

**FLAGLER COUNTY  
PLANNING AND DEVELOPMENT BOARD  
REGULAR MEETING  
Flagler County Government Services Building  
Board Chambers  
1769 East Moody Blvd., Bunnell, FL  
MEETING MINUTES  
Tuesday, August 13, 2019 at 6:00 PM**

*Adopted December 10, 2019*

1 **MEMBERS PRESENT:** Chair Michael Boyd, Jack Corbett, Timothy Conner, Michael Goodman,  
2 Lauren Kornel, Mark Langelo, and Anthony Lombardo.

3  
4 **STAFF PRESENT:** Adam Mengel, Planning Director; and Gina Lemon, Development Review Planner  
5 III.

6  
7 **BOARD COUNSEL:** Kate Stangle, with Nelson Mullins Broad and Cassel.

8  
9 **Chair Boyd** called the meeting to order.

10  
11 **1. Roll Call.**

12  
13 Attendance was confirmed by Ms. Lemon and a quorum was present.

14  
15 **2. Pledge of Allegiance.**

16  
17 **Chair Boyd** led the Pledge of Allegiance to the Flag.

18  
19 **3. Approval of the July 9, 2019 regular meeting minutes**

20  
21 *Motion to approve made by Mr. Langelo, seconded by Ms. Kornel.*

22 *Mr. Langelo commended Ms. Hickey for doing a great job on the minutes.*

23 *Motion carried unanimously.*

24  
25 **4. Quasi-judicial requiring disclosure of ex parte communication:**

26 Application #3179 - **APPLICATION FOR A SPECIAL EXCEPTION IN THE AC**  
27 **(AGRICULTURE) DISTRICT** - request for a borrow pit in the AC (Agriculture) district. Parcel  
28 Numbers: 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000; 14.79+/- acres. Owner:  
29 Rayonier Atlantic Timber Company/Applicant: Matthews Design Group.

30  
31 **Chair Boyd** asked for ex-parte disclosures; none were provided.

32  
33 **Mr. Mengel** presented the staff report describing the property and the request for a Special Exception  
34 for Soil Extraction to create a borrow pit within the AC District. He explained the administrative  
35 amendment to the Future Land Use Classification of Conservation and advised that it is complete. He  
36 provided staff's recommendation that the Planning and Development Board find that all the special  
37 exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have been  
38 met and therefore approves the Special Exception for Soil Extraction (borrow pit) located on Parcels:  
39 # 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000, subject to the following conditions:

40

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- 1           1. the Special Exception runs with the land;
- 2           2. owner or contractor to obtain all permits prior to commencement of work;
- 3           3. the use shall be limited to 7 a.m. to 6 p.m. Monday through Saturday;
- 4           4. the parcels shall remain under single ownership;
- 5           5. a minimum 50 foot wide perimeter buffer shall be maintained adjacent to the parcel
- 6           boundary lines within which no activity shall take place;
- 7           6. applicant shall obtain an Administrative Future Land Use Amendment (to correct the
- 8           Conservation Future Land Use designation) prior to commencement of any activity on the
- 9           site;
- 10          7. applicant to provide necessary access improvements – consisting at a minimum of
- 11          installation of a paved driveway connection to County Road 13 and paved shoulder apron
- 12          edge opposite the driveway and along County Road 13, with other improvements as
- 13          determined by the County Development Engineer at the time of right-of-way permit
- 14          application for the driveway improvements – within the public right-of-way to ensure safe
- 15          traffic movement on and off County Road 13, with no damage to pavement and/or
- 16          drainage flow; and
- 17          8. any damage to County Road 13 directly resulting from and in close proximity to this use
- 18          shall be the responsibility of the owner/operator.
- 19

20           **Mr. Mengel** also provided an alternative recommendation for the Planning and Development Board  
21           with a finding that all special exception criteria as listed in the guidelines at Land Development Code  
22           Section 3.07.03.F have not been met and therefore denies the request for a Special Exception for Soil  
23           Extraction (borrow pit) located on Parcels: # 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-  
24           0000.

25  
26           **Chair Boyd** asked if the applicant would like to speak.

27  
28           **Ms. Shannon Acevedo**, of Matthews Design Group was present for any questions on behalf of  
29           the applicant.

30  
31           **Mr. Langello** questioned if the extraction would end within a year and a half; questioned of the  
32           dirt would be stock piled or sold as extracted.

33  
34           **Ms. Acevedo** responded that the timeframe could be a minimum of 18 to 24 months and  
35           potentially be up to 3 years. Ms. Acevedo responded that the borrow pit is planned as a single  
36           phase and unsure of specific projects for the dirt, likely demand based.

37  
38           **Mr. Langello** continued questioning staff relative to traffic exiting the subject property.

39  
40           **Mr. Goodman** questioned what would be done with the pit after excavation.

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1  
2 **Ms. Acevedo** responded that the sides would be graded, sodded and it would become a pond.

3  
4 **Ms. Kornel** asked if there was any way to avoid the land use amendment.

5  
6 **Mr. Mengel** responded that staff's initial comment was to avoid the Conservation area, the  
7 applicants responded with their documentation demonstrating that the Future Land Use Map was  
8 incorrect.

9  
10 **Chair Boyd** opened the item for Public Hearing:

11  
12 **Edward Smith, 35 Falcon Fire Place** expressed concerns of traffic, noise, mosquitos, effect on  
13 well water.

14  
15 **Chair Boyd** closed the Public Hearing and asked for Board comments.

16  
17 **Mr. Langello** continued to question staff and the representative for the applicant regarding  
18 entrance/exit for the subject site.

19  
20 **Ms. Acevedo** was unable to commit to modifying the entrance/exit for the subject property  
21 without consulting with the applicant. She reported on her research locating closest home to the  
22 proposed borrow pit activity which would be no closer than 200'.

23  
24 **Ms. Kornel** questioned procedure if board chose to ask the application to consider a different access  
25 location.

26  
27 **Mr. Mengel** offered options for the Board to consider in their action.

28  
29 **Ms. Stangle** advised that the Board would be looking at a continuance, or a conditional approval or  
30 denial. She offered that the continuance may be in the best interest of the applicant.

31  
32 **Motion by Mr. Langello** to continue this Application #3179 to the September 10, 2019 regular meeting  
33 of the Planning and Development Board, seconded by **Mr. Lombardo**.

34  
35 **Motion carried unanimously.**

- 36  
37 5. Quasi-judicial requiring disclosure of ex parte communication:  
38 Application #3189 - **APPLICATION FOR VARIANCES IN THE C-2 (GENERAL**  
39 **COMMERCIAL AND SHOPPING CENTER) AND R-1 (RURAL RESIDENTIAL)**  
40 **DISTRICTS** - request for: (1) an 18-foot height variance from 40 feet to 58 feet; and (2) a 15-

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1 foot minimum rear yard setback variance from 50 feet to 35 feet, located at 5658 North  
2 Oceanshore Boulevard. Parcel Number: 40-10-31-3150-00000-0420; 4.264+/- acres. Owner:  
3 Hammock Harbour, LLC/Applicant: Bob Million  
4

5 **Chair Boyd** called for any disclosures from Board members.  
6

7 **Mr. Mengel** advised that staff was aware of emails to Board members from the applicant and  
8 those emails have been included in the Planning Board packet.  
9

10 **Mr. Langello** advised that he received the email and advised the applicant that he would hear the  
11 item at the meeting.  
12

13 **Ms. Kornel** advised that she received the email and responded she would not be able to meet with  
14 the applicant, nor had she reviewed the attachments within the email.  
15

16 **Mr. Conner** shared similar experience and responded similarly.  
17

18 **Mr. Lombardo** responded as the other members described.  
19

20 **Mr. Mengel** presented the staff report and described the before-the-fact Variance requests  
21 included in the application. He presented historical application processes approved by the Board  
22 of County Commission related to future land use and zoning. Mr. Mengel provided the following  
23 staff recommendations on the Variances; the Planning and Development Board finds that all  
24 variance criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have not  
25 been met and therefore denies the following variances for 5658 North Oceanshore Boulevard  
26 (Parcel #40-10-31-3150-00000-0420):

- 27 1. 18 foot variance from the 40 foot maximum building height; and
- 28 2. 15 foot variance from the minimum 50 foot rear setback.  
29

30 Alternative recommendation: The Planning and Development Board finds that all the variance  
31 criteria as listed in the guidelines at Land Development Code Section 3.07.03.E have been met  
32 and therefore approves the variances at 5658 North Oceanshore Boulevard (Parcel #40-10-31-  
33 3150-00000-0420).  
34

35 **Bob Million** for Hammock Harbour presented a handout on the overhead. Mr. Million explained  
36 that the Variances were not required to put the intended uses on the property, they are to make a  
37 smaller footprint and less impact on the neighborhood and Scenic A1A. He displayed his graphic  
38 demonstrating the setback and height of the proposed building with and without the variances  
39 requested to demonstrate the associated impacts on the adjacent properties without the variances.  
40 Mr. Million explained that approximately 63,000 square feet of the subject property is lost to the

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1 buffer requirements. He added that the applicants have worked on a number of site plans and the  
2 proposed, he believes to be the best.

3

4 **Ms. Kornel** asked if a rendering had been provided that shows the view shed of the adjacent  
5 owners.

6

7 **Mr. Million** answered that he has not provided a rendering, however adjacent owners are present  
8 at the meeting.

9

10 **Mr. Mengel** answered that the graphic showing the restaurant located more in the rear center of  
11 the property would be preferred as it removes the buildings from the nearest residential units. The  
12 site plan without the variance locates the restaurant to the north and significantly impacting the  
13 view shed of the residents on the north.

14

15 **Mr. Conner** asked if there was anything stopping them from building the 40' tall building on the  
16 smaller footprint.

17

18 **Mr. Million** responded that would not make economic sense.

19

20 **Mr. Conner** asked how many boats would be stacked in 40' height.

21

22 **Mr. Million** responded, three.

23

24 **Mr. Conner** acknowledged that they would be able to add a fourth layer.

25

26 **Mr. Million** confirmed.

27

28 **Mr. Langello** asked staff if this item would come back to the Planning and Development Board  
29 for site plan approval.

30

31 **Mr. Mengel** responded site plan would go before the Technical Review Committee only.

32

33 **Mr. Langello** asked how he would address not using a metal building.

34

35 **Mr. Million** responded concrete.

36

37 **Mr. Langello** acknowledged the graphics presented by the applicant make sense however the  
38 vehicle to get to the plan is the Variance. He asked the applicant to explain how the request is not  
39 created by them.

40

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1     **Mr. Million** answered that due to the need for septic, you are limited in development ability.

2  
3     **Mr. Lombardo** asked how close the current building is to the road.

4  
5     **Mr. Million** provided estimates of the setbacks for the existing buildings on site.

6  
7     **Chair Boyd** opened the item for public hearing:

8  
9     **Dennis Bayer**, 109 S. 6<sup>th</sup> Street, Flagler Beach representing the Hammock Civic Association  
10     concerning some issues they have for the Variance. Mr. Bayer briefly mentioned the intensity of  
11     the proposed use and offered opposition based on lack of request meeting the Variance criteria,  
12     nothing unique about the property and request is self-created.

13  
14     **Dennis Clark**, 5784 N. Oceanshore Boulevard, displayed a graphic on the overhead projection  
15     and reading from a prepared statement requested tabling of the request until their appeal is heard  
16     on September 10<sup>th</sup>. Mr. Clark expressed objections based on intensity of the project and site plan  
17     review not yet completed.

18  
19     **Janet Sullivan**, 35 Nantucket Drive read from prepared statement expressing opposition to the  
20     request based on noise, traffic, and intensity of use, Variances not a hardship and are self-imposed.

21  
22     **Dr. Lynn Bravo Rosewater**, 200 Ocean Crest Dr, #815 spoke in opposition related to intensity  
23     of use, tree protection, and protection of intracoastal.

24  
25     **Kathy Viehe**, 5676 N. Oceanshore Boulevard, the property north of the subject. Ms. Viehe spoke  
26     from a prepared statement in opposition due to intensity of use and lack of inclusive planning  
27     process.

28  
29     **Fran Bennett**, of the Hammock, spoke in opposition to the request due to intensity of the project  
30     and the rear setback of 35'.

31  
32     **John Russell**, 5652 N. Oceanshore Boulevard, the property south of the subject. Mr. Russell  
33     spoke in opposition to 10,000 gallon gasoline storage tank proposed adjacent to his property.

34  
35     **Joy Ellis**, 85 Ocean Oaks Ln, spoke from a prepared statement in favor of dry boat storage and  
36     restaurant in the Hammock but spoke in opposition to the intensity of the proposed development  
37     on the subject property.

38  
39     **Jim Buckley**, 2891 John Anderson Hwy, owner of the subject property explained that the intent  
40     of the proposal is to make the property as attractive as possible and to meet the intent of the Scenic

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1 A1A Committee. The larger unattractive version would be able to be constructed without the  
2 Variance. He is attempting to retain the beauty of the byway and make the use economically  
3 feasible and provide a nice waterfront restaurant.

4  
5 There being no other public to speak, Chair Boyd called for the applicant's rebuttal.

6  
7 **Mr. Million** explained that the graphic by Mr. Clark is not an accurate representation of the  
8 proposed improvement, the septic is not 5,000 sf it is 5,000 gallons per day. The approval of the  
9 Variance will not generate more profit, it is simply a better looking building.

10  
11 **Jodi Bollinger**, lives two lots from the subject property, spoke with concern about the traffic,  
12 gasoline storage tank, potential noise and traffic.

13  
14 **Chair Boyd closed public comment.**

15  
16 **Motion by Mr. Goodman to deny Application #3179, seconded by Lauren Kornel.**

17 **Discussion on the motion:**

18 **Mr. Langello** asked if there are any regulations related to the gas storage tank that the County  
19 will see on the site plan.

20  
21 **Mr. Mengel** acknowledged that there are regulatory requirements that will need to be met.

22  
23 **Mr. Langello** continued that the applicant demonstrated that the existing situation could be  
24 enhanced with the Variance, but in the C-2 zoning there are a lot of things that could be put on  
25 the property without coming to the Planning and Development Board. There was a lot of  
26 discussion about use this evening that is not pertinent to the request of the evening being the  
27 setbacks and height. He continued that he has difficulty finding that all the Variance criteria have  
28 been met, and for that reason he agrees with the motion.

29  
30 **Mr. Corbett** asked if the larger building/footprint would be allowed if it met setback  
31 requirements.

32  
33 **Mr. Mengel** acknowledged that there had not been a formal review, but the quick look today  
34 indicates compliance with setbacks.

35  
36 **Mr. Conner** acknowledged that he likes the concept and it is consistent with the uses provided  
37 for in the zoning. He echoes Mr. Langello on the purpose of the meeting not being about use. As  
38 he understands the Variance process is used to avoid a hardship not created by an applicant, and  
39 for that reason is unable to support the Variance.

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1     **Ms. Kornel** acknowledge that this is an excellent opportunity for re-development, mixed use  
2     concept is great. She does not see the Variance process as a remedy due to lack of hardship, and  
3     for that reason unable to support the request.  
4

5     **Mr. Mengel** clarified for the record that the basis for denial is that Criteria #2: such conditions  
6     were not created by the affirmative actions of the applicant and the applicant has acted at all times  
7     acted in good faith.  
8

9     **Motion maker confirmed that Criteria #2 had not been met.**

10  
11     **Vote on the Motion 6 Aye and 1 Nay with Mr. Corbett dissenting.**  
12     **Motion carried.**

13  
14  
15     **6. Staff Comments**

16     None.  
17  
18

19     **7. Board Comments**

20     None.  
21  
22

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

25     None.  
26  
27

28     **9. Adjournment**

29  
30     ***Meeting adjourned at 7:38 p.m.***

31  
32     Prepared by: Gina Lemon  
33     Reviewed by: Adam Mengel  
34