

City of Port St. Lucie

Board of Zoning Appeals

Meeting Minutes

121 SW Port St. Lucie
Blvd.
Port St. Lucie, Florida
34984

Shannon M. Martin, Mayor

Jolien Caraballo, Vice Mayor, District IV
Stephanie Morgan, Councilwoman, District I
Dave Pickett, Councilman, District II
Anthony Bonna, Councilman, District III

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Monday, August 21, 2023

1:30 PM

Council Chambers, City Hall

1. Call to Order

A Special Meeting of the City Council of the City of Port St. Lucie serving as the Board of Zoning Appeals was called to order by Mayor Martin on August 21, 2023, at 1:33 p.m., at Port St. Lucie City Hall, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida.

2. Roll Call

Council Members Present:
Mayor Shannon Martin
Vice Mayor Jolien Caraballo
Councilwoman Stephanie Morgan
Councilman Dave Pickett
Councilman Anthony Bonna

3. Public Hearings

3.a Order 23-15, Quasi-Judicial, Public Hearing, An Appeal of the Planning and Zoning Board Approving a Variance to Allow a Variance of 458.13 Feet Permitting the Sale of Alcoholic Beverages 1,4041.87 Feet from a Religious Institution.

[2023-668](#)

Mayor Martin inquired on if the Board had any ex-parte communications to which Mayor Martin, Councilman Pickett, Councilman Bonna, and Vice Mayor Caraballo responded in the affirmative, and Councilwoman Morgan responded in the negative.

City Attorney Stokes reviewed the procedures of a Quasi-Judicial hearing,

and the City Clerk swore in staff and those in attendance who wished to speak on the item.

(Clerk's Note: A PowerPoint presentation was shown at this time.) Mary Savage-Dunham, Planning & Zoning Director, presented to the Board and stated that the request was for the Board to reverse the approval of a variance to allow a variance of 458.13 feet permitting the sale of alcoholic beverages 1,041.87 feet from a religious institution where a separation distance of 1,500 feet was required. She provided a project description and background information on the current City Code, noting that City Staff were currently working on a revision. She showcased the location and noted that the proposed location was not on a single pad site, it was part of a parcel, and the current code did not contemplate this.

John J. Anastasio, counsel for the Appellant, spoke to the Board, stating that the issue of undue hardship was not being addressed and noted that one hardship was the shape and configuration of the property. He stated that the Appellant was leasing the property and not the property owner, and that another hardship was determining whether or not this was self-imposed. Mr. Anastasio also stated that the case law had an exception to the rule that there had to be direct interest, which would be if someone had a competing liquor store, and this case law would support that they had the ability to stand before the Council at this time. He discussed that there was an issue with the timeliness of this appeal, stating that the appeal did not start to run until August 1st, and Port St. Lucie City Code 158.338 stated that an application shall not be valid unless it is incorporated into the minutes at which the action was taken, and he also noted that an order was also issued from the same meeting date. He stated that he did not agree with the staff report.

Mr. Anastasio stated that the transcript notated that Wal-Mart had received a variance some time ago, but the Ordinance stated that other non-conforming uses are not to be taken into consideration, so the discussion held by the Planning & Zoning Board members was done on an illegal and improper basis. He further discussed that the Appellee had stated that there was no variance required, which would mean that regardless of the reasoning, whether it be due to hardship or lack of need of a variance, the Planning & Zoning Board's decision would need to be reversed.

Mr. Anastasio stated that the argument that the Ordinance only applied to strip malls was not supported by the plain language, which covered any configuration a multi-use building may have. He stated that staff's findings were based upon conclusion rather than fact, and that there was nothing in

the staff report that indicated balancing the impact of having full-time positions against the loss of business and consumer dissatisfaction. He also stated that consideration would also need to be given to the number of establishments that sell liquor in that area. Mr. Anastasio then discussed the timeline and stated that permission was not asked of the City before they marched on with their endeavor, and he requested that the appeal be reversed and concluded his presentation.

Nicholas Easler came before the Council and stated that, along with Cynthia Angelos, he was representing the property owner, Benderson Development, and the applicant, Florida Fine Wine & Spirits. He also noted that the general counsel for Total Wine & More, Robert Schaffer, and an expert in land-use, and Todd Mowry, were present as well. (Clerk's Note: A PowerPoint presentation was shown at this time.) He discussed the Ordinance in question and the distance between the place of business and the religious institute, and he stated that there was an exception provided for multi-use buildings. He stated that the application was in accordance with the Proximity Ordinance, and that there were 3 sets of legal teams that agreed that the application was in compliance with the Ordinance.

Mr. Easler stated that it would need to be determined if there was a standing for an appeal, and to be determined as an affected party, you would need to have special damages. He stated that the church had not contested the variance, was not present, did not file an appeal, and was not a party to this action. He also stated that there was no timely notice of an appeal, as the deadline was June 21, 2023, and the appeal was not filed until June 23, 2023, and that both staff and the Appellant were aware of the jurisdictional deadline. He noted that the Planning and Zoning Board came to a just conclusion, their decision was supported by competent substantial evidence, and the correct law was applied for the variance approval. He then provided information on what constituted as competent substantial evidence and discussed two of the seven flexible factors that the Planning & Zoning Board considered, which were a literal interpretation and public welfare. Mr. Easler stated that there were contingencies in the lease and all of the contingencies were met after the hearing, to which Mr. Anastasio objected. He stated that the public welfare would not be harmed and invited Mr. Schaffer to present on this topic.

Mr. Schaffer provided the history and vision of Florida Fine Wine & Spirits, and stated that the issue of the land use being permitted and approved by the Zoning Commission was not resolved until June, and 15 days after, the city had informed that there had been no appeal submitted by the Appellant.

Mayor Martin opened Public to be Heard, and Mr. Easler made an objection to the consideration of any public comment as it was not considered testimony or evidence for this hearing. City Attorney Stokes advised that the public comments would not be considered as evidence in this case as no new case evidence was to be provided during an appellate process.

Resident Melissa Kraus spoke in opposition of the project and discussed the hardships that her liquor store would endure with the addition of a new competing liquor store.

Resident Paul Bisaccia spoke in opposition of the project and discussed the Ordinance for the amount of feet involved and the lack of a need for another liquor store in St. Lucie West.

Resident Janet Baker spoke in opposition of the project, stating that she could lose her job upon the opening of this new liquor store.

Resident Katherine Nguyen spoke in opposition of the project, stating that the City would need to look at what they wanted to become when allowing multiple liquor stores to open.

Resident Mickey Soo spoke in opposition of the project due to an increase in traffic issues.

Mayor Martin asked City Attorney Stokes to once again clarify if they were to make a decision based on traffic, competition, or anything other than affirming or reversing the decision of the Planning & Zoning Board, to which City Attorney Stokes replied that she was correct, noting that the distance requirement was the only item on appeal and no other items were relevant to this hearing.

Councilman Bonna stated that he would give leeway for the timeliness due to giving those without legal representation the benefit of the doubt, and that he would also give leeway on the standing. He stated that he did not see a reason to reverse the Planning & Zoning Board's decision. Vice Mayor Caraballo stated that commercial usage allowed any form of commercial use to go there, so they would be discriminatory if they judged which commercial use could go where, and she noted that she had informed the residents/business owners that they would have to prove in an appeal that something in this particular application was not legal, and she had not heard anything from the defense's side that proved that the results were inaccurate and needed to be overturned. She also stated that

she did not see an issue as it related to undue burden. Councilman Bonna added the statements that he agreed with the legal interpretation of the Ordinance and that he did not believe that this should have gone to the Planning & Zoning Board for a variance.

Councilman Pickett expressed opposition to the Appellant submitting their appeal after the time frame that it was due and that this should not have been discussed and they should not be here for this hearing, and he requested that City Attorney Stokes speak to his staff to ensure that this did not happen again. Councilwoman Morgan stated that competition was good and people want choices, and she agreed with Councilman Pickett's statements.

Mayor Martin stated that someone questioning the appeals process did not constitute as an appeal, and that the appeal filed was untimely. She stated that a variance was not needed and there was no legal standing, and also that the Planning & Zoning Board made the correct decision.

There being no further discussion, Councilwoman Morgan moved to affirm the Planning & Zoning Board's decision. Vice Mayor Caraballo seconded the motion, which passed unanimously by voice vote.

4. Adjourn

There being no further business, the meeting was adjourned at 2:48 p.m.

Sally Walsh, City Clerk

Jasmin De Freese, Deputy City Clerk