Adopted 10/9/18

MEMBERS PRESENT: Chairman Mark Langello, Timothy Conner, Laureen Kornel, and Anthony Lombardo.

MEMBERS ABSENT: Michael Boyd (excused)

STAFF PRESENT: Adam Mengel, Planning Director; Gina Lemon, Development Review Planner III; and Wendy Hickey, Planner.

CONSULTANT: Sally Sherman, of JMI Consulting

BOARD COUNSEL: Kate Stangle, of Broad and Cassel

Chairman Langello called the meeting to order

1. Roll Call.
   Attendance was confirmed by Ms. Lemon and a quorum was present.

2. Pledge of Allegiance.
   Chairman Langello led the Pledge of Allegiance to the Flag.

3. Approval of the July 10, 2018 regular meeting minutes will be postponed to the September 11, 2018 regular meeting.

4. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3101 – APPLICATION FOR A SITE DEVELOPMENT PLAN OVER 5 ACRES IN THE AC (AGRICULTURE) DISTRICT – request for review of a site development plan in the AC (Agriculture) District at 2925 State Road 100 West. Parcel Number: 07-12-30-5550-00160-0030; 8.53 +/- acres. Owner/Applicant: Polonia Society of Korona, Fla., Inc.; Agent: J. Brett Markovitz, Sr. VP, CPH, Inc.

Chairman Langello asked for ex-parte disclosures; no disclosures were made.

Mr. Adam Mengel, Planning Director, presented the staff report giving a brief history of the project and recommended that the Planning and Development Board approve Application #3101, a Site Development Plan Over 5 Acres in the AC (Agriculture) District for an approve Semi-Public Use as a Cultural Center for the Polonia Society of Korona, Fla., Inc. located at 2925 State Road 100 West, finding that the Site Development Plan meet the technical requirements of the Land Development Code.

Chairman Langello asked if the applicant would like to give a presentation.
Mr. J. Brent Markovitz, Senior Vice President, CPH Engineers Inc. 520 Palm Coast Parkway SW, Palm Coast, applicant, gave a brief overview of the project and thanked the staff for their help.

Chairman Langello opened the Public Hearing. Seeing no one approach the podium, he closed the Public Hearing.

Chairman Langello asked if the Board had any questions.

Motion to approve made by Mr. Connor, seconded by Ms. Kornel.

Motion carried unanimously.

5. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3141 – VARIANCE IN THE PUD (PLANNED UNIT DEVELOPMENT) DISTRICT– request for 3.46 foot side yard setback variance from the 7.5 foot minimum side yard setback for a single family home located at 42 Heron Drive within Palm Coast Plantation PUD Unit 3 subdivision. Parcel Number: 27-11-31-4893-00000-0180; Owner: William F. and Virginia L. McLeod H&W/Applicant: Saltwater Homes, Inc.

Chairman Langello asked for ex-parte disclosures; no disclosures were made.

Mr. Mengel presented the staff report and the history for this variance request and the staff recommendation that the Planning and Development Board find that all variance criteria as listed in the guidelines at the Land Development Code Section 3.07.03.E have been met and therefore approves a 3.46 foot variance from the minimum 7.5 foot side yard setback for a single family residence at 42 Heron Drive subject to the condition that the homeowner route the existing downspouts from the roof along the left (South) side of the home away from the side yard, directing the roof drainage to the rear of the property, with a yard drain added in the low spot between the center of the home and the rear of the parcel, with the yard drain then piped to the rear lot line to the West.

Chairman Langello asked if the applicant would like to give a presentation.

Nicolle Waltman of Saltwater Homes, Inc., 205 Palm Coast Parkway, NE, Suite 607, Palm Coast, applicant, described how during the building and construction process numerous surveys indicated that the home met the minimum setbacks and if it wasn’t for the new construction next door the error in the surveys may have never come to light. She noted that they as the contractor
have agreed to coordinate any permitting and installation of the County-requested drainage improvements.

William and Virginia McLeod, 42 Heron Drive, Palm Coast, property owners, stated they are working with the neighbors to address some encroaching shrubs.

Chairman Langello asked the applicant what did the original surveyor, the surveyor throughout the project, say was the error?

Ms. Waltman stated that he said the initial four property corners for the lot were not placed correctly, which created a domino effect and the house was not placed correctly on the lot.

Chairman Langello this lot is not a rectangle and is deep so it is unique.

Chairman Langello opened the Public Hearing. Seeing no one approach the podium he closed the Public Hearing.

Motion to approve made by Ms. Kornel, seconded by Mr. Lombardo.

Motion carried unanimously.

6. Quasi-judicial requiring disclosure of ex parte communication:

Application #3142 – VARIANCE IN THE PUD (PLANNED UNIT DEVELOPMENT) DISTRICT – request for a 2.6 foot rear yard setback variance from the 20 foot minimum rear yard setback for a single family home located at 21 Bristol Lane within the Sea Colony subdivision. Parcel Number: 20-10-31-5365-00010-1580; Owner: Barbara C. Jones/Agent: Dennis Bayer, Esq.

Chairman Langello asked for ex-parte disclosures; no disclosures were made.

Mr. Mengel presented the staff report and recommendation that the Planning and Development Board finds that all the variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have not been met – specifically criterion 1 and 2 have not been met – and therefore denies the 2.6 foot rear yard setback variance from the minimum 20 foot rear yard setback for the expansion of living area at 21 Bristol Lane (Parcel #20-10-31-5365-00010-1580).

The Board finds that the owner’s requested 2.6 foot rear yard setback variance is denied, since the property in question is not unique within the Sea Colony subdivision and the need for the variance is caused by the owner’s action extending the home’s living area into the rear setback.
He also provided the Board with Alternative Approval Language: The Planning and Development Board finds that all variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have not been met and therefore denies the rear yard setback variance for 21 Bristol Lane (Parcel #20-10-31-5365-00010-1580). The Board finds that: as to variance criterion 1, this lot is unique through the removal of the pool and deck and the decrease in impervious area through the porch addition; as to criterion 2, the conditions requiring the variance were not created by the affirmative actions of the owner and the owner acted at all times in good faith; as to criterion 3, the requested variance would not cause substantial detriment to the community or impair the purpose and intent of Article III of the Land development Code; and as to criterion 4, use of the lot as a single family residence is permitted by the Sea Colony Planned Unit Development (PUD).

Mr. Connor asked if the waterways in Sea Colony were pledged as density credits?

Mr. Mengel replied that he did not know.

Mr. Connor questioned there was no emergency access by water, asking if the Sea Colony development predated zoning?

Mr. Mengel replied no.

Dennis Bayer, Esq., 109 6th Street, Suite #200, Flagler Beach, for the applicant, stated that for this request he comes before the Board with the approval of all the neighbors and the HOA which is unusual. He also noted that the house does not sit square on the lot, and thinks that is unique to this property. He also acknowledged that there is some inconsistency in the application, noting his client completed the application. He stated that what his client is asking for is a setback of 17.8 feet from the rear property line. He also added that his client relied on the nature of the development in the neighborhood as to what would be allowed.

Chairman Langello opened the Public Hearing. Seeing no one approach the podium he closed the Public Hearing.

Chairman Langello asked about in the applicant’s narrative it talks about other variances granted in the area. Have there been any variances in the immediate area of this site and if so how many?

Mr. Bayer replied that he had been involved in a few variance requests, such as a rear porch addition.
Chairman Langello stated that maybe since the HOA is in favor and give approval for these things, maybe they should change the PUD allowing for maybe a 15 foot rear setback.

Mr. Lombardo stated that he was familiar with this development and the situation of the size of the properties.

Mr. Connor stated he thought that the developer should have drawn the lot lines to include the water since all it is being used for is stormwater retention. I find it hard to see how this meets criteria 2 of the variance requirement showing that the owners didn’t know they were coming to this situation. A minimum level of due diligence would have alerted the land owners that they had a small lot and it was going to be restricted for development.

Ms. Kornel stated that as a planner, she would ask about setbacks, but many lay people when they buy an old home and they look around the neighborhood they think it should be fine based on what they see in the area.

Motion to approve made by Ms. Kornel, seconded by Mr. Lombardo.

Motion carried unanimously.

7. Quasi-judicial requiring disclosure of ex parte communication:


Chairman Langello asked for ex-parte disclosures; no disclosures were made.

Mr. Mengel presented the staff report, a brief history of the parcel, and staff’s recommendation that the Planning and Development Board recommend approval of Application #3143 for a Semi-Public Use for a church at 7855 U.S. Highway 1 South finding that sufficient factual data has been presented, subject to the conditions:

1. This Semi-Public Use approval shall be binding upon the applicant and subject to all conditions as included within the applicants submittal package, including the application and site plan;
2. This Semi-Public Use shall run with the land and shall survive conveyance and transfer to another owner or owners provided, however that the conditions contained herein are maintained in perpetuity;

These minutes are unofficial until adopted by the Planning and Development Board.
3. Obtaining all other agency permits prior to issuance of a Flagler County land development and/or building permit;

4. County staff will continue to monitor the site to ensure that health, safety and welfare of parishioners is maintained but not exceeding the maximum occupancy of any building while also verifying that off-street parking does not exceed the capacity provided on site; and

5. Any lighting on-site will be the minimum necessary and will be shielded and aimed downward so as to minimize the effects on adjacent properties.

Chairman Langello asked Ms. Stangle if there was anything special as it relates to churches.

Ms. Kate Stangle, Esq., Planning Board Counsel, replied no, everything Adam has presented is valid, we do not want to treat this with bias or favoritism. Churches are allowed within this zoning category so you are not discriminating against it as long as it meets all the other requirements as an acceptable use.

Tuan Huynh, P.E., Project Manager, Upham Engineering, 265 Kenilworth Avenue, Ormond Beach, for the applicant, noted that the applicant accepts all the conditions and added that the assembly would occur two to three times per week so the impact would be very minimal as there is existing services and infrastructure to the property.

Chairman Langello asked about the assembly area, that it looks to be 2,100 square feet in area and the occupant load seemed to be low for the size. How do we determine the occupancy load?

Mr. Mengel replied that the project was reviewed by the Fire Marshal, the Life Safety Code has some calculations and the Fire Marshal was comfortable with the 88 persons noted in the application packet.

Mr. Huynh also added there is an additional access point in the rear of the building.

Chairman Langello stated that it was parking that was his concern.

Mr. Huynh responded that based on the 88 occupancy the parking requirement is 22 but has provided an additional 5 spaces and there is also a large amount of greenspace that if necessary could be used for overflow on the 3.58 acre property.

Chairman Langello opened the Public Hearing. Seeing no one approach the podium he closed the Public Hearing.

Motion to approve made by Ms. Kornel, seconded by Mr. Lombardo.

Motion carried unanimously.
8. Quasi-judicial requiring disclosure of ex parte communication:

Application #3145 – VARIANCE IN THE R-1 (RURAL RESIDENTIAL) AND THE PUD (PLANNED UNIT DEVELOPMENT) DISTRICT – request for a 49 foot variance from the 150 foot maximum height of a telecommunications tower within the R-1 (Rural Residential) and PUD (Planned Unit Development) Districts located at 1250 South Old Dixie Highway. Parcel Number: 04-13-31-0650-000D0-0040; 19.69+/- acres. Owner/Applicant: Board of County Commissioners of Flagler County.

Chairman Langello asked for ex-parte disclosures; no disclosures were made.

Chairman Langello asked if Mr. Mengel was doing the presentation.

Mr. Mengel replied yes, but that Sally Sherman, the County’s consultant will represent Mr. Shupe our Innovation Technologies Director in his absence with any questions; she is very familiar with this project. So if you have any specific questions there I am not trying to advocate wrongly for the County even though I am a County employee.

Mr. Mengel stated that this had just gone through the Special Use approval. We didn’t have the variance timing for the notice to go out quick enough when the site was picked out, for the northwest corner of the property. The park property where we are going to put the tower sits in an R-1 zoning district. So, R-1 residential uses have a special criteria that is listed in our Special Use considerations for towers that says you can’t exceed 150 feet in height if you are constructing for two (2) or more users in a residential zoning district. So that is what has prompted this request. The request is specifically for a 49 foot height variance allowing for 199 foot total height emergency services telecommunications tower, being part of that overall network this being the tower that moved from the Plantation Bay Utility site. The FAA determination of No Hazard to Air Navigation is pending. The Special Use approval noted the FAA determination as a condition.

I had a discussion with Ms. Jane Gentile-Youd, she is present to request additional lighting that is not required by FAA. FAA says 200 feet or greater you are marking the tower orange and white and you are also lighting the tower. When we went through the Special Use approval I showed the proximity to our airport and also the airport in Ormond. Staff’s recommendation is that the Planning and Development Board finds that based on the testimony and evidence presented that all variance guidelines have been met and approve Application #3145 for a 49 foot variance from the maximum tower height of 150 feet to permit a 199 foot self-supporting emergency services telecommunications tower within the R-1 (Rural Residential) district at 1250 South Old Dixie Highway.

Chairman Langello thanked staff for the presentation.
Ms. Sally Sherman, Consultant, JMI Consulting, for Flagler County as the applicant, we have been working on our telecommunications system for several years now and it is all based on that we have voids in our system as it relates to our law enforcement and our fire rescue personnel trying to communicate to each other in the field so this is a critical part of our infrastructure that is going to enable them to communicate by radio. I think one of the things that really came to light was as an example if a law enforcement officer is in a certain area of the county after a perp and they lose communication by radio, we have no way of knowing where they are and what is going on so we are trying to close those gaps and that is a very important aspect of that closure this location. We do follow the circulars that the FAA puts out and they don’t arbitrarily make changes to what they recommend or what they are proposing to give us guidance of because the flying population kind of dictates where they are because of tower height locations and if you were to sometime attach another system on to that then they assume they are at a certain height. We are committed to adhere to what FAA is going to require us to do and install lighting if required by them.

Chairman Langello asked if anyone on the Board had any questions for Ms. Sherman. Hearing none he then opened the Public Hearing.

Ms. Jane Gentile-Youd, 3 Magnolia Drive North, Ormond Beach, taxpayer and resident, stated we do need towers. Years ago I was against them, but we definitely need them, everybody needs them. The County said that a request for a lighting waver is not needed as long as the tower is less than 200 feet in height. The County is going to be borrowing $13 million upfront to pay Motorola for the six towers, lighting is relatively inexpensive today. There is LED lighting, we don’t need to worry about blinding people the residents. Right behind the property there is ICI future Westlake, I don’t know if they even know about this. But the people are going to be living very, very, close now let me ask you, if you lived close by and you do with the county I don’t know does the FAA know that about a half a mile to the east is a five million dollar water plant? Does the FAA know that about a half a mile to the east is a five million dollar water plant? Does the FAA know that less than five miles to the north is an airport? An airport that has no radar at this time and we are leasing space to student pilots who fly at all times day and night. We are the lightning capital of the United States and for one foot we are not going to put up lights? I am going to call the FAA tomorrow and I am going to give them all the facts. It seems to me absolutely stupid and dangerous and look at the liability that taxpayers we will face if a plane hits that tower we are going to say we didn’t need a light because the tower was one foot below 200 feet and there is a playground and homes and an airport with no radar and lighting is inexpensive and considering we are borrowing $13 million with interest at only 3½% over 20 years. Please make lighting mandatory.

Chairman Langello asked Ms. Gentile-Youd if she was against the variance or are you only asking them to put lighting on the tower?
Ms. Gentile-Youd replied absolutely, we need the tower. I just want them to be safe.

Mr. Mark Youd, 3 Magnolia Drive North, Ormond Beach, Flagler County resident, stated that making this tower 200 feet and not installing lights, I don’t know if it is a financial thing or an arrangement with Motorola. I have been in the aviation industry for over 35 years and I have seen my share of dumb, stupid and dangerous things. Does anyone really believe a tower at 199 feet is safer than one at 200 or 201 feet? I don’t think so. Last night the weather we had by 7:00 p.m., we had a thunderstorm I haven’t seen this bad in years. I couldn’t see 50 feet to my neighbor’s house. Do you think these conditions for a pilot flying in trouble struggling to maintain altitude and he’s got no tower and no radar. I’m sorry even if he has instrument readings he is not going to see a tower 200 feet up in the air if it doesn’t have any lighting in those conditions. I’m sorry, last night I couldn’t see my neighbor’s house. So I am asking for this to be denied based upon lack of lighting and at least delayed until the Flagler Airport gets a tower and radar installed.

Chairman Langello asked if the Board had any questions.

Ms. Kornel asked staff if the Board could move to approve the variance and put conditions on it?

Mr. Mengel replied yes.

Ms. Kornel responded okay, that’s all.

Chairman Langello asked that based on the public comments, in the building business, I often know this we have steps so when you get to this level, this triggers if you get below it you don’t trigger it and it is not uncommon in the public, I should say the private sector to look at that and we may do something up to the limit because we know if we go a little more we are going to trigger that thing, so in the private sector we often do that to save money.

Ms. Sherman commented that the tower height is the recommendation from the tower company we are working with, this is their recommendation for the height. As I had indicated Flagler County has been working on this for a number of years and this is not the first time we had tower requests that are 199 feet, this is what they had recommended. Also as I had indicated it is our goal and our desire to work with FAA with regard to their recommendations on what they want us to do with regard to the tower location and any proximity to any other location within Flagler County. As you may recall, when we came forward a number of years ago with cell towers there was a lot of outcry because people did not want lighting and so that was one the things that was taken into consideration as well as we moved forward with these current requests. But it is not related to a financial aspect. It is what is needed for the location and also working with FAA to determine what they would want to see in regard to lighting. Again it puts us in a difficult position, we are being dictated to do something that FAA may come back and say no it is not
allowed or we don’t want it in that location. We are not opposed to it. Again, we are working with the FAA on it.

Chairman Langello asked Ms. Sherman that this lot has two (2) different zoning classifications and if we were to place this thing in the rear, the variance would not be necessary?

Ms. Sherman replied you are absolutely correct.

Ms. Langello asked how many feet away are we from roughly from where it changes?

Ms. Sherman stated I think it was about 20 feet.

Mr. Mengel added, assuming we measure it out, I want to say it is about 200 feet deep so that as Ms. Sherman had said there would be about another 20 feet further to the south then you have that boundary line showing up.

Chairman Langello added that it is not practical to put it there obviously.

Ms. Sherman stated that is correct based on the recommendation of the engineer.

Chairman Langello replied I was saying to Adam that this is not the first time we have asked to have a variance and the height of the towers and without getting into whether or not we meet all this criteria that we do on all these variances. It would be nice again that staff would be looking at this thing and maybe these tower heights aren’t correct anyway and need to be adjusted. If the County needs that amount of height it is not unreasonable to believe that somebody else is going to need it. So it would be nice if this issue was corrected. So, I would just wish you would correct some of these issues instead of keep coming back for variances.

Chairman Langello asked for a motion.

Motion to approve with the condition that the tower be lit made by Ms. Kornel, seconded by Mr. Lombardo.

Chairman Langello stated that he was not in favor of that only because he thought they should get the variance. I don’t want to dictate whether the lighting is required.

Motion with the condition of lighting carried 3 ayes to 1 nay with Chairman Langello dissenting.

Chairman Langello asked staff if there would be more people to sit on this Board soon.
Mr. Mengel replied yes sir, we have some things in the works.

Chairman Langello stated as you can see we are down again, we have not had a full five member of our seven member Board and if any other member didn’t show up we would not have had a meeting tonight.

9. **Staff Comments**

None.

10. **Board Comments**

None.

11. **Public Comments** - Each speaker will be allowed up to three minutes to address the Planning and Development Board on any item or topic not on the agenda.

Ms. Jane Gentile-Youd, 3 Magnolia Drive North, Ormond Beach, added I want to say thank you. I wish that you would consider revisiting the C-2 Code. I am here and taking advantage of the three minutes. We have an antiquated C-2 code that really has a lot of people very concerned that the current C-2 code is so out of date and allows all types of businesses to have only a 50 foot buffer from single family homes including Bus Stations, Night Clubs, Assisted Living Facilities. If you look at the list under C-2, it looks to me like 1985 when this was written. In 1985, I was living in Dade County and I think that at that time the County was the Wild Wild West back then because the different uses listed are not consistent or compatible with the surrounding areas. At this point, the current C-2 zoning is inconsistent and incompatible with our quality of life. I hope you can revisit doing something with that C-2 code.

12. **Adjournment**

Motion made by Mr. Connor at 7:17 p.m.

Prepared by: Wendy Hickey
Reviewed by: Adam Mengel