

**CITY OF MELBOURNE, FLORIDA
MINUTES-REGULAR MEETING OF THE
ZONING BOARD OF ADJUSTMENT
JUNE 26, 2017 ♦ 6:30 P.M.**



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1. A regular meeting of the Zoning Board of Adjustment was held in the City Hall Council Chamber, on this date. Thomas Herbert, Chairman, called the meeting to order at 6:30 p.m.
 2. All present gave the Pledge of Allegiance to the Flag of the United States of America.
 3. Roll call: The following members and officials were:

PRESENT:	Thomas Herbert	Chairman
	Dennis Mannion	Vice-Chairman
	Charles Jackson	Member
	Brenda Burgener	Member
	Peter Kostrzewa	Member
	Mike Nowlin	Member
	Mary Taylor	Alternate Member
	Michael Peacock	Alternate Member

ABSENT:	Ravindra Shah	Member (Excused)
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ALSO PRESENT:	Cathy Wysor	City Clerk
	Kevin McKeown	Assistant City Clerk
	Cheryl Dean	Planning Manager
	Jeffrey Higgins	Planner
	Adam Conley	Assistant City Attorney
	Kalanit Oded	Assistant City Attorney
	Samantha Buck	Recording Secretary

Chairman Herbert introduced the Board members and City staff. The meeting was a training session for the Board so there were no conflicts of interest to declare or be read into record.

4. Approval of Minutes – May 1, 2017

Moved by Nowlin/Burgener to approve the February 27, 2017 meeting minutes as presented.

Motion carried unanimously.

5. Welcome & Introduction – Community Development Department

Mr. Higgins started by giving a brief overview of the items that would be covered during the Board training session and introduced the City staff who would be presenting on behalf of their departments.

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6. City Clerk's Office – Presentation/Discussion

Cathy Wysor, City Clerk, and Kevin McKeown, Assistant City Clerk, represented the City Clerk's Office

Ms. Wysor explained that the City has 17 standing committees, with 131 volunteer Board members. Recent changes to City Code brought about changes regarding the appointment of Chairman and Vice-Chairman. This provided an opportunity to review how the City's Boards are trained. During her presentation, Ms. Wysor gave a brief overview of the City Charter and City Code as it relates to this Board, Board member terms, and the role of alternate members. She also gave a detailed explanation on the correct procedure to be followed when declaring a Conflict of Interest. Interestingly, she also explained that Code specifies that the Chairman of the Planning & Zoning Board is an ex-officio member (non-voting member) of the Zoning Board of Adjustment.

Kevin McKeown, Assistant City Clerk, then stepped in to discuss the membership requirements for Board members, the main points of Robert's Rules of Order, and parliamentary procedure. He reminded the Board how important it is to notify staff when you are unable to attend a meeting to ensure that the Board always has a quorum.

Ms. Wysor stressed the importance of allowing public comment in all proceedings. She then discussed how all Boards conduct an annual self-evaluation in January/February of each year which allows the opportunity to discuss how they are functioning, Board attendance and participation, and the composition of the Board. She also suggested that preparing a job description could be something that the Board may want to consider drafting in the future.

Ms. Wysor handed over to Mr. McKeown who discussed the Sunshine Law requirements which ensures members of the public know how decisions are made, have an opportunity to inspect records, and are able to participate in meetings and provide their comments. He listed the three main requirements of the Sunshine Law, being that all meetings are open to the public; reasonable notice is given of all meetings; and accurate minutes are taken of all meetings. He also gave suggestions on how Board members can ensure that they are not breaching this law outside of a public meeting, or when corresponding with Staff.

Ms. Wysor summed up by telling the Board that they are required by Florida Law to vote on every item that comes before the Board unless a Conflict of Interest is declared. She gave a definition of a Conflict of Interest and outlined the procedure for declaring one. Board members who declare a Conflict of Interest may not participate in the discussion on the item. She urged Board members to seek advice from the City Attorney's Office prior to the meeting if they feel they are not able to give an applicant due process and a fair hearing.

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Ms. Wysor answered questions from the Board on her presentation.

Mr. McKeown finished by running through some of main points of Robert's Rules of Order and how these rules are integrated into meetings to ensure meetings are conducted in an orderly manner, with any interested party being afforded every opportunity to speak on an item.

7. Community Development Department – Presentation/Discussion

Cheryl Dean, Planning Manager, showed how variance applications have decreased substantially over the last 10 years. Changes to the Sign Code in 2009 eliminated many of the issues that created the need for a variance.

Ms. Dean then gave a brief overview of the application process from receipt of an application, to it finally being heard by the Board. Variance applications are always reviewed for compliance with Code, and staff may ask for input from other City departments, outside bodies, and other professionals. In addition, the application may also be discussed at the weekly Development Review Committee which meets to collaboratively discuss issues, concerns and comments related to upcoming projects.

Mr. Higgins explained the Board has two primary duties; to undertake an administrative review when an applicant disagrees with an interpretation of Code. After an interpretation is sought, the requestor has 30 days from rendition to appeal the interpretation. In these cases, the decision between two opposing views rests with the Board. He listed the sections of Code that can be challenged, and said that although administrative reviews rarely happen, Board members should remember that this is something that they may come across in the future. Throughout the process, staff will apply their knowledge of code to provide alternatives for the applicant/developer which may resolve or alleviate the problem. They will also provide the Board with as much information as possible before they make any decision.

Another main function of the Board is to deal with variance requests. Throughout the process, staff will undertake a background investigation, look at alternatives that comply with Code, review development plans, consult with professionals, and incorporate all the findings into the staff report that will be provided to the Board prior to the meeting.

Mr. Higgins then defined what a variance is, and gave a detailed explanation of the factors the Board should consider when making a determination on a variance request. He also explained each of the six criteria which needs to be met before a variance can be granted. He gave an insight on how he reviews every application to ensure it meets the criteria, and reminded the Board that non-conforming use of neighboring lands, structures, or buildings in the same district, should not be considered grounds for the issuance of a variance.

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Finally, Mr. Higgins gave a brief explanation on the application process for an Administrative Waiver. This is when an applicant requests a reduction in setbacks for a principal structure, accessory structure, swimming pool, landscape buffering, signs, lot dimensions, lot area, width and depth which is less than 10 per cent of the Code requirement. Applications are reviewed by the Community Development Director, City Engineer, and the Building Official. The applicant must provide signatures from all abutting property owners to confirm that they do not object to the waiver being granted.

Mr. Higgins then handed over to Assistant City Attorney Adam Conley and Assistant City Attorney Kalanit Oded.

8. City Attorney's Office – Presentation/Discussion

Assistant City Attorney Conley stated the City Attorney's Office provides legal counsel to the Board. His presentation illustrated what it is to be a quasi-judicial board, and the procedures and proceedings necessary to comply with the legal requirements of being a quasi-judicial board.

Assistant City Attorney Conley then introduced Assistant City Attorney Kalanit Oded who would be providing legal support for the Board in the future.

Assistant City Attorney Oded briefly explained the two types of decisions that Boards are able to make; a legislative decision and a quasi-judicial decision. This Board acts in a quasi-judicial capacity when reviewing variances, carrying out administrative reviews, appeals or orders, decisions, determinations, and interpretations and applications of City Code by staff. The decisions made by the Board are final but may appealed to circuit court.

Assistant City Attorney Oded outlined the main factors required in a quasi-judicial proceeding. Due process must be afforded at all times, the essential requirements of law must be observed, and the Board must make decisions supported by competent substantial record evidence. She explained that due process protects the private rights and interests of all parties in balance with the City's interests. It occurs both prior to, and during a quasi-judicial proceeding. Reasonable notice must be given before the Board makes a final decision. There must also be a meaningful opportunity for any interested parties to be heard, present evidence, cross-examine witnesses, and be informed of all the facts upon which the Board will base their decision. All discussion by the Board must be made on the record, and there should be no side-bar discussions. It is imperative that ex-parte communications and site visits by the Board are disclosed at the beginning of the public hearing. Also, if a Board member believes some other form of conflict or bias exists, they must declare a disqualification and abstain from all proceedings.

The presentation then looked at observing the essential requirements of law, and Assistant City Attorney Oded referenced several cases illustrating how the burden of proof rests on the applicant, and how courts interpret a hardship. She also

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reminded the Board that they must limit their review to established Code criteria. It is important that there is uniformity of application of the Code on similarly zoned properties, and that nobody is advantaged or disadvantaged. Any decision that is made must be supported by competent substantiate evidence found in the record of the quasi-judicial proceeding. She took a few minutes to discuss examples of competent substantial evidence, when expert testimony is required for competent substantial evidence, and who should be considered an expert in these cases. She also covered how the Board should deal with lay witness testimony and incompetent evidence during hearings.

Finally, Assistant City Attorney Oded said that staff recommend the Board state its findings when rendering a decision, especially if they choose a finding other than what is stated in Staff's recommendation report. Any motion should state such findings of fact in its motions, as a Board order with stated finding is more authoritative and tends to be upheld more often in any subsequent legal record evidence. She showed the Board a proposed motion script and recommended this be used during future meetings.

A lengthy discussion then took place on the three presentations given, and staff answered answer any questions that the Board had following the training session.

10. Adjournment

Chairman Herbert adjourned the meeting at 8.58 p.m.



Samantha Buck, Recording Secretary

Minutes approved by Zoning Board of Adjustment on: _____