

The Special Meeting of the City Council of the City of Panama City Beach, Florida, and when permitted or required by the subject matter, the Panama City Beach Community Redevelopment Agency, conducted on April 24, 2014.

ROLL

MAYOR GAYLE F. OBERST

COUNCILORS:

JOHN REICHARD

JOSIE STRANGE

KEITH CURRY

CITY MANAGER:

MARIO GISBERT

DEPUTY CITY CLERK:

JO SMITH

CITY ATTORNEY:

DOUG SALE

**ITEM 1 REHEARING OF AN ORDER OF THE PLANNING BOARD DENYING A REAR YARD SETBACK VARIANCE APPLICATION REQUEST BY MR. RICHARD MCMAHON FOR PROPERTY LOCATED AT 404 ALBATROSS STREET.**

Mayor Oberst called the Special Meeting to order at 12:30 P.M., with Councilman Reichard, Councilwoman Strange, Councilman Curry, the City Manager, Deputy City Clerk and City Attorney present.

Mayor Oberst explained that the Planning Board had denied a rear yard setback variance application and that decision had been appealed to the City Council by Mr. McMahon. Mr. Sale explained that this would be a Quasi-Judicial Hearing and asked that anyone who wished to testify be sworn. The witnesses were sworn. Mr. Leonard testified that the notice requirements for the sign and the meeting were met as well as notifying the affected parties who had appeared at the Planning Board meeting.

Mr. Sale asked the Council to make their Jennings Disclosures. Councilwoman Strange said she spoke with many people opposed to the request because of their concern about the safety of vehicles traveling the street and children getting hurt and some people favored the request because they wanted the variance.

Mr. Leonard explained that Mr. McMahon submitted an application for a fourteen foot (14') rear yard setback variance for 404 Albatross, an undeveloped lot. In this R-1C District, a twenty foot (20') rear yard setback was required. The Planning Board heard the request on March 10, 2014, and denied the request three to one (3-1). The Order of the Planning Board was signed March 12, 2014, and subsequently appealed by the applicant on March 20, 2014. He entered into the record the Agenda Packet which included the Appeal, the Order, Minutes of the Planning Board, the Variance, the required Findings, Staff Report, and the Application itself.

Mr. Sale said in this case, the burden on proof was on the applicant, Mr. McMahon. He said once his testimony was presented, Mr. McMahon would be subject to cross-examination by the Council.

Mr. Richard McMahon, resident of 513 Satsuma, Panama City, distributed handouts of the slides he would be presenting. He said he purchased the property in Bid-A-Wee, one of the smallest lots in the subdivision. He said this was an unusual situation as he did not have the hardship but rather this variance request was for the benefit of his neighbors. He could have the house in the middle of the lot with his 26' motorhome in front. He explained he used the motorhome for his Christian outreach ministry and travel part of the year. Mr. McMahon said his parking the RV in front was allowed with an 1180 square foot home. However, many of the neighbors had expressed strong reservations about having the RV in front of the home. He displayed photos of the signs on the front and sides of the RV, the Bible messages from his Christian outreach ministry. A second option would be a smaller house to allow parking the RV on the side instead of the front of the house. Mr. McMahon displayed another drawing with possible positions of the RV, allowing its door to be accessible and in both cases the writing and messages on the RV would be obscured.

Mr. McMahon explained that the back of his property had a 6' fence with a single story home on the other side of the fence. He said regardless of where he placed his house, the neighbor could only see his 6' fence. He said the six foot difference in the setback would make it easier to get the RV in and out and allow space for a small front porch on the house. He said the smaller sized house would make it too difficult and narrow without the additional footage.

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Councilwoman Strange asked if all of the drawings had been submitted to the Planning Board. Mr. McMahon said yes and that the Planning Board had read the eight (8) hardship requirements with his request being outside of those requirements. He said his application had been denied because it did not meet one of those requirements. He said he believed it was not his potential hardship but instead his neighborhoods.

Mr. Sale clarified that the Council was constrained by the same eight (8) factors as the Planning Board, and his case would have to meet those same eight factors in order for the request to be granted. At the request of Mr. McMahon, Mr. Sale read the eight (8) factors into the record and Ms. Myers gave Mr. McMahon a copy.

1. There is a specific hardship affecting the **Development** of the **Lot** resulting from the strict application of the provisions of the **LDC**;
2. The hardship is not a result of actions of the owner and is not based solely on a desire to reduce **Development** costs;
3. The need of the proposed **Variance** is due to the physical shape, configuration, or topographical condition of the **Lot** in such a manner as to distinguish it from other adjacent or nearby **Lots** or from other **Lots** in the district;
4. The proposed **Variance** is necessary to preserve a substantial property right where such property right is generally available to other property owners of adjacent or nearby **Lots** or other **Lots** in the district;
5. The proposed **Variance** will not substantially increase congestion on surrounding **Streets**, will not increase the danger of fire or other hazard and will not otherwise be detrimental to the health, safety, or general welfare of the public;
6. The proposed **Variance** will be compatible with adjacent and nearby **Development** and will not alter the essential character of the district;
7. The effect of the proposed **Variance** is consistent with the purposes of the **LDC**; and
8. The effect of the proposed **Variance** is consistent with the Comprehensive Plan.

Mr. Sale suggested that, based on what he had heard, that Mr. McMahon might want to focus his testimony on the need for the Variance being due to #3, or #4, or #5. He suggested to the Mayor that Mr. McMahon might want to speak to those specific issues.

Mr. McMahon said #1, regarding the strict application, he felt that it was clear by his moving the house back six feet (6') on the lot that there would be nothing negative to the neighborhood. He said regarding #6, compatibility with adjacent development and the neighborhood seemed to be a direct fit for his plan. With this Variance, Mr. McMahon would be able to park the motorhome on the side of the house and blend in better with the other homes by seeing only the house and not the RV, thus being more in line with the character of the district. For #7, Mr. McMahon said one of the purposes of the LDC was uniformity between the lots and everyone's rights and wellbeing would be met by the changes. He said this change would be a positive fulfillment of #7. He continued that he agreed with the neighbors and their desires and took those into account when he conformed to a great degree what he could place on his lot so that it would work with the neighborhood. Mr. McMahon said he could see a direct correlation between Numbers 6, 7 and 8, and a strong correlation with #1. He said a strict application would have a negative impact on the neighborhood. He said he planned to live there in the future and wanted for it to work well with everyone. He asked if there were any questions. There were none.

Mr. Sale said if anyone wished to cross-examine Mr. Mahon, the Council would first have to determine that they were an adversely affected party. For the benefit of the audience, Mr. Sale explained the definition of an "adversely affected party".

Mr. Howard Brackett, resident of 13800 Pelican, said he lived around the corner from this property. Mr. Sale said to the Council that under precedent he would be an adversely affected party and entitled to cross-examine Mr. McMahon.

Mr. Brackett asked Mr. McMahon what he did for a living. Mr. McMahon responded that he worked for FEMA responding to major disasters and acting as a counselor. Mr. Brackett asked if he did this work full-time and Mr. McMahon responded that he worked when FEMA called. Mr. Brackett said there had been concern in the neighborhood about his wanting the motorhome on the property in order to house homeless or disadvantaged people. Mr. McMahon said that was not true and he did not plan on doing so beyond what was allowed in the neighborhood. Mr. Brackett said at his last home, the lot was not suitable for parking his motorhome, and rather than causing his neighbors to have to put up with it, he stored it at a storage lot. He asked Mr. McMahon why he did not store the RV in a storage lot. Mr. McMahon said he did not for several reasons because the RV acted as his office and he also was in and out of the RV daily. Mr. Brackett said it seemed the motorhome was driving everything else, not the suitability of the lot.

Ms. Mary Crawford, property owner of 402 Albatross, said that Mr. McMahon had met with her to present the options he had for his property. She asked Mr. McMahon if he was using the RV as an office for his ministry if that would not be considered a business. Mr. McMahon said that there was no monetary exchange and that his ministry was more of an avocation. She said at an earlier meeting with him, he had mentioned having meetings of his followers. Mr. McMahon replied that he was in contact with many different churches and he was involved with many outreaches. There would be people coming over, gathering to talk about the outreach ministry.

Mr. Sale said the issues before the Council this afternoon were the physical characteristics of this lot, the requested variance from the setback requirements of the LDC, and the interests protected by the LDC. The assembly of persons or the use of the motorhome in an enclosed building was not relevant to the questions before Council today. As legal counsel, he asked the Council to ignore that testimony and questioning.

Ms. Crawford said there was no parking on Albatross so she asked Mr. McMahon where these people would park. Mr. McMahon said the people would park the same way as when other people had family gatherings. Ms. Crawford said Albatross was a two-lane road and she explained that Mr. McMahon had planned to park the RV on the side because her daughter who lived next door could not see backing out of the driveway.

Mr. McMahon said his issue was in trying to make this as easy as possible on his neighbors and to have the RV out of the way. He said he was trying to accommodate the RV being out of the way with the design of the home. He asked the neighbors who wished to speak to consider that he could park the RV in front of the house if necessary.

Mr. Howard Brackett, resident of 13800 Pelican, asked which plan was being considered. Mr. Leonard responded the plan with the 14' setback where 20' setback was required. Mr. Brackett said about 75% of the lots in Bid-A-Wee were conforming and this was the problem. He explained that he thought the back neighbor would complain about the fence issue. He recommended the Council require people who bought properties to fit what plans they had as opposed to buying the lot and then coming to Council to change it. Mr. Sale asked Mr. McMahon if he had any questions for Mr. Brackett and he had none.

Mayor Oberst asked if there were any other adversely affected persons who wished to speak. There were none.

Councilwoman Strange asked Mr. McMahon if he had considered building a two story house. Mr. McMahon said no because occasionally relatives would come to stay and they had difficulties with stairs. He said this was also a retirement home and he did not need a lot of space, plus he considered the additional cost. Mr. McMahon said he planned to do part of the construction himself.

Councilman Curry asked Mr. McMahon how long he had owned the motorhome. Mr. McMahon replied about ten years. Councilman Curry said he had bought the property in 2013 and he asked Mr. McMahon how long he thought the RV would last. Mr. McMahon said this was a 1993 model but he maintained it daily. He added that he planned to have an RV for another ten years, whether this model or its replacement. He said he planned to continue his ministry as long as he lived and with his outreach, he anticipated another ten years.

The Mayor asked for public comments. Hearing none, Mr. Leonard said the Application did not meet criteria 1-5, but did touch on criteria 6-8. He said this was the finding from the Planning Board and his recommendation. Mr. Sale clarified that this was Mr. Leonard's opinion. Mr. Leonard explained that the Planning Board discussed the items and although they specifically were not noted in the Order itself, the determination was that the request did not meet the criteria. Mr. Sale said Mr. McMahon would make the closing statement.

Mr. McMahon asked if it would be possible to hear how the Council planned to vote prior to his closing statement. Mr. Sale said that would be up to the Council. Mayor Oberst said she thought the Council sympathized with Mr. McMahon but their decision today must be based on his request meeting the criteria laid out in the LDC. She said the Council would not be allowed to inform an opinion until Mr. McMahon concluded his testimony. She said the testimony heard from Mr. McMahon, Staff and the adversely affected parties would be the basis for their decision. She said as the Council member voted, the reasons for that vote could then be explained. Mr. Sale added that if any Council member had questions for Mr. McMahon about a specific factor, he could address their questions now.

Councilman Reichard addressed Mr. McMahon and said the small size of the lot for a house and large motorhome would be "pushing it" as he had friends who had RVs that would bring the RV home from the storage facility on the day travel was planned in order to do the prep. He suggested that this might be a remedy which would suit everyone. Mr. McMahon said this option would not be workable because he was at the motorhome every day. He said the two

options for the lot and his asking for the setback variance would not have a material impact on anyone around his lot. Councilman Reichard said there was a storage lot about one-half mile from his lot where the RV could be stored.

Councilwoman Strange said it concerned her that Mr. McMahan had the motorhome for ten years but yet bought a small lot last year. She understood potential health issues would be a negative for having a second story home, but the lot was little. Mr. McMahan said the lot met all of the requirements, and he could have a home up to 1200' and the RV in front. He said this process was solely for the benefit of the neighborhood and he had hoped the neighbors would support his request. He said if the neighbors wanted to see the RV parked in front of the house, he could do so.

Councilman Curry said even though Bid-A-Wee may be a hodge-podge of lots, a lot of time and effort went into the consideration of the LDC. When looking to change a lot size merely to fit an RV, that RV would not be there forever but the building would be there permanently. He said the LDC was a cohesive set of rules to improve the neighborhoods going forward. He said he could not see a hardship where there was not one for a temporary RV.

Mr. McMahan asked the Council, after looking at the eight criteria, if any member saw where his request violated one of the factors. Mayor Oberst said Mr. Leonard had said the first five factors. Mr. Sale said the decision of the City was a majority of these elected officials and not any one official; and rather than piecemeal, he asked the Mayor to instruct Mr. McMahan to make his final statement and then the Council collectively could discuss and render a decision.

Mr. McMahan said factors 6, 7 and 8 were positive matches for his request. Mr. Leonard clarified that factors 1-5 must also be met and he argued how they were not met by this application.

1. The lot could be developed without the variance.
2. It was because the lot could be developed under the regulations.
3. This was a regularly shaped rectangular lot.
4. Development could occur on the lot without the variance.
5. Mr. Leonard said he could not see this creating congestion on the streets but a vehicle did not have to meet the setbacks and it would be closer to other dwellings. If it should malfunction and catch fire, it would be closer to other dwellings.

Mr. Leonard explained to Mr. McMahan that it was not necessarily violating a factor but instead meeting the standards of review for making a positive finding for a Variance. Mr. McMahan had no questions for Mr. Leonard.

Mr. McMahan said he would be willing to alter his request on behalf of his neighbors by changing his setback request to only 2' instead of the 6'. This would allow the RV on the side and not have the additional 4' in front of the house. He said he had delayed construction of the house while dealing with this request. Mr. Sale explained that the amended request would have to go back to the Planning Board. His only questions would be whether there would be a prohibition in revisiting a request, and in his opinion, this would be a substantially different request than Mr. McMahan's original application. Mayor Oberst explained to Mr. McMahan that the Council was not allowed to negotiate and he would need to go back to the Planning Board for those changes he just outlined.

Mr. McMahan said if the Council elected to go by the letter of the law as opposed to the concerns for the neighbors and the best outcome for everyone, then he could park his motorhome in front of the house. Mayor Oberst asked Mr. Leonard if he had any further comments; there were none.

Mr. Sale explained that the Council would be considering the record of the Planning Board and the record of testimony today, and then Council would make the decision to grant or deny.

**Councilman Reichard made the motion to deny the request. Second was by Councilwoman Strange.** In order to prepare the Order and Finding of facts, Mr. Sale said Staff would need to know the basis for denial. Mayor Oberst said factors 1,2,3 and 4 were not met. **With nothing further, the motion passed by unanimous roll call vote recorded as follows:**

<b>Councilman Reichard</b>	<b>Aye</b>
<b>Councilman Russell</b>	<b>Absent</b>
<b>Councilwoman Strange</b>	<b>Aye</b>
<b>Councilman Curry</b>	<b>Aye</b>
<b>Mayor Oberst</b>	<b>Aye</b>

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Mr. Sale said he would prepare a draft Order and submit to Mr. McMahon for comment, and hopefully ready for approval by Council at the May 8<sup>th</sup> meeting. Mr. McMahon asked if today had been the final appeal process, and Mr. Sale explained that there was no appeal from this decision.

With nothing further, the meeting was adjourned at 1:40 P.M. Mayor Oberst said the Regular City Council meeting would begin shortly.

READ AND APPROVED this 12th of June, 2014.

**IN THE EVENT OF A CONFLICT BETWEEN THE FOREGOING MINUTES AND A VERBATIM TRANSCRIPT OF THESE MINUTES, THE FOREGOING MINUTES SHALL CONTROL.**

  
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Mayor

ATTEST:  
  
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City Clerk