

CITY OF PALM BAY, FLORIDA
PLANNING AND ZONING BOARD/
LOCAL PLANNING AGENCY
REGULAR MEETING 2020-08

Held on Wednesday, July 1, 2020, in the City Hall Council Chambers, 120 Malabar Road SE, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Land Development Division, Palm Bay, Florida. The minutes are not a verbatim transcript but a brief summary of the discussions and actions taken at this meeting.

Mr. Philip Weinberg called the meeting to order at approximately 7:00 p.m.

Mr. Donny Felix led the Pledge of Allegiance to the Flag.

ROLL CALL:

CHAIRPERSON:	Philip Weinberg	Present	
VICE CHAIRPERSON:	Leeta Jordan	Present	
MEMBER:	Donald Boerema	Present	
MEMBER:	Donny Felix	Present	
MEMBER:	Richard Hill	Present	
MEMBER:	Khalilah Maragh	Present	
MEMBER:	Rainer Warner	Present	
NON-VOTING MEMBER:	David Karaffa	Absent	(Excused)
	(School Board Appointee)		

CITY STAFF: Present were Mr. Laurence Bradley, Growth Management Director; Mr. Patrick Murphy, Assistant Growth Management Director; Ms. Chandra Powell, Recording Secretary; Mr. James Stokes, Board Attorney.

ADOPTION OF MINUTES:

1. Regular Planning and Zoning Board/Local Planning Agency Meeting 2020-07; June 3, 2020. Motion by Ms. Maragh, seconded by Mr. Felix to approve the minutes as presented. The motion carried with members voting unanimously.

ANNOUNCEMENTS:

1. Mr. Weinberg addressed the audience on the meeting procedures and explained that the Planning and Zoning Board/Local Planning Agency consists of volunteers who act as an advisory board to City Council.

OLD BUSINESS:

1. **♣FD-10-2020 – CHAPARRAL SUBDIVISION PHASE II (JAKE WISE, P.E., REP.)
(REQUEST TO CONTINUE)**

Mr. Murphy announced that the applicant for Case FD-10-2020 had requested a second continuance to the August 5, 2020 Planning and Zoning Board meeting to allow for further design. Board action was required to continue the request.

Motion by Mr. Warner, seconded by Ms. Maragh to continue Case FD-10-2020 to the August 5, 2020 Planning and Zoning Board meeting. The motion carried with members voting unanimously.

2. **♣PS-2-2020 – ROOK AT PALM BAY (JAKE WISE, P.E., REP.)**

Mr. Murphy presented the staff report for Case PS-2-2020. The applicant had requested Preliminary Subdivision approval for a 5-lot commercial and residential subdivision, with requests for waivers from Section 184.18(B) of the Palm Bay Code of Ordinances, for a reduction of a proposed road right-of-way width and cul-de-sac radius. Staff recommended Case PS-2-2020 for approval with conditions.

Mr. Jake Wise, P.E. of Construction Engineering Group (representative for the applicant) stated that after three years his company had become involved in creating design parameters for the uniquely shaped and zoned property. The public right-of-way was designed to meet City standards with sidewalks on one side for a reduced right-of-way width to allow for four commercial lots. The cul-de-sac would meet City standards but was reduced in size to accommodate four additional apartment clubhouse parking spaces for visitors to the leasing office. ALDI grocery store had committed to one commercial lot, and a well-known coffee shop was anticipated for another of the commercial lots. The wetland on the site would serve as a preservation buffer for American Legion Post 117 to the west. Issues discussed at

the Citizen Participation Plan (CPP) meeting included the proposed perimeter fencing for security for the gated apartments; relief from the onsite homeless population; and the community's desire for a high-end restaurant. He discussed the plans for tree preservation; how the traffic signal had to be installed before the first issuance of a certificate of occupancy; the preliminary School Board Concurrency approval; and the extension of water and sewer to the facilities.

Ms. Maragh asked if a new road name had been chosen to replace Crowne Square Way. Mr. Wise stated that the road name was changed to Emperor Lane.

Mr. Warner inquired whether the project would be developed in phases, and he noted that the current proposal seemed to address the single access to and from the site. Mr. Wise stated that the project would be built in one phase, and that the proposed traffic signal alleviated residential concerns regarding sole access.

The floor was opened for public comments.

Mr. Thomas Gaume (representative for American Legion Post 117) spoke in favor of the request. However, he requested that the proposed six-foot high privacy fence be replaced with a taller wall as a safety measure in securing the pond, playground, and tiki-bar on the American Legion site.

The floor was closed for public comments, and there was one letter in the file from American Legion Post 117.

In response to comments from the audience, Mr. Wise indicated how the large wetland, 25-foot wide wooded upland, and a six-foot high opaque fence would provide an adequate safety buffer between the development and the American Legion.

Motion by Ms. Maragh, seconded by Ms. Jordan to submit Case PS-2-2020 to City Council for Preliminary Subdivision approval of a proposed development called Crowne Square for four (4) commercial lots and one (1) multi-family residential lot, subject to Items A through E of the staff report being submitted with the Final Subdivision application as recommended by staff. The motion carried with members voting unanimously.

Case PS-2-2020 will be heard by City Council on July 16, 2020.

3. ♣V-12-2020 – ROOK AT PALM BAY (JAKE WISE, P.E., REP.)

Mr. Murphy presented the staff report for Case V-12-2020. The applicant had requested a variance to allow a proposed grocery store to encroach the rear building setback and the proposed parking areas to encroach the rear parking setback in a CC, Community Commercial District as established by Section 185.043(F)(7)(d), and for a proposed apartment clubhouse parking area to encroach the front parking setback in an RM-20, Multiple Family Residential District as established by Section 185.038(F)(7)(e). The board must determine, based on the facts presented, the degree of minimal relief, if any, to meet the needs of the variance request, as required by Section 169.009 of the City of Palm Bay Code of Ordinances.

Mr. Jake Wise, P.E. of Construction Engineering Group (representative for the applicant) stated how the seven criteria for the variance had been met. The subject request would permit four parking spaces to be located outside the proposed apartment clubhouse for potential apartment leasers; front parking for the proposed ALDI grocery store; the east wetland and pond area to remain undeveloped; and a reduction in the front parking setback for landscaping along the road right-of-way. The adjacent mini-storage and car wash business owners had no objections to the request.

The floor was opened for public comments.

Mr. Thomas Gaume (representative for American Legion Post 117) spoke in favor of the request. He stated that the American Legion abutted the site and wanted a wall for a buffer.

In response to the comment from the audience, Mr. Wise explained how the American Legion was not directly adjacent to where the variances would occur, and that the car wash and mini-storage sites were the affected properties.

The floor was closed for public comments, and there was one letter in the file from American Legion Post 117.

Motion by Ms. Jordan, seconded by Ms. Maragh to submit Case V-12-2020 to City Council for approval of a variance from Section 185.038(F)(7)(e) and 185.043(F)(7)(d) of the Palm Bay Code of Ordinances, to encroach the front parking setback of a proposed apartment building clubhouse; the rear building setback of a proposed grocery store; and the rear parking setback in two (2) separate commercial locations as noted in the staff report. The motion carried with members voting unanimously.

Case V-12-2020 will be heard by City Council on July 16, 2020.

NEW BUSINESS:

1. **CP-4-2020 – WEST POINTE BABCOCK, LLC (CARMINE FERRARO AND ROBERT SCHWERER, REPS.)**

Mr. Bradley presented the staff report for Case CP-4-2020. The applicant had requested a small-scale Comprehensive Plan Future Land Use Map amendment from Single Family Residential Use to Commercial Use. Staff recommended Case CP-4-2020 for denial based on the four points listed in the staff report.

Mr. Robert Schwerer, Esq., land use attorney with the law firm of Hayskar, Walker, Schwerer, Dundas & McCain (representative for the applicant), informed the board of his credentials. He respectfully disagreed with the staff report and gave a PowerPoint overview on the validity of the subject site for commercial development. The proposed commercial land use and zoning designations would be consistent with the Babcock Street corridor south of Malabar Road. The residential character of the 3.86-acre site fronting Babcock Street had essentially been destroyed and would continue to be destroyed with the four-laning of Babcock Street. The property and the adjacent acreage had sat vacant for a decade with no interest shown for residential development. He asked that his comments and those by his four experts be included with Case CPZ-4-2020. He remarked on how the proposal had appeared before the board multiple times with different circumstances but had only gone before City Council once.

Mr. Daniel DeLisi, AICP, certified land use planner, informed the board of his credentials and spoke as an expert in support of the request by way of the PowerPoint presentation. He explained that given the expanse of residential land within the existing corridor, more commercial development was needed to support the residents. Commercial uses were not inherently incompatible with residential uses, and based on the current field of planning, integrating both uses could be done responsibly with design buffers and limitations on the types of uses. The subject site was located at two major intersections. He believed the one-acre rural lots in the surrounding area were suburban in nature and needed retail. The Community Commercial zoning district was being proposed for the site to allow for drive-throughs and a broader mix of uses.

Mr. Shaun MacKenzie, P.E., transportation engineer with MacKenzie Engineering & Planning, Inc., informed the board of his credentials and spoke as an expert in support of the request by way of the PowerPoint presentation. He stated that the submitted land use and zoning amendments met all applicable City standards. Cogan Drive SE and Babcock Street SE were major collectors operating satisfactorily at Levels of Service C, which would also be acceptable for a maximum of 15,000 square feet of retail. The driveway access to the site would require additional traffic improvements and could include a four-leg roundabout. His Rezoning Traffic Impact Analysis was submitted into the file.

Mr. George Botner, PLA, AICP, licensed landscape architect, informed the board of his credentials and spoke as an expert in support of the request. He stated how landscaping could be used to achieve compatibility between different types of abutting uses. He used illustration boards to depict how the landscaping proposed for the subject site would be well in excess of the City's code requirements by creating a buffer around three edges of the site with 14-foot high trees set 20-feet apart, a 6-foot high masonry wall, and shrubs reaching 6-feet in height. The property would be visually impenetrable from the outside. There would be no spillover of night-time illumination into the residential area. Florida native plants would be used, and a landscape buffer would be installed at the north side of the property for a resident. Mr. Schwerer added that double setbacks for the rear and side of the property would be included in a non-statutory developer's agreement.

Mr. Bruce Moia, president of MBV Engineering Corporation, spoke as an expert in support of the request. He stated how existing water and sewer systems had the capacity to serve the subject site. There was a 16-inch water distribution main on the east side of Babcock Street and a 16-inch sanitary sewer force main along the west side.

Mr. Schwerer reiterated his disagreement with staff findings by countering staff's four points of denial. The subject area had become more urban/suburban in nature and was now consistent with introducing commercial uses. The commercial development would be needed since the large acreage of commercial land a half mile to the south would unlikely warrant development for years. Commercial development of the subject property, as indicated by the expert traffic engineer, would not cause traffic issues. And lastly, the plan to widen Babcock Street was not relevant to the subject request and would be dealt with in the future as would all other businesses on the road.

Ms. Maragh inquired whether the type of commercial use planned for the site was known. Mr. Schwerer stated that a specific use or tenant had not been identified as the zoning had to be in place. He said that a drive-through was needed to attract viable businesses.

The floor was opened for public comments.

Mr. Thomas Gaume (resident at Lantana Court NW and candidate for Palm Bay City Council Seat 3) spoke against the request. He indicated in a PowerPoint presentation how the subject request met the definition of spot zoning. The applicant was also granted a subdivision variance from having to run water and sewer lines across Babcock Street for a preliminary residential subdivision. Now seven months later, the applicant planned on running the lines to the subject site in the subdivision if the property was changed to commercial. The Florida Department of Transportation plan for Babcock Street could include a retention pond on the property, which would cost the taxpayers more as a commercial site.

Mr. Kenneth Smith (resident at Plantation Circle SE) spoke against the request. He remarked that based on the Minor Subdivision Code, allowing the residential subdivision was a promise that the subject property would remain residential. Minor

subdivisions were all inclusive and could not consist of more than one phase of development. The subject request appeared to be in violation of that code. He refuted the expert testimonies by explaining how Bayside Lakes development, a large commercial node surrounded by a large residential area, was a good example of integrating commercial and residential properties. The subject site, however, was set within an existing residential area. He believed the intended use of the property should be disclosed so that an informed decision could be made about the site. Huge development was already occurring to the south on Babcock Street. He used a display to show the incompatibility of placing commercial uses within the residential neighborhood and noted that buffers would not eliminate noise. He stated that the City Council had previously denied the commercial proposal by concluding that the Future Land Use Plan did not support the request. The size of the request had increased since the denial from 2.89 acres to 3.86 acres.

Mr. David Thornberry (resident at Plantation Circle SE) spoke against the request. He commented that Mr. Schwerer was the third lawyer to represent the request and was not from Brevard County. He felt that the applicant and representatives had only a monetary interest in the property, and that plans for the site should be revealed. He commented that the landscaping proposal would take years to mature and that no one would continue to maintain the level of landscaping proposed. He indicated that a traffic circle was usually set away from a commercial site so that the eye was not distracted.

In response to comments from the audience, Mr. Schwerer remarked that condemning authorities appraised properties at their highest and best use. Mr. DeLisi commented that a commercial plat could not be approved within a residential zoning district since the zoning must be consistent with the Comprehensive Plan. Mr. Brian West of West Pointe Babcock, LLC (applicant) listed the projects he had developed throughout the County and in Palm Bay. Mr. Schwerer addressed spot zoning comments by noting the commercial properties within the Babcock Street corridor. He restated how zoning must be in place before potential users could be entertained and explained that the size of the subject property had been increased to accommodate the double setbacks and enhanced landscaping. He stated that the subject request must be judged on its own merits and not by any previous reviews, and as indicated by the expert traffic engineer, a roundabout was workable.

Mr. Schwerer informed the board that the applicant had authorized the non-statutory developer's agreement to include a restriction for buildings on the site to be no more than one-story high.

The floor was closed for public comments, and there was 20 correspondence in the file.

Mr. Weinberg commented on how referring to Plantation Circle as rural or suburban was semantics; one-acre parcels were permitted by the Zoning Code in Rural Residential districts. He stated that after considering the application on its owner merits, he was in agreement with the staff recommendation. Mr. Warner also concurred with the staff report.

Motion by Mr. Warner, seconded by Mr. Hill to submit Case CP-4-2020 to City Council for denial of a small-scale Comprehensive Plan Future Land Use Map amendment from Single Family Residential Use to Commercial Use, based on the four points listed in the staff report.

Mr. Weinberg commended the applicant and experts on their presentations.

A vote was called on the motion by Mr. Warner, seconded by Mr. Hill to submit Case CP-4-2020 to City Council for denial of a small-scale Comprehensive Plan Future Land Use Map amendment from Single Family Residential Use to Commercial Use, based on the four points listed in the staff report. The motion carried with the members voting as follows:

Mr. Weinberg	Aye
Ms. Jordan	Aye
Mr. Boerema	Aye
Mr. Felix	Aye
Mr. Hill	Aye
Ms. Maragh	Aye
Mr. Warner	Aye

2. ♣CPZ-4-2020 – WEST POINTE BABCOCK, LLC (CARMINE FERRARO AND ROBERT SCHWERER, REPS.)

Mr. Stokes advised the board to submit a recommendation on the zoning amendment to accompany their denial of the land use request.

Motion by Ms. Maragh, seconded by Mr. Warner to submit Case CPZ-4-2020 for denial of a zoning amendment from an RR, Rural Residential District to a CC, Community Commercial District. The motion carried with members voting as follows:

Mr. Weinberg	Aye
Ms. Jordan	Aye
Mr. Boerema	Aye
Mr. Felix	Aye
Mr. Hill	Aye
Ms. Maragh	Aye
Mr. Warner	Aye

The meeting resumed after a brief interval.

3. T-15-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT)

Mr. Bradley presented the staff report for Case T-15-2020. The applicant had requested a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 170: Construction Codes and Regulations, to eliminate the requirement of building permits for fences and to allow the Growth Management Director to exempt fences over four feet in height in front yards. Staff recommended that if Case T-15-2020 was approved, the document review as noted in the proposed text remain as a requirement, and that property owners be required to complete a Hold Harmless Agreement.

Ms. Jordan commented that high walls made people feel unsafe.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Mr. Weinberg was not in favor of the amendment. He commented that the cost of a fence permit was nominal, but Council could consider reducing the fee. A permit; however, was necessary to ensure fences were built properly and according to code.

Motion by Ms. Jordan, seconded by Ms. Maragh to submit Case T-15-2020 to City Council for denial of a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 170: Construction Codes and Regulations, to eliminate the requirement of building permits for fences and to allow the Growth Management Director to exempt fences over four feet in height in front yards. The motion carried with members voting as follows:

Mr. Weinberg	Aye
Ms. Jordan	Aye
Mr. Boerema	Aye
Mr. Felix	Aye
Mr. Hill	Aye
Ms. Maragh	Aye
Mr. Warner	Aye

4. T-16-2020 – CITY OF PALM BAY (GROWTH MANAGEMENT DEPARTMENT)

Mr. Bradley presented the staff report for Case T-16-2020. The applicant had requested a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.136 Backyard Chickens, to increase the maximum number of chickens allowed from 4 to 13; and to create Section 185.139 Urban Farm Animals, to allow a maximum of 2 sheep or 2 goats on residential properties. Staff recommended that allowing additional chickens or additional types of animals was a policy decision that the City Council would need to address carefully before any action was taken.

Ms. Maragh wanted to know how properties would be checked to ensure animal counts. Mr. Bradley explained that most of the enforcement would be complaint based through the Code Compliance Division. Ms. Maragh remarked that it was hard to imagine 13 chickens and two goats or sheep on quarter acre lots.

Ms. Jordan inquired whether the proposal was for the Northeast areas of the City that were without deed restrictions. Mr. Bradley explained how the Port Malabar Units were deed restricted to prohibit virtually all but domestic animals. The Zoning Code had been amended in the past to allow for four chickens; however, a property owner could privately challenge the matter through the courts because of the deed restrictions.

Ms. Maragh asked about reducing the proposed number of chickens from 13. Mr. Bradley stated that according to the councilmember requesting the amendment, the proposed number was based on the productivity of chickens for a sustainable amount of eggs.

Mr. Felix wanted to know how the amendment had come about. Mr. Bradley explained that the requesting councilmember had found acquiring sustainable protein during the current pandemic to be difficult, and with City Council support, staff was directed to prepare an amendment. Mr. Felix remarked that the City seemed to be moving backward.

Mr. Warner asked for clarification that the amendment would be Citywide. Mr. Bradley confirmed that the proposal was to allow the urban farm animals Citywide on all single-family lots within the zoning districts listed in the staff report. Homeowner's Associations that prohibited the livestock would have to privately enforce their deed restrictions.

The floor was opened and closed for public comments; there were no comments from the audience, and there was no correspondence in the file.

Mr. Weinberg commented that Palm Bay would be known as a rural farming community and would not attract commercial businesses to increase the tax base. Livestock belonged on rural properties of five acres or more and not on the quarter acre residential lots.

Motion by Ms. Maragh, seconded by Mr. Felix to submit Case T-16-2020 to City Council for denial of a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.136 Backyard Chickens, to increase the maximum number of chickens allowed from 4 to 13; and to create Section 185.139 Urban Farm Animals, to allow a maximum of 2 sheep or 2 goats on residential properties.

Ms. Jordan commented that it was unreasonable to keep goats and sheep on quarter acre lots. Ms. Maragh concurred.

A vote was called on the motion Ms. Maragh, seconded by Mr. Felix to submit Case T-16-2020 to City Council for denial of a textual amendment to the Code of Ordinances, Title XVII, Land Development Code, Chapter 185: Zoning Code, Section 185.136 Backyard Chickens, to increase the maximum number of chickens allowed from 4 to 13; and to create Section 185.139 Urban Farm Animals, to allow a maximum of 2 sheep or 2 goats on residential properties. The motion carried with members voting as follows:

Mr. Weinberg	Aye
Ms. Jordan	Aye
Mr. Boerema	Aye
Mr. Felix	Aye
Mr. Hill	Aye
Ms. Maragh	Aye
Mr. Warner	Aye

OTHER BUSINESS:

There was no other business discussed.

ADJOURNMENT:

The meeting was adjourned at approximately 9:53 p.m.

Philip Weinberg, CHAIRPERSON

Attest:

Chandra Powell, SECRETARY

♣Quasi-Judicial Proceeding.