

PLANNING COMMISSION

Demery Bishop
Marianne Bramble
Randi Bryan
Jay Burke, Chair
Rob Callahan
John Major, Vice Chair
Monty Parks



CITY MANAGER

Diane Schleicher

PLANNING AND ZONING MANAGER

Jonathan H. Lynn

CITY ATTORNEY

Edward M. Hughes

MINUTES

**Planning Commission Meeting
November 15, 2010 – 7:00 p.m.**

Chair Jay Burke called the November 15, 2010, Planning Commission meeting to order. Other Commissioners present were: Demery Bishop, Marianne Bramble, Rob Callahan, John Major, and Monty Parks. Absent was Randi Bryan. Burke said that Bryan and her family were going through a difficult time. He requested that they be kept in everyone’s thoughts and prayers.

Chair Jay Burke asked for a motion on the Minutes of the October 19, 2010, Planning Commission meeting. Rob Callahan moved to approve. Demery Bishop seconded the motion. The vote in favor of the motion to approve was unanimous.

Chair Jay Burke asked if there were any Disclosures or Recusals. There were none.

Chair Jay Burke opened a Public Hearing for a Zoning Variance at **205-A Miller Avenue**, PIN 4-0004-12-007, Zone R-2. The petitioner was Tyler Randolph. The request was a setback variance for a porch addition at one unit of a duplex. Jonathan Lynn said that it was part of the Inland Cottage Neighborhood according to the Master Plan. He explained that there currently existed a 21.1-foot south side setback which would be reduced to 8-feet, 10 inches by the addition. Lynn said that the required setback was 10-feet so the addition would require a 1-foot, 2-inch variance. He said Staff found that the request does not violate the intent of the Master Plan but Staff does not make any interpretations on hardship. Randolph said that his wife and he have owned the unit for four years. He explained that he had a builder do a proposed design and to build it with usable dimensions they would have to have a variance of 14-inches. He said that they do not think they will actually use 14-inches, probably only about 12-inches, but the builder said to ask for 14-inches to be safe because of the siding. He described that HardiPlank siding would be used. John Major asked the square footage of the lot. Lynn said that it was 5,261 square feet. Major and Lynn discussed the lot size. Major asked what made the lot irregular or uneven or what would qualify this. Randolph said the narrowness of the lot was what made it an undue hardship. He said they could extend further back; the lot is deep but it is narrow on the frontage and to make it a usable proportion they needed to extend to the side. Major asked if it was going to be heated and cooled. Randolph said yes. He described a separate heating/cooling unit that would be installed. Monty Parks asked how Randolph arrived at the dimensions. Randolph explained that they laid out what furniture would be there. He noted that they were not extending it the full length. Demery Bishop asked if they had looked at whether an 11-foot addition would suffice. Randolph said that with the walls it would be so narrow they did not think it would be worthwhile or suitable for what they were hoping to do with it. Marianne Bramble asked what the back of the lot abutted. Randolph said that there was another home. Bramble asked about putting the porch in the back. Randolph explained that there were a lot of issues: no doorway, the A/C unit, the plumbing and sewer lines, and the roof. Major asked if Randolph went 11-feet would he still have 10-feet of useable space. Randolph described an interior brick wall and an exterior

studded wall. He said that it would be less than 10-feet. Major and Randolph discussed. Bishop discussed the construction diagrams with Randolph. Bishop expressed that the room would be a little more than 10-feet. Bishop asked about a palm tree on the south side. Randolph said they hope to save all the trees. Bishop and Randolph discussed. Burke asked for public input. There was none. Randolph summarized the request. Burke closed the Public Hearing and asked for a motion. Parks moved to deny. Bishop seconded. Major said he was having a hard time making the definition of a hardship fit this. Bishop said what was presented did not necessarily qualify as a true hardship. He said that there are alternatives that could be looked at. The vote in favor of the motion to deny was unanimous. The **motion to deny passed** with a 5-0 vote. City Council would consider the request at their December 9 meeting.

Chair Jay Burke opened a Public Hearing for a Zoning Variance request for **404 Butler Avenue, units 415, 425, 435, and 445**; PINs 4-0004-20-051, -056, -061, and -066; Zone C-1. The petitioner was Alex Salgueiro. The request was a front setback variance for existing condominium units. Jonathan Lynn said that the building was originally constructed utilizing the minimum required setbacks for C-1(B), where the uses are hotel and motel, and a setback of 5-feet. He said that the use changed and it was now condominiums and would be subjected to setback requirements of C-1(C) which require a 20-foot front setback. Lynn said the applicant was requesting this be changed from hotel/motel to residential condominiums in order to provide individual ownership for the units, however, in order for us to agree to that and allow them to be referenced as condominiums they had to meet any setbacks that would be required by the definition of condominiums, and that was the reason for the variance request. He said that the building was already there and it has been used for quite some time; they are just changing the nature of that building, as opposed to hotel/motel, to condominiums. John Major asked if they were occupied currently as condominiums. Lynn said he did not know; the applicant would need to answer that. Monty Parks asked if it qualified as a mixed use. Lynn said loosely it could, yes. Parks said that if it had been within the setback requirements it could just go from being a hotel/motel to being condos. Lynn said that was correct. Parks asked if that has been done anywhere else. Lynn said he could not think of anywhere but that does not mean that it has not been done. Parks said he was looking for a reference point. Lynn said that if they meet everything else they would not need to come back for any kind of request from Planning Commission, or Mayor and Council. Parks said they were occupied as condos so obviously this has already been done. Major asked how we got here and why this was not done before we changed the designation from hotel/motel. He also asked what if they do not get the variance. Lynn said that we did not change the designation; the owner changed it. He said it was originally approved as a hotel/motel. Major asked how the owner did that without the City's approval. Lynn said that it was still within the C-1 requirements; in terms of how he did it: he just did it, and he was sure he was not alone in doing that. He said that in terms of where we go from here and how we do it, if it does not get approved he was not sure where that leaves the applicant; to us the building is still there whether it is 5-feet or 20-feet it is already in existence. Lynn said that he thinks all they are trying to do is come into conformance with what they consider condominiums in order to do whatever they need to do, he would assume financially, but the applicant would need to address that. Rob Callahan asked Lynn if he was saying there was no City approval required to convert from hotel to condominium. Lynn said that you are still in the same zoning district and if the setbacks were already met, there would not be any requirement. Major said that it was not met. Lynn said that the setbacks are different for C-1(B) and C-1(C). Callahan and Lynn discussed. Demery Bishop asked if you build knowing that you are building a hotel/motel with the 5-foot building setback and the intention is that as soon as it is built it would become condos and there is no City government over that because of zoning, would that not allow that to be done intentionally, and that would not be policed or regulated. Lynn said he did not have an honest and accurate answer for that. Bishop and Lynn discussed. Mark Crapps with Kern-Coleman Engineering introduced himself and Alex Salgueiro, president of the association at Beachside Colony. Salgueiro said that he owns one of the units. He said that this has been an issue for quite some time. He said that they all bought units thinking they

were a legally built condo; they paid a lot of money and they pay a lot of property taxes to the City of Tybee. Salgueiro said there are four units there representing over 2 million dollars that were sold to the owners. He said that it was the biggest and most expensive building on the property. He said that they all went through the process of purchasing the condos, the closings, the closing attorneys; they were not aware of the setback issue. Salgueiro explained that the association asked him to tackle this issue because several owners tried to sell their units and were not able to because of this setback issue. He said that it was brought up by a couple of closing attorneys so the only solution at this point was to come to the City because he investigated through Kern-Coleman, who designed the building for the developer, what the possibilities are. He said that right now the way the City rules are they could rebuild that building if it were to be knocked down, on its current footprint, but if somebody goes to sell one of the units on that end of the building any closing attorney could bring up this setback issue and quash the sale, and it puts those owners at a very huge disadvantage and not of their own doing. Major said that previously under our variance ordinance this would not even have been allowed to come because after-the-fact variances were not permitted. He said that they recently modified that; they put some language in there that said when an after-the-fact variance was brought there were conditions that had to be met or requirements were stipulated. Lynn said such things as the applicant needed to provide a narrative explaining the hardship, who created it, how it was created, when it was created. Major asked if they had all that; he was looking for the when and the how. He asked if these were ever occupied as a hotel/motel. Salgueiro said not to his knowledge. Major asked if they were built as condos. Salgueiro said they were built and rented for a short time and then sold as condos. He said they are all owned as condos now. Major asked if any of it was used as a hotel/motel now. Salgueiro said nothing in that building. He and Major discussed. Parks asked if they were advertised as condos when they were sold. Salgueiro said yes. Parks and Salgueiro discussed. Marianne Bramble asked if it was an auction. Salgueiro said no, these units were bought in the heyday at top dollar. Bishop asked if they were bought from the developer as condos. Salgueiro said yes. He said that every unit in that complex except for the ones the developer retains, which he believes is sixteen units out of ninety-seven, has been sold as a condo. He said they have gone through extensive legal work, have spent many thousands of dollars, to make sure that everyone in that complex right now has a legitimate deed to their condo, and they also own all of the common area property which was also kind of in a fog; the developer tried to claim that he owned it, which, by Georgia law, he did not. Parks asked if this developer was still in town. Salgueiro said yes. He said that one of the buildings was currently being held by the FDIC but the rest of the buildings were owned by individual, tax-paying Tybee citizens and they have been maintaining and improving the complex. Bishop summarized that it was built as hotel/motel under current regulations and sold as condos. Salgueiro spoke of the history of various buildings on the property. Major and Salgueiro discussed. Major asked who the builder was. Salgueiro replied Tommy Clark. Parks asked where it falls under hardship. Lynn said, in his professional opinion, it would be unique physical characteristics of the lot because the number of buildings on the lot exceeds just about anything you will find on the island. Gordon Griffith, owner of unit 435 with his wife, Laura, thanked Salgueiro for this and for spending thousands of hours on getting the ownership of this condominium back into their control. He said they did not spend thousands of dollars; they spent hundreds of thousands of dollars and he would not bore them with a very unpleasant subject with the individual that they bought these from. He said he hoped they deal with Salgueiro and listen to him. Freda Rutherford said that having lived in a condo association built by Clark's prior engineer her heart goes out to these people. She spoke of having been involved in lawsuits, she threw in the towel and moved, that have been raging for about five years over buildings that came before the Planning Commission's predecessors and City Councils who considered developers their customers. Rutherford spoke about consideration of codes, title insurance lawyers, and end-users. Callahan asked what happens if they do not approve this. Lynn said nothing from our end, he would assume, however, it would fall back to the owner of the property; there would be, it sounded like, some kind of financial burden for them, however to us it would be just a building that was already there, unfortunately, as sad as that sounds. Burke asked if

passing this would make the units legal to sell. Lynn said that was his understanding from what he has heard from the applicant and matching up with our Land Development Code. Burke said that he did not see why that would not be a hardship. Lynn said that was why they get the big bucks. Major, Bishop, Bramble, and Parks spoke to the situation. Burke closed the Public Hearing and called for a motion. Bishop motioned to approve. Major seconded the motion. Bramble spoke further about the situation. Voting in favor of the motion to approve were Bishop, Bramble, Callahan, and Major. Parks voted against the motion. The **motion to approve passed** with a 4-1 vote. City Council would hear the request on December 9.

Chair Jay Burke opened a Public Hearing for a Text Amendment to create **Article 17 – Shore Protection Ordinance**. The petitioner was the City of Tybee Island. Jonathan Lynn said this originally came to Planning Commission in February. He turned the discussion over to John Major. Using a PowerPoint presentation that a Planning Commission subcommittee had presented in 2008 and that Major had since updated, he provided information related to shore protection. Lynn said that what was before Planning Commission was a decision to act on the draft ordinance or to solicit input from a committee and have that reported back at the January or February meeting. He said that the draft ordinance was before them but it had been about three years since it had been shown in public. Burke asked how they felt about Major's recommendation to have a committee. Monty Parks said that he walked the beach with the document; it does not say anything about the percentage of destruction required for build-back. He said he thought it was 80% at the time it was presented. He said that he could see why the big setback, 250-feet where there was no dune. Parks said that he did not see anything unreasonable about this document. He asked Major why they should not stick 80% in and move it on up to Council. Major said that having spent a great deal of time studying this three years ago, he thought it was a pretty good document and it deserves a look and an opportunity for people to talk about it again. He said it was one of the most important things that they can do on this island and he did not want anybody to feel they did not have every opportunity to get their input into this. Major and Parks discussed. Parks asked Lynn if there was any way to anchor this. Lynn said to make it as strong as you can be at the time you make it. After Major and Parks briefly exchanged comments, Freda Rutherford said that she is a member of the Beach Task Force and followed closely the writing of this ordinance when the committee worked so hard on it. She said that it used to be when somebody appeared before a Tybee body, the first thing they did was tell you how long they have lived here. She said that she is up to seventeen years. Rutherford said that what you have to keep in mind is that you are talking about the priciest land on this island. She said she wanted to cite a couple of instances where this has been so contentious. She discussed examples of a bunker on Pulaski Street and a lot on Eighteenth or Nineteenth Street that was built within 5-feet of the toe of the dune and then a request for a wall was made because sand was moving under the house. She also discussed sand on the back river and messing with Mother Nature. She said she supported Major's recommendation that they review the ordinance and update it. Major noted that the materials they had gone over tonight were available at a website. Burke closed the Public Hearing and called for a motion. Demery Bishop motioned that a review committee be appointed and convened with the goal of reviewing the proposed amendment and presenting an ordinance to Council with a sunset for committee action April 1, 2011. Major seconded the motion. The vote was unanimous. The **motion to appoint and convene a review committee with the goal of reviewing the proposed amendment and presenting an ordinance to Council with a sunset for committee action April 1, 2011, passed** with a 5-0 vote.

Chair Jay Burke opened a Public Hearing for a Text Amendment to **Article 5 – Procedures for Administration and Enforcement**. The petitioner was the City of Tybee Island. Jonathan Lynn said that they had a workshop on October 7 regarding the article and most if not all of those changes had been incorporated into the current version. He said the Commission could take it section by section, as Council has been doing with another article. John Major said that he did not find it acceptable because of

references to things like, “Jonathan and Bubba will work out variance language” and “Jonathan will work on campaign disclosure requirements.” He said that maybe going through it a little piece at a time makes a lot of sense even though it is going to slow it down but if they could go through it a section at a time, and that is the path that Council seems to be on, they could pass it on to them a piece at a time rather than give them the whole thing at once and they are still going to take it a couple of sections at a time. Lynn said he was agreeable with that. Major said that particularly the variance language; he wants to know what is going to Council: he had a lot of thoughts on that and there were some other points that they had talked about that he did not see in the current version that maybe in a smaller section they could talk about them and figure out why they are not in there. Lynn asked if they wanted to start with some of the easier sections. Monty Parks asked what would happen if something in the last section affected something in the first section that was talked about two months prior; was anybody reviewing this for consistency, for a thread of continuity. Lynn said that we thought about that and so far it has not happened. After Lynn explained further, Parks said that as far as variance language, that almost required its own subcommittee; it was a huge subject. Major said that his comments in the workshop were huge. After discussion, Major asked when City Council would be expecting to start looking at Article 5. Lynn said that he would not want to give them Article 5 until they are done with Article 3; probably the middle of January. He recommended the Planning Commission have its work on Article 5 done by its January meeting as there was a chance that three new Planning Commissioners could come onboard starting with the February meeting. He said that gave three meetings to get it taken care of. It was agreed that they would consider the article until 9:00 pm. Major asked what the process would be for open issues. Lynn said that if anyone has any open issues, if they would email them to him he would compile a list and send it out. After discussion, Lynn said that Section 5-001, General Approval Procedures, was a new paragraph that detailed this article. Rob Callahan moved to approve. Demery Bishop seconded. The vote was unanimous. **The motion to approve Section 5-001, General Approval Procedures, passed** with a 5-0 vote. After a brief discussion, Parks moved to approve Sections 5-002 through 5-008, Reserved. Callahan seconded. The vote was unanimous. **The motion to approve Sections 5-002 through 5-008, Reserved, passed** with a 5-0 vote. Lynn said that the only changes in Section 5-009, Permit Prerequisite for Construction, was from “zoning administrator” to “designated City official” and capitalization of the word “Article.” Major asked about capitalization in the phrase “designated City official.” Lynn offered to make it consistent throughout the article. Bishop moved to approve. Callahan seconded. The vote was unanimous. **The motion to approve Section 5-009, Permit Prerequisite for Construction, passed** with a 5-0 vote. For Section 5-010, Permit Required, Lynn said that in the second paragraph, “...or of the work...” would be changed to “...or if the work...”. He emphasized the first sentence of 5-010(A). Parks said that there was discussion at the Council meeting about what work does not require a permit. After discussion, Bishop asked where “work” was defined. Lynn said that he was not sure that we have a definition for “work” and interpretation from our office was when there was equipment onsite and you are actually doing something. After discussion, Lynn read language from Section 9-030(A), “No permit is required for maintenance and/or repair work that does not necessitate or involve structural alterations, expansion of a structure and does not require that work be performed by a licensed trade such as electrical or plumbing. Cosmetic repairs or maintenance such as painting, carpet replacement and similar work shall not require a permit. No permit shall be issued until the prescribed fees for same have been paid in accordance with the fee schedule on file with the Clerk of Council.” It was agreed to reference Section 9-030(A) within the first sentence of Section 5-010(A). The Permit Required section was discussed further. Major confirmed with Lynn that relocation of a home outside the city limits of Tybee would not require a permit. Major asked if “significant” had been removed from the Tree Ordinance. Lynn said that the Tree Ordinance had not been touched yet but the word would be stricken from there when the time comes. Major said that Dianne Otto’s notes from the workshop said “add reference to 25-foot buffer” to 5-010(K). Lynn said that he could add that. For Section 5-010(L), Major said that Otto noted that “Jonathan will work on this paragraph” and there were three suggestions. Lynn said that he could work on that. After discussion,

Parks motioned to have Lynn continue working on Section 5-010 for review by the Planning Commission at the December meeting. Major seconded the motion. The vote was unanimous. The motion to continue passed. Lynn explained that for Section 5-020, Permits or Actions Required by this Land Development Code, a majority was grammatical corrections, however, in (F), Subdivision of Land, most of the paragraph was struck and language related to minor and major subdivisions was added. He also explained (H), Use of Recreational Vehicles on Private Property for Residential Purposes, and (I), Permits Required in Conjunction with Permits in this Land Development Code. Referring to the workshop notes prepared by Otto, Major recommended that Section 5-020 be modified throughout to “such action requires a public hearing before the Planning Commission and the City Council.” Lynn said that this was one he got with City Attorney Bubba Hughes about and Hughes believes they are both considered Public Hearings because the public has a chance to comment at both Planning Commission and Council. Major agreed and explained that the various subsections within the current version of Section 5-020 do not say that City Council is a public hearing. Lynn agreed and added “Mayor” and “at scheduled meetings.” After Parks and Lynn discussed (F), Major, Lynn and Parks discussed that the change to four-year terms for the Mayor and City Council would not affect the campaign contribution disclosure requirement of two years. Major motioned to approve Section 5-020 as amended. Parks seconded the motion. The vote was unanimous. The **motion to approve Section 5-020, Permits or Actions Required by this Land Development Code, as amended, passed** with a 5-0 vote. Downer Davis referred the Commissioners to a comment in Section 5-020(I) that read, “Need to differentiate between LDAPs that require review from NRCS and land disturbing permits that are issued at the City level without additional review.” He said that Section 5-040(C)(8) reads, “Soil erosion and sediment control plan required for all projects whether a Land Disturbing Activity Permit is required or not.” Davis and Lynn discussed. Lynn recommended including two definitions in Article 2. After a brief explanation by Lynn of Section 5-030, Fees, Callahan moved to approve. Parks seconded the motion. The vote was unanimous. The **motion to approve Section 5-030, Fees, passed** with a 5-0 vote. Lynn moved to Section 5-040, Application for Permits or Actions under this Land Development Code. Major asked if Section 5-040(D), Additional Application Requirements for a Zoning Variance, should reference Section 5-090, Variances. Lynn agreed and added “...in compliance with Section 5-090” to the end of the first sentence. Major and Lynn discussed why (D) was included in this section. Davis requested that in Section 5-040(G)(2) the 200 feet to the inch requirement be changed to 100 feet to the inch. After discussion the change was accepted. Major and Lynn discussed adding definitions to Article 2 for the terms used in Section 5-040(G)(2)(a)(2). At the suggestion of Parks, Lynn struck the word “significant” from (G)(2)(a)(12). At the suggestion of Major, Lynn added “if applicable” to the ends of (G)(2)(a)(7), (8), (9), and (10). Major and Lynn discussed Section 5-040(H)(8) and the first sentence was then modified from “...needs or should have...” to “...requires...” Parks motioned to approve Section 5-040 with the changes as noted. Major seconded the motion. The vote was unanimous. The **motion to approve Section 5-040, Application for Permits or Actions under this Land Development Code, as amended, passed** with a 5-0 vote. Next was Section 5-050, Public Notice. Major moved to approve. Parks seconded. The vote was unanimous. The **motion to approve Section 5-050, Public Notice, passed** with a 5-0 vote. Lynn discussed Section 5-060, Public Hearing Requirements. Major said that in Section 5-050(A)(3) it read that the petitioner was recognized first and explained the request. He said that was not how they do it. Lynn said that he makes the Staff presentation. Major asked if Lynn was the presiding officer or was Burke. Lynne said Burke was. Major, Lynn, Parks, and Bishop discussed “...it shall be the duty of the speaker to disclose the following information five days prior to the public hearing...” from Section 5-060(A)(5). Lynn suggested holding off on the section so he could see what he could find out about it.

Rob Callahan motioned to adjourn and Monty Parks seconded the motion. The vote was unanimous and the meeting adjourned.