

**SPECIAL MEETING OF THE STUART CITY COMMISSION
TO BE HELD MAY 29, 2007
AT 9:00 A.M. IN THE CITY COMMISSION CHAMBERS
121 S.W. FLAGLER AVE.
STUART, FLORIDA 34994**

Roll call was answered by:

**Mayor Mary L. Hutchinson
Vice Mayor Jeffrey A. Krauskopf (absent)
Commissioner Carol S. Waxler
Commissioner Michael J. Mortell
Commissioner James A. Christie, Jr.**

Also present were:

**City Manager: Dan Hudson
City Attorney :Paul J. Nicoletti
City Clerk Cherie White**

0:00 ~ 5/29/2007 9:02:02 AM

Mayor Hutchinson delivered the Invocation, followed by the Pledge of Allegiance led by the Commission.

COMMENTS BY CITY COMMISSIONERS

COMMENTS BY CITY MANAGER AND REVIEW OF TENTATIVE AGENDA

COMMENTS FROM THE PUBLIC (Non-Agenda Matters Only – 5 min. max)

Sworn were:

**Petitioner Representatives: Attorney Steven Utrecht, Paul Charette
Interveners: Attorney Virginia Sherlock, Attorney Howard Heims, Patricia Wood, Keith Wood, Lucille Rights, Anne Burford
Witness for the Interveners: Joseph George**

Mayor Hutchinson announced she would be abstaining from this item, because she is on the record as opposing this item at the two Board of Adjustment meetings in 2005, as a property owner near this proposed project.

Attorney Nicoletti stated the Mayor could act as presiding officer. She can discuss the item but act as presiding officer without any other issues coming into this item. He stated the item must be approved by three affirmative votes.

9:23 ~ 5/29/2007 9:11:25 AM

Attorney Sherlock came forward and requested a continuance for the purpose of allowing the City to consider a Cottage Zoning or small residential lot Ordinance, and upon enactment of such an Ordinance, then let's come back.

Mr. Hudson reminded the Commission that this was one of the items the City Commission discussed during their strategic planning retreat last year. Staff has been working on this, and proposed to go before the Land Planning Agency Board in June.

Commissioner Mortell stated the application is pending regardless of the outcome of any Ordinance their application stands unless they withdraw it.

Attorney Sherlock stated she agreed however you would have two advantages, number one, you would have some guidelines that would help assist you in your discussion of the pending variance application. Certainly the owner would have the ability to voluntarily comply with the new Ordinance. And in the event this Commission was to deny the variance as applied for then there would be some relief for the owner to come back under the new Ordinance.

Attorney Nicoletti stated that this could actually mute the need for the variance.

Attorney Utrecht came forward and stated they would oppose any request for a continuance because of the length of time it has taken already. He stated they have voluntarily reduced density by 25% and reduced it from a three story to a two story residence. We are not going to withdraw.

Mayor Hutchinson stated that she felt the cottage lot Ordinance could help within the City because the City's code does not address construction on 50 foot lots.

Attorney Nicoletti stated there was a motion in front of the Commission for a continuance to this hearing.

Sworn in : Kev Freeman

MOTION: COMMISSIONER WAXLER: MOVED DENIAL OF THE MOTION TO
CONTINUE.

SECOND: COMMISSIONER MORTELL

Kevin Freeman gave a brief overview to the Commission regarding the proposed Cottage Lot Ordinance.

MOTION APPROVED UNANIMOUSLY of the denial to continue this item.
Mayor Hutchinson abstained

1. **Public Hearing:** Request to reduce the required lot width from 75 feet to 50.98 feet and
2) Reduce lot area requirements from 7,500 square feet to 7,186 square feet to allow for construction of a new single family home.

Property Location: 701 S.W. Saint Lucie Crescent
Property Owners: Tom Crowsen / First South Properties
Applicant/Representative: Paul Charette / P. Charette Architecture

21:24 ~ 5/29/2007 9:23:26 AM

Kev Freeman, Development Director gave a staff presentation regarding the proposed project. He stated it was proposed for a single structure with a detached garage. The primary structure is proposed to be 27.4 inches in height and 2768 sq feet. The detached structure is proposed at 17.2 inches in height and 477 sq feet. He presented an exhibit which outlines the various lots and zoning districts within the neighborhood and asked that it be included into the record. He stated that staff recommends approval.

50:02 ~ 5/29/2007 9:52:04 AM

Attorney Steven Utrecht requested that the exhibits 1-14 introduced to the Board of Adjustments be included and introduced as part of this hearing. He stated the applicant's hardship is the property was platted in 1912 and those plats when they were created were consistent with the zoning and building requirements of the City of Stuart. "After the house was built the minimum lot size went to 75 feet and 7500 sq feet minimum lot size. It is in fact a smaller lot then a build able lot such that no house of any size could be built on that lot without a variance."

Mr. Paul Charette, A.1.A Architecture, came forward and gave a brief overview of the existing conditions of the proposed project. He stated the conditions of the prior building were poor. He stated it was sitting over the current setbacks and to make it conform they would have had to remove a substantial portion of the house to make it conform to today's code or go in for variance hardships on that matter.

1:16:47 ~ 5/29/2007 10:18:49 AM

Attorney Howard Heims cross examined the petitioner and staff regarding the proposed project.

Attorney Nicoletti stated the City Commission packet in its entirety is considered an exhibit. He advised that the City would take notice of all of the City's records to be considered an exhibit to this case.

Attorney Virginia Sherlock stated that this case falls under the administrative res judicata and should not be reheard. "The adjacent neighbors would stipulate to approval of this variance if, in approving the variance you would limit the size of the structure. You know if you give a variance, and say, will give you a variance if you limit it to 1000 sq feet, one story, and these people will sign off on that in a heartbeat, no problem."

The Commission questioned if the administrative res judicata law would prevent any one from asking for a variance on this property.

Attorney Sherlock stated the land owner can't by his own conduct or act create a right that does not exist. He does not have the right to keep coming back over and over because of administrative res judicata.

Attorney Nicoletti stated in the City's mind res judicata does not apply in this case because each application submitted was substantially different. He stated the Board of Adjustment has in the past granted a variance to a 50 foot lot. In this particular case they felt the building that was being proposed was just simply too large. It did not fit the neighborhood. I would say that in this particular instance res judicata does not apply.

Attorney Sherlock stated the City Commission has to make a finding in order to overcome administrative res judicata that the application before you that there is some substantial change and it is up to you to determine whether if we take off 100 feet, that is a substantial change? How much change is a substantial change that requires us to do this over and over again.

Commissioner Mortell stated that he felt that going from a two story to a three story constitutes a substantial change based upon the minutes and reflection of the members of the Board of Adjustment saying, "that floor is scaring us away."

Mayor Hutchinson asked what the original submittal height was.

Mr. Paul Charette stated the original submittal was 37 feet to the top of the roof, and at this point we are 31 feet to the top of the roof.

Commissioner Waxler stated that if Attorney Sherlock motion with regards to her argument of administrative res judicata is a motion to dismiss this appeal, I am prepared to deny such motion and move forward with the hearing.

**MOTION: COMMISSIONER WAXLER: MOVED DENIAL OF THE MOTION TO DISMISS
AND MOVE FORWARD WITH THE HEARING**

**SECOND: COMMISSIONER MORTELL
MOTION APPROVED UNANIMOUSLY
Mayor Hutchinson abstained**

Commissioner Mortell stated that City needs to clarify its rules with regards to what constitutes a substantial change, does taking a closet out of a master bedroom a substantial change?

Comments by the Public:

Keith Wood, 701 Cleveland Avenue came forward and presented a piece of the Bessey addition plat with descriptions of individual lots obtained from the Martin County Property Appraisers web site on the internet.

Mr. Nicoletti stated that it can be heard and referenced by the Commission as here say.

Attorney Nicoletti asked that it be marked Interveners #6. He said the Commission needs to understand that there is no way to authenticate the document.

Mr. Wood continued his testimony. Mr. Wood stated he felt the building was too big for the neighborhood.

Attorney Heims cross examined Mr. Wood.

Attorney Heims also cross examined Mrs. Wood.

Attorney Nicoletti marked the March 30, 2007 staff packet of the Board of Adjustment the Petition to Deny Variance dated March 22, 2007 as exhibits City 2. The March 28, 2007 Petition to Deny Variance as Exhibit City 3. March 30, 2007 the requested Variance letter from Lucille Rights as Exhibit City 4. The petition that is hand written in red marked as Exhibit City 5.

Attorney Heims. No further questions.

Attorney Steven Utrecht asked Mr. Wood; "Its not that you have a problem with a house you would agree that a house should and could be built here, just not this house?"

Mr. Wood: "Yes".

Attorney Nicoletti: asked when Mrs. Wood was last in the house that was demolished on the property in question.

Mrs. Wood stated it was approximately early 1990's.

2:44:16 ~ 5/29/2007 11:46:19 AM

Joseph George came forward and was cross examined by Attorney Howard Heims. He stated that he was no opposed to a 2000 or 2500 sq feet overall structure.

Lucille Rights, 816 St Lucie Crescent came forward and was crossed examined by Attorney Heims and Attorney Utrecht.

Anne Burford 720 SW Cleveland Avenue came forward and was crossed examined by Attorney Heims and Attorney Utrecht.

Comments by the Public:

Dick Giles 716 St Lucie Crescent came forward and stated he was not opposed to the proposed project.

Annette Salvatore 649 St Lucie Crescent came forward and stated she was not opposed to the construction of the proposed project. She was then cross examined by Attorney Steven Utrecht and Attorney Heims.

Closing arguments were given by Attorney Steven Utrecht.

Closing arguments were given by Attorney Virginia Sherlock.

Commissioner Christie expressed concern over the new development with transition from residential to different commercial or new urbanism. He stated the City is looking at a new "Cottage Lot Ordinance" which would address 50 foot lots. He would support denial of the variance.

Commissioner Waxler expressed concern that the petitioner demolished the house. She stated that by allowing and granting this variance what we are saying is, anybody can come in and tear the house down knowing they need a variance to do it, and after the fact we will grant the variance because now it is build able and you have created your own hardship. She stated she could not support this because she cannot see a hardship. She suggested the applicant coordinate with the neighborhood regarding a proposed structure for this property. As it is presented here I am going to have to deny the Variance.

Commissioner Mortell stated he would not support the denial of this of it because I have a concern that, if I were to vote in favor of the denial of this that this would be forever barred based upon res judicata. My comments on this case are based upon staff's testimony under oath that in fact it was our staffs opinion that this was a perfect example of a hardship and that this did meet the minimum requirements to comply wit that hardship.

3:06:51 ~ 5/29/2007 12:08:53 PM

Commissioner Waxler: We are just denying the current application and I understand the res judicata and I think that Mr. Nicoletti was right. If there is a substantial change because other wise what we do up here and micromanage it would be without effect. Here is my problem I don't find a hardship, I don't care how big it is or how small it is what the setbacks are, and I don't find a hardship. The reason I don't find a hardship is they permanently chose to tear it down. Had they not tom it down and what they had could be build able, then I say yes there was a hardship.

Attorney Nicoletti: Part of the reason why I asked Mr. Charette on the record about the value of the house and whether or not it could be rehabbed was because it was not clear in the record regarding this whole hardship issue. What I am afraid of is at some level, if you say well they tore it down so they created their own hardship, and that is really the reason for the variance, they could never come back. Really that is the reason I asked Mr. Charette the question. If the house really could not be rehabbed and had to come down, if it was a matter of not this year but maybe next year we would have condemned it anyway, or the year after or ten years from now. That doesn't constitute necessarily the creation of a hardship.

Mayor Hutchinson: "So what we are saying to the general public, if you ignore your house long enough we will condemn it. I have a problem that this is the message we are sending to the City. "

Attorney Nicoletti: "No, that is certainly not my intent, there are other codes obviously that say you have to repair, and there is property maintenance code. That is clearly not my intent. We don't know what happened over the last 10 years from the time that Mrs. Wood was in there, and said it was fine back in the mid 90's and then the mid 2000's it wasn't. "

MOTION: COMMISSIONER WAXLER: MOVED APPROVAL OF THE DENIAL OF THE VARINACE BASED UPON THE FACT THE PETITIONER HAS NOT SHOWN BY PROPONDERANCE OF THE EVIDENCE THAT THE VARIANCE SOUGHT IS DUE TO SPECIAL CONDITIONS WHERE THE LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ZONING CODE WILL IN THIS INDIVIDUAL CASE RESULT IN UNECESSARY HARDSHIP.

SECOND: COMMISSIONER CHRISTIE

Commissioner Mortell stated you can't have a 50 foot lot that doesn't have a hardship, because from the very premise there is a hardship on a 50 foot lot regardless of whether you are going to build a doghouse. Once we look at this application and we say this is a 50 foot lot, if the minimum building lot is 75 feet there is a hardship. The real issue is not whether there is a hardship, the issue before us is whether this is the minimum compliance because there is never going to be a time that this 50 foot lot is not a hardship. If you are finding they don't have a hardship on a 50 foot lot they are barred from res judicata. Under these criteria, yes you could find a hardship, it's a triangular shaped lot and as a result there is a hardship, however, I find that if they move their garage over 10 feet that would be an alternative to avoid the hardship.

3:08:22 ~ 5/29/2007 12:10:24 PM
Commissioner Waxler; I will amend my motion.

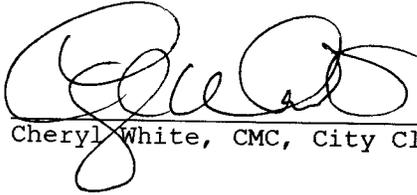
AMENDED MOTION: COMMISSIONER WAXLER:
MOVED APPROVAL OF THE DENIAL OF THE VARINACE BASED UPON THE FACT THE PETITIONER AND THE VARIANCE IS NOT THE MINIMUM VARIANCE REQUIRED TO ELIVIAE A HARDSHIP UNDER THE CIRCUMSTANCES.

SECOND: COMMISSIONER CHRISTIE
ROLL CALL:

MAYOR HUTCHINSON	ABSTAIN	COMMISSIONER CHRISTIE	YES
COMMISSIONER MORTELL	YES	COMMISSIONER WAXLER	YES

3:25:21 ~ 5/29/2007 12:27:23 PM

ADJOURNMENT:12:27 PM


Cheryl White, CMC, City Clerk


Mary L. Hutchinson, Mayor

Minutes approved at the Regular Commission
Meeting This 9th Day July 2007



Cheryl A. White
City Clerk