regular monthly meeting. **Moved** by Roberta Odom, **seconded** by Karen Zander, **passed 7-0** by unanimous voice-vote.

V. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN FOR 2016

Mr. Mitherz said while he's enjoyed being the Board's chairperson most of the time, at this point, he thinks it's time for some new blood, so if anyone was planning on nominating him, he'd like to just be a regular Board member. He opened the floor for nominations for chairman for 2016.

Mr. Thomas nominated Ms. West.

Ms. West nominated Mr. Bradfield.

Mr. Whitehouse read the signed ballot sheets and announced the election of Ms. West as the Board's new chairperson by majority signed ballot vote.

Ms. Sloan nominated Mr. Bradfield for vice-chairman.

Ms. Zander nominated Ms. Odom for vice-chairman.

Ms. Odom thanked Ms. Zander, but declined to accept the nomination, and nominated Ms. Zander for vice-chairman.

Ms. Zander declined to accept Ms. Odom's nomination.

Mr. Bradfield was elected vice-chairman, as there were no other nominations.

VI. PUBLIC COMMENT

There was no public comment regarding any issue not on the agenda.

VII. NEW BUSINESS

- A. Land Use Variance File No. VAR 2016-01, for proposed construction of a six-foot-high picket-style fence in the front setback area of a single-family residence on an oceanfront lot at 1 E Street, St. Augustine Beach, Florida, 32080, Terence and Bettina Lally, Applicants

Mr. Larson said the variance request before the Board is to increase the height of a fence allowed in the front setback area from 42 inches to six feet, because the applicants have a service dog they are currently training. They're requesting the six-foot high fence to prevent the dog, which can easily jump a 42-inch-high fence, from jumping over the fence and becoming a nuisance.

Mr. Whitehouse said staff included information regarding the Americans with Disabilities Act (ADA) in the Board members' packets, for their understanding as to what questions they may ask relating to medical conditions, and not necessarily because the ADA is applicable. The ADA is applicable regarding access to public buildings, not private residences, which is the case here.

Bill Freeman, 3210 Cross Creek Place, St. Augustine, Florida, 32086, said he's speaking on behalf of the applicants, Terry and Bettina Lally, as the contractor for the work being done at their home at 1 E Street. One of the key points of this work is to have the yard ready for the service dog. They're allowed to have up to an eight-foot-high fence along the rear and side yard property lines, but are limited to only a 42-inch-high fence forward of the front building wall facing the dunes and along the sides. To keep their dog from escaping and possibly being picked up by St. Johns County Animal Control, they're asking to increase the overall height of the fence from 42 inches to six feet, as it takes a lot of time and money to train a service dog, and they don't want to lose it.

Ms. Zander said as a point of order, the Board has nothing in the application packet information showing Mr. Freeman is authorized to speak on behalf of the applicants.

Terry Lally, 1 E Street, St. Augustine Beach, Florida, 32080, said he and his wife, Bettina, are the property owners, and give Mr. Freeman, as their contractor, permission to speak on their behalf.

Mr. Freeman said the type of fence they're proposing meets the requirements of the City's Land Development Regulations, as it will be a picket-style fence which will look nice, blend in with the surroundings, and not cut off the view of the dunes from this property or neighboring properties.

Mr. Bradfield said one of the photographs submitted with the application shows an existing open picket-style fence adjacent to E Street, and it certainly looks like this fence is higher than 42 inches.

Mr. Larson said the variance request is to replace the white fence, as shown in the photograph referred to by Mr. Bradfield, which runs along the dunes, as the front of the house on an oceanfront lots is considered to face the ocean. The six-foot-high open picket-style fence running along the side of the house adjacent to E Street, as seen in this photograph, is allowed, as fences in side and rear yards can go up to a height of eight feet. Staff recommends approval of this variance request.

Ms. Odom said on page two of the ADA information provided to the Board, it says service animals must be under control. She asked if this requirement applies in this case to the variance request.

Mr. Whitehouse said no. As he said earlier, the ADA applies to access to public buildings, so this information was only provided as guidance for asking questions about someone's disability.

Ms. Zander said according to the tax records, the applicants bought this property in March 2015. She asked Mr. Freeman if he was then retained by the applicants to build their house.

Mr. Freeman said the home was already there. He was retained to do some work on the house, including potentially changing the fence height in the front, along the dunes and facing the ocean.

Ms. West opened the floor for public comment on this agenda item.

Steve Alexander, 2 F Street, St. Augustine Beach, Florida, 32080, said he and his wife have owned their home since 1986. As an attorney, he sees a lot of service animals coming into the courthouse, and they're usually the most well-behaved, well-mannered dogs. Normally, they're trained to stay in the home with the person they're assigned to, so to say you need a higher fence to contain a service dog wandering around a yard seems, to him, to be a little bit ludicrous. He found out tonight you can go on the internet and have any type breed of dog named as a service animal in about a week to 10 days. However, the real issue is that every property owner of an oceanfront lot and lots on the east side of A1A Beach Boulevard have to deal with people trespassing on their properties to get to the beach, using their outdoor showers, and taking things from their yards. He asked the Board to consider making a recommendation to the City Commission to change the current fence ordinance to allow see-through, picket-style fences up to six feet in front yards, so people can put up a six-foot high fence without having to come up with a bogus reason for applying for a variance. The applicants' request for a six-foot-high fence is a valid one, but the way they're going about it is wrong, as he doesn't think it at all fits the description or reason for a hardship.

Ms. West said Mr. Alexander will be happy to know the City is in the process of hiring a land use planner to make recommendations as to appropriate changes to the laws they're all governed by.

Ms. Odom said she thinks the positive comments in favor of the variance for the six-foot-high fence should be read aloud for the record. Correspondence from Rick and Martha Fey, 2 E Street. Unit 9, Sea Oats Villas, dated January 19, 2016, says, "We are pleased with the improvements that have already been made and fully support the proposed removal of the existing white board fencing and the addition of new fencing. When the work is completed our view will be greatly enhanced."

Mr. Thomas said he has some of the same concerns as Mr. Alexander, as service dogs are usually well-trained and expensive, so he asked if the dog for which the fence is requested has a history of running away. If the variance is requested for this reason, the regulations for fences should be looked into further, so this isn't something that's brought before the Board continuously.

Ms. Sloan said the Board has to find a hardship in order to approve this variance, as according to the way the City's rules for fences are established, there's no other way to allow a fence higher than 42 inches in a front yard at the present time. She understands the variance request for a higher fence in the front yard is for a service dog, but also understands from the questions asked that the applicants were aware, or should have been aware, of the current zoning laws when they purchased the property, which is part of the Board's consideration in the granting of a variance.

Mr. Bradfield said his confusion is in Mr. Larson's determination of recognizing the front of the house as being the seaward side facing the beach, as opposed to the side facing the street. He interpreted that the 42-inch height maximum for fences in front yards was enforced between the property and the street, not the property and the beach, so he thought this variance for a six-foot-high fence was for the fence located between the front door of the home and E Street, as in every other scenario other than oceanfront lots, this is where the 42-inch fence height maximum applies.

Mr. Larson said that is correct. Oceanfront lots are determined to have their front yards facing the ocean, because these lots are 50 feet wide from the street to their north or south property lines, and 93 feet deep, from the east to west property lines. If the side adjacent to the street was considered the front, you could only build a 10-foot-wide house with 20-foot front and rear yard setbacks.

Ms. Zander said when considering variances, the Board is required to follow the Code, which has seven criteria for granting variances. Having a fence that looks good is not a criterion, nor is liking the person applying for a variance. The criteria for granting a variance is very clear and needs to be applied, so the Board's decision is legally defensible. In other words, if the Board doesn't apply this criteria, the City can get sued for the decisions made by the Board. The criteria says the Board must first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographical condition, or other physical or environmental conditions that are unique to the specific property involved, which in this case, it clearly does not. The specific required considerations for the granting of a variance state the presence of a single factor shall not warrant either the granting or denial of the application, instead, the Board shall weigh each factor as to whether the public health, safety and welfare warrant the granting or denial of the application. The burden of demonstrating factually that the granting of the application is warranted is on the applicant. The first of the seven criteria to be considered by the Board in the granting of a variance is the nature of the hardship, as to whether it is a result of an inability to make reasonable economic use of the property consistent with the provisions of the Land Development Regulations, it being the intent of this provision that an inability to make reasonable economic use of the property acts in favor of the granting of the variance, and personal hardship and hardship in common with others act against the granting of the variance. Clearly, this would act against the granting of the variance. The second criteria addresses the precedential effect of the variance, it being the intent that the prior granting of similar variances to persons similarly situated shall act in favor of the granting of the variance and the prior denial of similar variances shall act against the granting of the variance. She asked Mr. Larson if there has ever been a similar variance request, and if so, if it was granted.

Mr. Larson said he'd have to go back and look at the records, as he cannot say offhand.

Ms. Zander said the third criteria says the creation of a precedent shall act against the granting of the variance. If the Board grants this variance, it will be setting a precedent, which acts against the granting of the variance. The fourth criteria addresses whether the hardship is self-created, as to whether the applicant acquired the property following the adoption of the Code from which the variance is sought, which is clearly the case here, so this, too, acts against the granting of the variance. The fifth criteria addresses whether the variance requested is the minimum variance that will permit the reasonable economic use of the property, which is something she'll get back to. The sixth criteria says the absence of an effect on neighboring properties will act in favor of the granting of the variance, and an adverse impact upon neighboring properties or the immediate neighborhood will act against the granting of the variance. She thinks it could very easily be argued that this is going to have an adverse impact upon neighboring properties, because they can't do the same thing unless the property owners also come before the Board for a variance. Going back to whether the variance requested is the minimum variance that will permit the reasonable economic use of the property, the City's legal counsel said earlier the ADA can't be considered here, as it does not apply to residential buildings. The applicants bought their house in March 2015, so clearly the current Land Development Regulations were in effect. It appears they're doing a lot of work and upgrades, based on the photos submitted with the application, which is great, so the Board is not denying the applicants from making reasonable economic use of the property, nor are they saying the applicants can't have a service animal, or that the service animal cannot be on their property. She asked what's stopping anyone with an aggressive dog, or a dog that can jump a fence, from getting a variance for a higher fence, as the hardship they're claiming is that their dog can jump a 42-inch fence, so therefore, a higher fence is needed. However, this isn't a hardship, it's a dog-training issue. They can put a shock collar on the dog, put it on a leash, or train it not to jump the fence, the point is, there are plenty of options, so this is not a hardship. It must take a lot of time and money to train a service dog, so she'd sure like to think it could also be trained not to jump a fence. Mr. Alexander made some excellent points, and as an attorney, he could be the one who starts to hold this Board to legally defensible positions, which this clearly would not be, if the Board granted the variance, based upon the criteria for variances in City Code.

Mr. Freeman said one of things he heard discussed was that the applicants clearly knew what the City's Land Development Regulations were when they bought their property, but he doesn't know anyone who knows all the codes and regulations when they buy anything, especially with residential property, as codes and regulations are not usually common knowledge. Most people barely know if they live in an area that has a homeowners association. If the applicants' service dog does escape, it may be picked up by St. Johns County Animal Control, which goes around checking for nuisances and dogs running loose, and the service dog is not the only dog owned by the applicants, who just want to make sure the dogs they own are not going to escape.

Ms. Zander asked how many service dogs the applicants have.

Mr. Freeman said one.

Mr. Lally said when he and his wife purchased their home, they had no idea of the specific codes and land uses, or that they would not be able to build a higher fence in the front consistent with

the fence they have in the back and along the sides. He'd like to be on record as stating many property owners don't have a clue as to codes and regulations when buying property, as there are so many other things involved in a property purchase transaction. Specific to the dog's ability to get over the fence, Mr. Alexander talked about the number of people coming onto beachfront properties, and two weeks ago, they had an issue with someone coming onto their property, and their dog, not their service dog, but their other dog, pulled his wife across the fence and into the dune area, trying to go after the individual trespassing on their property, so there is a very specific reason as to why they're requesting this variance, as they've already had an incident.

Ms. Zander asked if it was the service dog that was the problem in this instance.

Mr. Lally said no, the problem was the person trespassing on their property. He understands their home was vacant for a long time, from 2003 until when they bought it in 2015, and there've been vagrants who've trespassed on the property, used the showers, and perhaps slept in the house back when it was vacant for over a decade. Someone tried to come in two weeks ago, and one of their dogs, not the service dog, cleared the fence and pulled his wife along, trying to go after this person.

Ms. West said this actually is a really tough Board when it comes to the issuance of variances. Since she's been on the Board, she's learned having skin cancer does not actually constitute a hardship, which was kind of a rude awakening for her, but since then, she's taken a very strong and hard look at the requirements for a variance, and Ms. Zander is spot on in stating the applicable law. She agrees it's incumbent upon this Board, in making a decision on this, to look very clearly at the seven factors to be considered for a variance, which include the nature of the hardship; the precedential effect of the variance; whether granting the variance is going to set a precedent; whether the hardship is self-created; whether the variance requested is the minimum variance that will permit the reasonable economic use of the property; the effect of the variance on neighboring properties; and whether the variance will increase congestion on surrounding streets and/or increase the danger of fire or flooding. Personally, she had a hard time thinking a disease is some sort of a self-created hardship, instead of a circumstance allowing for humanity and exceptions, but she understands people may disagree with her on that. She doesn't think the last factor, as to whether the variance will increase congestion on surrounding streets and/or increase the danger of fire or flooding, which acts against the granting of the variance, is applicable at all. She encouraged the Board to strongly look at the criteria, as each factor must be weighed as to whether the public health, safety, and welfare warrant the granting or denial of the application, and unfortunately, or fortunately, for the applicants, the presence of just a mere single factor alone shall not warrant either the granting, or the denial, of the application, as the Board has to look at this cumulatively.

Ms. Zander said it's clear to her there's more than one dog the applicants are trying to contain, and not knowing the Code when you purchase the home is on the buyer, not on the City. As this clearly does not meet the criteria for variances, she made a motion to deny the variance request, based on the fact that it doesn't meet the criteria for a variance and therefore would not be legally defensible.

Motion: to deny the request for the variance as submitted in the application for Variance File No. VAR 2016-01, based on the determination that it does not meet the criteria for a variance and therefore would not be legally defensible. **Moved** by Karen Zander, **seconded** by Zachary

Thomas, **passed 6-1** by roll-call vote, with Mr. Bradfield, Ms. Odom, Ms. Sloan, Mr. Thomas, Ms. Zander, and Mr. Mitherz assenting, and Ms. West dissenting.

- B. Conditional Use File No. CU 2016-01, for a conditional use permit for outside seating on the premises of an existing building in a commercial land use district at 101 F Street, St. Augustine Beach, Florida, 32080, filed by 101 F Street LLC/Frank O'Rourke, Applicant

Mr. Larson said the applicant is requesting to build a small wood deck between his building and A1A Beach Boulevard, to be used by patrons of "The Kookaburra," which specializes in coffee, donuts, cookies, etc. There's no food preparation onsite, so it isn't a commercial business required by the State to have a food preparation license, but is considered a retail business. The applicant wants to put picnic tables on the deck to give customers a place to sit to eat and drink their carry-out goods, on the building's east side, facing the Boulevard. Staff recommendation is for approval.

Frank O'Rourke, 101 F Street, St. Augustine Beach, Florida, 32080, applicant, said he owns the building, and one of the businesses, at 101 F Street. His new coffee shop tenant has been at this location about five months. The square footage inside the coffee shop is approximately 250 square feet. It has a counter from which coffee and muffins are sold, and a few seats inside, but no table service, as everything is sold as take-out. They've had several requests from customers asking if they could sit outside to drink their coffee and eat their muffins, hence the request before the City.

Ms. West asked for any ex parte communication disclosures from the Board members regarding this application. She said she met with an adjacent property owner at her office, who provided a photograph taken from their porch, which she displayed and submitted to the recording secretary.

Ms. Sloan said she's been to the coffee shop, and wants to say it is delightful.

Mr. Mitherz said he went by the coffee shop to look it over before tonight's meeting.

Ms. West opened the floor for public comment on this agenda item.

Linda Ringwood, 8 F Street, St. Augustine Beach, Florida, 32080, said she's here to encourage the Board to deny this application, and wrote a letter to the Board and City Commission, which she hopes they all received a copy of. Reading from her letter, she said City Code defines a conditional use permit as a use that would not usually be appropriate, but if controlled as to number, area, location, or relation to the neighborhood, promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. She can't see that any of these things would be promoted by allowing this outdoor seating. Also, the Land Development Regulations say a conditional use permit shall not be granted if the proposed use is not compatible with other uses existing in the neighborhood or will conflict with the public interest. Most of the neighborhood surrounding the coffee shop is residential, and while she knows the coffee shop is commercially-zoned, there are lots of other commercial ventures that could go there that wouldn't involve outdoor seating, or the noise and extra lighting involved with it. She's visited the coffee shop, which is very small inside, and has very nice coffee, but the nice young lady who served her said they were excited because they were talking about wine and beer service. If the shop is

expanded to include beer and wine, she can't see how the existing nine parking spaces would be adequate for the clientele and employee parking. The coffee shop is already open seven days a week until 10 p.m., and outdoor noise and lighting this late every night isn't something she sees as benefitting or enhancing the neighborhood. She urged the Board to vote "no" to the application.

Renee Trinca, 7 F Street, St. Augustine Beach, Florida, 32080, commended Ms. Ringwood, as she said she covered just about everything she wanted to say. Her major issue and concern is the lack of parking in this area of F Street. She and her husband Len have lived on F Street for over 30 years, and it just seems the parking situation is getting worse and worse all the time. They own eight vacant lots directly across the street from the coffee shop, on the west side of A1A Beach Boulevard between E Street and F Street, but after consulting with some professionals, they were advised to not allow people to park there, because of the consequences of problems that might occur if there was a situation where somebody got hurt, and they could be sued. They put up tow-away signs today to prohibit parking on these lots, which she hates to do, as they used to let surfers and people going to the beach park there, but it's no longer possible, due to the liability issue.

Betty Carvellas, 4 F Street, St. Augustine Beach, Florida, 32080, said she has the same concerns expressed by Ms. Ringwood about the possibility of beer and wine being sold at the coffee shop, and the noise and lighting on the outdoor seating if it's open until 10 p.m. seven days a week.

Michael English, 115 F Street, St. Augustine Beach, Florida, 32080, said he and his wife Paula go to the coffee shop and enjoy their coffee, but their primary concern is what the outside seating involves and what's coming down the road. There's been word that alcohol may be served in the future, and if this is true, they wouldn't like that. As questions have already been raised about the noise, he'd like to know what kind of sound system, if any, would be installed on the outdoor deck.

Otto Tittle, 105 F Street, St. Augustine Beach, Florida, 32080, said he lives next door to the coffee shop, and is very much exposed to this business, which is open every day from 7 a.m. until about 10 p.m. They used to have peace and quiet, but don't feel comfortable sitting outside on their deck anymore, or leaving their windows open. Their privacy needs to be protected, so outside deck or no outside deck, he wants the side door adjacent to his property line, which is the entry door to the coffee shop, removed and relocated. He's very much against the outdoor deck, as once it's built, his privacy will be jeopardized even more. The City's already dealing with a very tough parking situation, as there simply is not enough parking. A small building houses both the coffee shop and Mr. O'Rourke's realty business, with a total of nine parking spaces for both businesses. According to his information, the coffee shop has a restaurant license, so according to City Code, an additional 20 seats on the outside deck would require 10 more parking spaces, for a total of 19 spaces.

Adrienne Tittle, 105 F Street, St. Augustine Beach, Florida, 32080, submitted photographs of the coffee shop from their porch next door. She said they've been coming to St. Augustine for the past 30 years with their children, spending summers here, to find peace and quiet, and they recently built their dream home at 105 F Street, to retire here. The business next door used to be a hair salon, which operated from 10 a.m. to 6 p.m., five days a week, and last year, it was a soft-serve ice-cream shop, which operated with limited hours about five days a week. One day they just woke up to coffee shop's opening with car doors slamming and people coming and going. Their living room and two of their bedrooms look out onto the side of the coffee shop, so they really feel

their privacy and peace is being comprised. Yesterday, as they were looking out their window, a beer tap was moved into the building, so obviously, they're intending to serve alcohol on the outdoor deck they're proposing to build. She displayed a photograph of the alleged beer tap being moved into the coffee shop building. Also, at night, the lights from the coffee shop are so bright, they shine into the rooms of their house. The City's Land Development Regulations define a noise disturbance as any sound which causes actual and unreasonable interference with the use and peaceful enjoyment of a residence by disrupting normal daily activities such as reading or studying. Their home used to be a peaceful retreat, they'd wake up in the morning and have quiet reflection, but now they have kids standing under their front porch. She hopes the Board will consider all of the rules and regulations that have been submitted and apply to this request, as they did with the previous application, in making a decision to allow, or not allow, the proposed outdoor seating.

Kathy Avery, 108 F Street, St. Augustine Beach, Florida, 32080, said she's concerned about the many families in the area with young children who ride their bikes, skateboard, and carry their surfboards to the beach. She has eight grandchildren, and it's already a nightmare crossing A1A Beach Boulevard in the crosswalk, as sometimes cars stop, and sometimes they don't. Now that the free parking on the lots across the street from the coffee shop are no longer available, traffic is only going to be that much worse on this corner, and she's concerned about people parking in front of her home. If they're going to have beer and wine there, this will only cause more problems, and she doesn't know why anyone would want to have outside seating on a busy road like the Boulevard anyway. She doesn't see anything good coming out of this, and is totally against it.

Leonard Lyons, 10 E Street, St. Augustine Beach, Florida, 32080, said he's here to speak in opposition to the proposed outside seating at the coffee shop. He agrees with everything said by previous public speakers, as in general, the proposed outside seating is not appropriate for the structure and business in this location. In his opinion as a resident, the worse thing the coffee shop owners could do for their business, because of the parking limitations placed upon them, is provide seating for customers to stay. Especially now with the free parking across the street no longer available, no parking allowed on the paved asphalt of the road, per the signs he's observed up and down F Street, and the limitation of only nine parking spaces, he'd think they'd want to move their clientele on and get them in and out as quickly as possible, instead of encouraging them to sit with their laptops and cups of coffee for who knows how long while their car sits in one of the nine parking spaces. He also sympathizes with the owners of the house next door, as he wouldn't want people coming and going at all hours of the night seven days a week next door to his property, and the fact remains, the residence was there before the coffee shop opened. He submitted a letter to the Board and asked that a copy be passed on to the City Commission, and is looking forward to the Board's decision and the City Commission's decision when this comes before the Commission.

Robin Streit McGuire, 114 D Street, St. Augustine Beach, Florida, 32080, said she's lived at this address since 1997, and when she moved in, there was a business which still exists on the corner of D Street and A1A Beach Boulevard, which formerly was an Italian restaurant, and now is a Mexican restaurant. In the almost 20 years she's lived here, she's never had any problem with people parking on D Street or on the City parkettes next to her house. The coffee shop is a commercially-zoned property, and there are commercial businesses, restaurants and retail services all along A1A Beach Boulevard that provide outside seating. The area is getting busier with more tourists coming here from downtown St. Augustine and new hotels coming in, so she believes the

City should support new businesses like “The Kookaburra” and allow them the same opportunities for outside seating that other existing businesses have.

Mike Hinson, 111 F Street, St. Augustine Beach, Florida, 32080, said this coffee shop is a lot different than a restaurant, as it faces F Street, not A1A Beach Boulevard, and in front of the coffee shop, there are really only three parking spaces, with the rest of the parking in front of the real estate office, so he doesn’t think it has enough parking, especially if more seating is being added outdoors. There’s also a noise problem, as the side entry door to the coffee shop is always open, with noise always coming out of the shop. If the entry door were on the A1A Beach Boulevard side, it would be fine. The previous businesses in this location always kept this door closed and were very quiet, low-key, nine-to-five operations. He’s also concerned about increased trash with more customers, and asked if the coffee shop is going to get a dumpster and put it in the back adjacent to the neighboring residences, which is the only place it could go. He’s worried about whether or not the coffee shop has sufficient restrooms, and if it has egress doors, so people can get out if there’s a fire. This is just more commercial encroachment on the residential side, which has lots of children in the area. If alcohol is brought in, it’s probably going to be a serious problem.

Steve McGuire, 114 D Street, St. Augustine Beach, Florida, 32080, said they’re talking about a deck on the east side of the building, between the sidewalk running along A1A Beach Boulevard and the coffee shop building. He asked if the Board allowed the Marriott hotel to be built where it is, as the neighbors around the coffee shop are talking about noise and lights, but what about what the Marriott has done? Are they going to vote to not allow fireworks in the summertime, because they go off too late, and people’s dogs bark? The coffee shop is a business that’s trying to grow, so he thinks they ought to be given a shot, because if it’s legally zoned for what they want to do, they have a right to do it. They’re not applying for a beer and wine permit right now, if, in the future, this comes up, at that point, it will be addressed. Many people, including himself and his wife, walk or ride their bikes to the shop to get their coffee, they’re not going to drive, so he thinks the Board should seriously consider this as an opportunity and vote “yes” to allow it.

Paula English, 115 F Street, St. Augustine Beach, Florida, 32080, said the Mexican restaurant a previous speaker talked about has four lots, with one lot dedicated just for parking, so that’s a big difference to having no parking. If the coffee shop isn’t going to serve alcohol, why were beer taps brought in last night, she asked? Her friend who owns the property across the street from the coffee shop is no longer allowing people to park on these lots, as it’s her private property, and a lot of the coffee shop customers did park there, so where are they all going to park now, in front of all the neighboring residents’ houses, she asked? A hair salon, that’s different, it has two or three clients at a time, and a real estate office may have a car or two parked out front and then they go out with a client and look at houses, but letting a restaurant expand is a bad, bad idea.

Mr. O’Rourke said there was a cooler brought into the building yesterday, as when “The Kookaburra” purchased the equipment from the ice cream shop, with it they purchased a cooler or refrigeration unit that failed, so they had to replace it. It doesn’t have beer in it, but refrigerated milk and other things used in making coffee, so unfortunately, there’s a lot of misinformation and hearsay, which he can understand, as neighbors see change, and instead of coming in and asking questions, they hypothesize and believe something is going to happen, when in fact, it’s not. To clarify, his building is surrounded by commercial property. Otto Tittle built his house on

commercially-zoned property. The Ringwoods at 8 F Street are in medium density residential zoning, immediately adjacent to commercially-zoned property all the way to A1A Beach Boulevard. He's sensitive to this because he's been a business owner here for 30 years, and previously owned "The Beachcomber" at 2 A Street. Back in 1987, they had the same problem, as they were a growing restaurant surrounded by residences, and they had to figure out a way to keep the residents happy, and still grow their business. They did a very successful job of this, and since expanding, there have been zero problems. His next venture was Premier Properties, in which he built a very successful real estate company, and a building that was recognized by the City. He's a City resident and business owner, and takes great pride in what he does. Now they have an opportunity for a coffee shop, which isn't a bar, although down the road they may want to sell beer and wine. The coffee shop use is compatible with the surrounding commercial property, and is across the street from a hotel and a miniature golf park. The lights at the miniature golf park are on until 10 p.m. each night, and you can see these lights from the pier, so he doesn't think the coffee shop lights will be any brighter than that. He's checked with the Chief of Police, and they've had zero noise complaints, zero accidents, and zero traffic incidents, so these arguments, to him, don't mean anything. They're proposing the deck on the east side of the building to respect Mr. Tittle's privacy, and not talking about having amplified music, any outside speakers, or sit-down table service. This is a little retail shop where people come in and get their goods, and either take them with them and leave in their cars, or they go outside with them and take a walk on the beach.

Mr. Thomas said he's less concerned with what they're serving, whether it's just coffee or coffee and beer and wine, as the building is in a commercial zoning district. What concerns him more are the parking issues, and if the coffee shop will be able to accommodate, and still comply, with the parking requirements with additional seating on the outside deck.

Ms. Zander the parking requirements actually go by the square footage of the building, not by the number of seats.

Ms. Sloan said she empathizes with all the people who have spoken, as the City is growing, and they're getting rated on every popular list in the country, and so it keeps growing. She knows they all have families and they'd like to protect the residential quality-of-life. This lot is zoned commercial, the City's plan for A1A Beach Boulevard is commercial, and she thinks it's to the applicant's benefit that he's proposing the outside seating on the Boulevard street side, and not on the residential side, of the property. The coffee shop is little, so it'd be nice if it had more seating. She has a question about picnic tables, as she's noticed there's already a picnic table outside, and asked if the applicant needs permission for the picnic table to be placed outside in the grass.

Mr. Larson said he'd have to defer to the City Attorney on this, to see if the City has any regulations prohibiting the placement of picnic tables in yards.

Mr. Whitehouse said first of all, this isn't part of the application, as they don't really deal in hypothetical situations when evaluating an application that's before the Board. Obviously, whether or not they can have a picnic table would be subject to the land development code, but he thinks outside seating, depending on what they're doing at the picnic table, could be interpreted under the Code to be covered under this particular use, which requires a conditional use permit for consumption of food and beverages outside on the premises of a commercial establishment.

Mr. Bradfield said the business is described as not requiring any type of food service licensure from the State, even though they're obviously serving drinks and some kind of food. He asked how many seats are inside the coffee shop, and if there are any plans for additional parking. Eight out of 10 neighbors spoke in total opposition to the outdoor seating, for a variety of reasons, which include possibly expanding to allow beer and wine, and the already limited amount of parking. He's uncertain as to how a beer and wine permit could be obtained by a retail vendor that's not a licensed food service establishment in any way, shape, or form, and asked if this was even possible.

Mr. Larson said the business previously at this location was a gelato shop, which the State determined was actually a service establishment. The coffee shop falls under the same criteria, as no food is prepared there, so it is not classified by the State as a restaurant. To clarify this right now, they will never be able to sell beer and wine there, because a business has to be a restaurant and have food service for the City to approve the sale of beer and wine. Stand-alone sales of alcohol without food service basically constitutes a bar, which is a prohibited use within the City.

Mr. O'Rourke said there are approximately 10 seats inside the coffee shop. Right now, there are no plans for additional parking. A lot of hotel rooms have been added along the Boulevard, there's a hotel right across the street, and many customers are walk-ins from the neighborhood, so not everyone drives. He understands the concerns about parking and having beer and wine, but they're not here asking for a beer and wine license, they're asking for outside seating on a deck.

Mr. Mitherz said in addition to the 10 seats inside the shop, the applicant is asking to put 20 seats on a 15-foot-by-30-foot outdoor deck. He's sure with this many more seats, there will be more drive-in customers, as well as walk-ins. Personally, he doesn't feel there will be enough parking.

Ms. Zander said per Section 3.02.04 of the Land Development Regulations, maximum lot coverage for commercial zoning is 40 percent. She asked what the lot coverage is on this parcel, if a pervious deck is considered as part of the maximum lot coverage, and where the fire exit door is located.

Mr. Larson said 40 percent coverage applies to new construction. He thinks when Mr. O'Rourke's building was built, around 1985, maximum lot coverage for commercial zoning was 50 percent. Maximum impervious surface coverage for commercial zoning is 70 percent. A pervious deck is not considered as part of the maximum lot coverage. Per his estimation, the businesses in Mr. O'Rourke's building are not required to have a fire-exit door, except for one door, based on the square footage. The main doors to the real estate office and the coffee shop are all that are needed.

Ms. Zander asked if it is correct to say that the sheer number of people in support of or against an agenda item cannot truly be a determining factor.

Mr. Whitehouse said that's right.

Ms. Zander asked Officer Martinez, as the City's police representative, if he sees any safety issues with the outdoor deck as it's proposed, such as sight visibility triangle issues or ingress-egress issues, from a public-safety perspective.

Officer Martinez said he'd have to look up statistics from the past year to see if there've been any

accidents in this area or any pedestrian issues.

Mr. Larson said the vision triangle for clear visibility is 15 feet, and the proposed outdoor deck is beyond the 15-foot vision triangle.

Ms. Zander asked if the outdoor deck, as proposed, will be located between the building and the existing sign on the east side of the building.

Mr. O'Rourke said that's correct.

Ms. Zander asked if there are any issues with setbacks for the deck, if any landscaping is proposed between the deck and the sidewalk along the Boulevard, and the coffee shop's hours of operation.

Mr. Larson said there are no issues with setbacks, and actually, anything 12 inches or less in height isn't subject to any setback requirements.

Mr. O'Rourke said he probably won't put any landscaping between the deck and the Boulevard. There's an existing plant bed with palm trees on the building's north side, and an existing plant bed on the front of the east side of the building, between the building and the proposed deck, which he'll probably redo, and hedges on the south side, between the building and Makarios townhomes. The coffee shop tenants are here, and can answer the question about hours of operation.

Spencer Hooker, 127 Coronado Street, St. Augustine, Florida, 32080, said they're open seven days a week, from 6:30 a.m. until 8:00 to 9:00 p.m. on weekdays, and until 10:00 p.m. on Fridays and Saturdays. Those are the stated hours, but in reality, they've been closing earlier on Fridays and Saturdays, as they haven't had much business this late. They offer specialty coffee drinks, baked goods such as muffins, brownies, cookies, savory Aussie pies, and Australian desserts. Everything is served at room temperature except the Aussie pies, which are served out of a pie warmer.

Ms. Zander asked what materials are proposed for the deck, and if it will have any railings.

Mr. O'Rourke said the deck will be made of wood, and yes, the deck drawings submitted with the application show see-through picket or spindle-style railings, built to Code.

Mr. Bradfield asked if a conditional use permit is required to build this deck, or if Mr. O'Rourke could build it simply as an improvement to his property.

Mr. Larson said no, a conditional use permit is not required to build the deck, which could be constructed as an improvement to the property.

Mr. O'Rourke said he's glad Mr. Bradfield brought this up, because he wanted to know if he could build a deck for his real estate office, and put some picnic tables on top of the deck.

Mr. Whitehouse said he'd have to defer to staff and agree if Mr. O'Rourke wanted to build a deck for his real estate clients, he'd be allowed to do this, but in practicality, if the deck is being used by the other business in his building, clearly, the way you situate a property can't be used to subvert

the Code. If the coffee shop customers are sitting out on the deck, and Mr. O'Rourke didn't have a conditional use permit for this outside seating, he'd probably get a code enforcement action brought against him, if somebody complained about it. He thinks it's clear a conditional use permit for the requested action on this application is necessary per the Code, if the applicant wants to have outside seating for consumption of the goods sold inside the retail establishment.

Ms. Zander asked if Mr. O'Rourke's real estate office is considered a professional office, per City Code, and based on what's been said, "The Kookaburra" is considered as a service business, not a restaurant, regarding how the parking requirements are determined.

Mr. Larson said yes, Mr. O'Rourke's real estate office is a professional office, and "The Kookaburra" is considered a retail sales use, not a service business, but the parking requirements are the same, requiring one parking space per every 250 square feet of gross floor area. He does not consider "The Kookaburra" as a restaurant, as it's not licensed by the State as a restaurant.

Ms. Zander asked Mr. Whitehouse if he agrees they should not be considering "The Kookaburra" as a restaurant, regarding interpretation of City Code for parking requirements.

Mr. Whitehouse said yes, if this is how the City's professional staff has interpreted this.

Ms. Zander asked Mr. O'Rourke what the lease duration of "The Kookaburra" is, and if he'd be open to the conditional use permit being granted to the coffee tenants, instead of him, as the owner of the building. Normally, the tenants are the applicants, unless a business is owner-operated. She also asked the City has the ability to regulate any music played on the outdoor deck.

Mr. O'Rourke said the lease information is probably confidential between himself and his tenants, but they'd be willing to make the conditional use non-transferable, and not have any outside music.

Ms. Zander said Mr. O'Rourke provided information that his real estate office space is 800 square feet, and coffee shop space is 250 square feet. Per the City's parking requirements for professional offices and retail uses, one parking space is required for every 250 square feet of gross floor area, so inclusive of the addition of the outdoor deck, with nine existing parking spaces, the site meets the parking requirements. A restaurant is required to have one parking space for every 55 square feet of gross floor area, but as the coffee shop is considered a retail business, it has enough parking.

Mr. Larson said that's correct.

Ms. West said she counted 10 members of the public against this application and two in favor, with the opposition ranging from lack of parking, concerns about congestion, hurting children, noise factors, and lack of privacy, all of which she thinks are legitimate concerns voiced by the public. Based on the public interest factor alone, she personally doesn't think the application meets the standards for the issuance of a conditional use permit. That being said, she'd like to put a mediation hat on, and make some suggestions. A lot of the concerns she heard from the public, notwithstanding the parking issues, included the placement of the side entry door to the coffee shop. Quite honestly, it is physically awkward to have entry into the coffee shop on the west side of the property, the real estate office in the middle, and the outside seating on the east side, along

the Boulevard. She asked Mr. O'Rourke if he'd consider switching things around, and getting the side entry door to coffee shop away from the residential impact, by moving it closer to the high volume traffic area along the Boulevard, so there will be less friction between those two uses of high intensity commercial and residential. She thinks this might go a long way in solving some, though not all, of the neighbors' concerns. She'd like to give Mr. O'Rourke the opportunity to evaluate that option, and meet with the Tittles and other neighboring property owners to try to address their concerns. She'd be willing to entertain a motion to continue this until Mr. O'Rourke can get this done, so when he does go before the City Commission, he can present a united and amicable package for the Commission's consideration of his conditional use permit application.

Mr. O'Rourke said aside from the expense of relocating the door, the entry door to the coffee shop is on the side is because there's parking in front of the building, and there's a safety issue with moving the door to the front where vehicles pull in and out. The fact is, the property next to coffee shop is zoned commercial, and the neighbors decided to build a house on a commercially-zoned property, so this really shouldn't restrict his commercial property rights. When you build in a commercial zone, there's an inherent chance something like a McDonald's could be built next door. He bought the building two years ago, and with it came expenses, including a total interior build-out, replacement of the roof, new siding, new paint, new air-conditioning, and new landscaping. He'd like to continue to beautify the property, and has no problem with putting a landscaped buffer screen on the residential side. He's sensitive to the residential neighbors, which is why the deck and outdoor seating are proposed on the street side, where all the road noise is.

Mr. Bradfield said as he thinks Mr. O'Rourke, as a business owner, has a conditional use right within some control parameters that address the public's concerns, he recommends approval, subject to no beer or wine being served out of this location. Another thing relevant to the conditional use approval should be a control on the hours of use of the outdoor deck, and an expiration date for the conditional use, such as one year, so at the end of this time period, the terms and conditions of the conditional use permit can be reevaluated. Also, a landscaped buffer should be put up to address the aesthetic issues between "The Kookaburra" and the neighboring residence, and the outdoor deck should have some kind of low-level safety lighting, as you can't just ban outdoor lighting. This would be a safety hazard after dark, and in the winter, it's dark at 6:00 p.m.

Ms. Zander said she wants to point out that the City's Vision Plan encourages connectivity and outdoor dining, and they have local owners and small-business people here who want to expand an existing local business, which is what she thinks the City wants, as opposed to chain restaurants and things like that. Frankly, she doesn't agree there's enough parking, but she fought for more parking with Embassy Suites, and found you can't hold an applicant to having more parking than what the Code requires. Per the Code, the applicant and his tenants have enough parking.

Motion: to recommend the City Commission approve the conditional use permit application for outside seating for take-out food and/or beverage service and consumption on a proposed exterior deck outside of an enclosed building in a commercial land use district at 101 F Street, subject to the following conditions: 1) The conditional use permit shall be granted with a one-year expiration date; 2) The conditional use permit shall be granted only to the current tenant, "The Kookaburra," and shall not be transferable to a new tenant; 3) There shall be no usage of the outdoor deck after 9:00 p.m. Sunday through Thursday nights, and after 10:00 p.m. Friday and Saturday nights; 4)

There shall be no alcohol consumption on the premises; 5) Deck materials must remain pervious and be uncovered, aside from portable tables and umbrellas; 6) Appropriate low-level safety lighting only shall be installed on the exterior deck; 7) A mature, native landscape buffer shall be installed between the property at 101 F Street and the residence adjacent to the west property line within 60 days of the issuance of the conditional use permit. **Moved** by Ms. Zander, **seconded** by Ms. Sloan, **passed 5-2** by roll-call vote with Ms. Odom, Ms. Sloan, Mr. Thomas, Ms. Zander, and Mr. Bradfield assenting, and Mr. Mitherz and Ms. West dissenting.

- C. Review of proposed amendment to Section 2.00.00 of the City of St. Augustine Beach Land Development Regulations to provide a definition for alternative porous paving materials

Mr. Larson said staff's recommendation is that this should be tabled until the land use planner to be hired by the City is on board, as this is what they're retaining the services of a land planner for.

Craig Thomson, 6 D Street, St. Augustine Beach, Florida, 32080, said he serves on the City's Tree Board, whose scope of work is to try preserve trees and the tree canopy. Impervious surface coverage is a big issue especially in the Coquina Gables and Chautauqua Beach neighborhoods, which have 50-foot-wide lots, and what they're recognizing is that the larger homes now being built on these lots due to the new setbacks typically affects the parking required. One of the foundations of zoning is lot coverage, and while impervious surface coverage is defined in City Code, unfortunately, in the process of developing these larger homes, there has been a tendency to use paving systems that take up the entire lot in order to have enough parking. The maximum impervious surface coverage allowed on medium density residential zoning is 50 percent, to prevent water run-off. There is a section in the Code under impervious surface coverage which allows for the use of alternative paving systems, which are not counted as impervious surface coverage, but there is no definition in the Code for what constitutes an alternative paving system. He has no problem with the work of Mr. Larson, but he thinks there's a policy issue here, as in multiple instances, Mr. Larson has interpreted that concrete pavers can be considered a porous surface. When he spoke before the Board awhile back, he tried to demonstrate the difference between porous paving systems, and showed that a porous concrete paving system drains three to eight gallons of water per minute straight through, so the key thing here is that if you have 50 percent impervious surface coverage, you want the rest of the property to absorb water, so it doesn't run off, as the goal is to prevent water run-off. As the maximum impervious surface coverage allowed is being circumvented by the section in the Code that says if porous paving materials are used, the area covered with porous paving materials shall not be counted as impervious surface coverage, he's suggesting a definition for porous paving materials, based on assigning a porosity value to the paving materials. If, indeed, a paving material drains three to eight gallons of water per minute, it's a porous paving material. He read aloud the proposed definition drafted for an alternative porous paving system, which states, "A paving system which allows for the absorption of water at the rate of four gallons per minute per square foot of area, thus controlling stormwater runoff comparable to sodded areas of a site. The use of alternative porous paving shall be limited to no more than 25 percent of the total area of a property." He's asking the Board to forward this proposed definition to the City Commission, with the recommendation that the Commission have it reviewed by the land use planner, to get it in the Code as an amendment to Section 2.00.00 of the City's Land Development Regulations.

Neil Armingeon, 291 Cubbedge Road, St. Augustine, Florida, 32086, said he's the Matanzas Riverkeeper, and his job is simply to look after the Matanzas River, from the St. Augustine Inlet, to seven miles south of the Matanzas Inlet. One of the biggest threats to the river is urban run-off and stormwater, so he agrees with Mr. Thomson and certainly supports anything that can be done to limit direct run-off into the river. The Matanzas River watershed now has two of the fastest growing counties in the State, and sadly, a lot of the development is in and around the river. The reason they have a very limited oyster harvest area is due to run-off from urbanized areas. They're down to harvesting oysters only between State Road 206 and the Flagler County line, which is one of only three places left in northeast Florida where one can actually harvest and consume oysters, so he'd certainly appreciate and support anything the City can do to protect and preserve the river.

Ms. Odom said she thinks the Board should move this forward to the Commission with the recommendation that the proposed definition for alternative porous paving materials be reviewed by the land use consultant, as she knows Mr. Thomson and others have worked very hard on this.

Mr. Thomas said he agrees.

Ms. Sloan said she absolutely agrees, and likes that not only has alternative porous paving been defined, but the definition includes limiting the use of alternative porous paving on property sites.

Mr. Bradfield said he completely agrees the new verbiage should be adopted.

Mr. Mitherz said he's not opposed to amending the Code by adding this definition.

Ms. Zander said before making a recommendation to the Commission to have the land planner look at this, she'd like to better understand where the numbers for the rate of the absorption of four gallons of water per minute came from, and whether they're relevant to anything.

Mr. Thomson said concrete companies have come up with what's called a porous concrete paving, based on materials that have a drainage rate of three to eight gallons of water per minute. There are also permeable systems, but these are not the same animal. Soils engineers can tell you a better solution is sodded grass, which absorbs about five gallons of water per minute.

Motion: to recommend the City Commission provide a definition for alternative porous paving materials that is consistent with the materials and definition provided by Mr. Thomson, and for the Commission to instruct the land use planner/consultant to be hired by the City to adhere to the same. **Moved** by Ms. West, **seconded** by Ms. Sloan, **passed 7-0** by unanimous roll-call vote.

- D. Rescheduling of March 15, 2016 regular monthly meeting due to the Supervisor of Elections Office occupying the City Hall meeting room for the Presidential Preference Primary Election

The Board agreed, by general oral consensus, to reschedule its March 15, 2016 regular monthly meeting to Tuesday, March 22, 2016, at 7:00 p.m. at City Hall.

VIII. OLD BUSINESS

There was no old business.

IX. BOARD COMMENT

Ms. Odom said at the Board's last meeting, she asked about the wavy flags at Cone Heads Ice Cream and Obi's Fillin' Station, which are still there.

Mr. Larson said this issue is going to have wait until the City gets new legal counsel on staff, as there are individuals who think their first amendment rights are being violated by the City telling them to take down these flags, so staff needs to find out what the limitations are in restricting them.

Ms. Sloan said she wants to thank Officer Martinez for being here tonight, as she greatly appreciates having the City's finest at their meetings.


Ms. Zander said for the benefit of the Commissioners, she'd like to read from page 13 of the Vision Plan. The consulting firm hired by the City to draft the Vision Plan recommended consideration of a base height limit of 40 feet plus an additional five feet to provide architectural detail, not to exceed 40 percent of the building perimeter, subject to Planning and Zoning Board approval, as this would provide some flexibility for roofline variations, particularly when ground floor uses would require extra height. To address concerns that this standard might open the door to mid-rise buildings, the Code should specify an absolute maximum limit of three stories. It also says at the time of writing of the Vision Plan, a suggestion was being considered to incorporate the maximum building height of 35 feet into the City Charter. Setting aside the reality that a 35-foot height limit is too tight for the well-designed hotels or mixed-use structures envisioned in the Vision Plan, the consultant urged that adoption of regulatory measures into a community charter is unadvisable, often leading to quandaries much greater, and consequences more unfortunate, than the measure was intended to prevent in the first place. She suggested, as the Commissioners continue to discuss the height limits, that they might want to look at the City's own Vision Plan.

Mr. Mitherz said clarified that the Vision Plan was never adopted by the City Commission.

Ms. West thanked the Board for electing her chairman, and said she's really honored, and will try to do her best.

X. ADJOURNMENT

The meeting was adjourned at 9:45 p.m.


Jane West, Chairman
Bonnie Miller, Recording Secretary

(THIS MEETING HAS BEEN RECORDED IN ITS ENTIRETY. THE RECORDING WILL BE KEPT ON FILE FOR THE REQUIRED RETENTION PERIOD. COMPLETE VIDEO CAN BE FOUND AT WWW.STAUGBCH.COM OR BY CONTACTING THE OFFICE OF THE CITY MANAGER AT 904-471-2122.)