Adopted December 10, 2019

MEMBERS PRESENT: Chair Michael Boyd, Jack Corbett, Timothy Conner, Michael Goodman, Laureen Kornel, Mark Langello, and Anthony Lombardo.

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

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

Chair Boyd called the meeting to order.

1. Roll Call.

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

2. Pledge of Allegiance.

Chair Boyd led the Pledge of Allegiance to the Flag.

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

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

Mr. Langello commended Ms. Hickey for doing a great job on the minutes.

Motion carried unanimously.

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

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

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

Mr. Mengel presented the staff report describing the property and the request for a Special Exception for Soil Extraction to create a borrow pit within the AC District. He explained the administrative amendment to the Future Land Use Classification of Conservation and advised that it is complete. He provided staff’s recommendation that the Planning and Development Board find that all the special exception criteria as listed in the guidelines at Land Development Code Section 3.07.03.F have been met and therefore approves the Special Exception for Soil Extraction (borrow pit) located on Parcels: # 31-11-30-0000-01050-0000 and 32-11-30-0000-02020-0000, subject to the following conditions:
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1. the Special Exception runs with the land;
2. owner or contractor to obtain all permits prior to commencement of work;
3. the use shall be limited to 7 a.m. to 6 p.m. Monday through Saturday;
4. the parcels shall remain under single ownership;
5. a minimum 50 foot wide perimeter buffer shall be maintained adjacent to the parcel boundary lines within which no activity shall take place;
6. applicant shall obtain an Administrative Future Land Use Amendment (to correct the Conservation Future Land Use designation) prior to commencement of any activity on the site;
7. applicant to provide necessary access improvements – consisting at a minimum of installation of a paved driveway connection to County Road 13 and paved shoulder apron edge opposite the driveway and along County Road 13, with other improvements as determined by the County Development Engineer at the time of right-of-way permit application for the driveway improvements – within the public right-of-way to ensure safe traffic movement on and off County Road 13, with no damage to pavement and/or drainage flow; and
8. any damage to County Road 13 directly resulting from and in close proximity to this use shall be the responsibility of the owner/operator.

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

Chair Boyd asked if the applicant would like to speak.

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

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

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

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

Mr. Goodman questioned what would be done with the pit after excavation.
Ms. Acevedo responded that the sides would be graded, sodded and it would become a pond.

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

Mr. Mengel responded that staff’s initial comment was to avoid the Conservation area, the applicants responded with their documentation demonstrating that the Future Land Use Map was incorrect.

Chair Boyd opened the item for Public Hearing:

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

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

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

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

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

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

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

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

Motion carried unanimously.

5. Quasi-judicial requiring disclosure of ex parte communication:
   Application #3189 - APPLICATION FOR VARIANCES IN THE C-2 (GENERAL COMMERCIAL AND SHOPPING CENTER) AND R-1 (RURAL RESIDENTIAL) DISTRICTS - request for: (1) an 18-foot height variance from 40 feet to 58 feet; and (2) a 15-
foot minimum rear yard setback variance from 50 feet to 35 feet, located at 5658 North Oceanshore Boulevard. Parcel Number: 40-10-31-3150-00000-0420; 4.264 +/- acres. Owner: Hammock Harbour, LLC/Applicant: Bob Million

Chair Boyd called for any disclosures from Board members.

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

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

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

Mr. Conner shared similar experience and responded similarly.

Mr. Lombardo responded as the other members described.

Mr. Mengel presented the staff report and described the before-the-fact Variance requests included in the application. He presented historical application processes approved by the Board of County Commission related to future land use and zoning. Mr. Mengel provided the following staff recommendations on the Variance; 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 following variances for 5658 North Oceanshore Boulevard (Parcel #40-10-31-3150-00000-0420):
1. 18 foot variance from the 40 foot maximum building height; and
2. 15 foot variance from the minimum 50 foot rear setback.

Bob Million for Hammock Harbour presented a handout on the overhead. Mr. Million explained that the Variances were not required to put the intended uses on the property, they are to make a smaller footprint and less impact on the neighborhood and Scenic A1A. He displayed his graphic demonstrating the setback and height of the proposed building with and without the variances requested to demonstrate the associated impacts on the adjacent properties without the variances. Mr. Million explained that approximately 63,000 square feet of the subject property is lost to the
buffer requirements. He added that the applicants have worked on a number of site plans and the proposed, he believes to be the best.

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

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

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

Mr. Conner asked if there was anything stopping them from building the 40’ tall building on the smaller footprint.

Mr. Million responded that would not make economic sense.

Mr. Conner asked how many boats would be stacked in 40’ height.

Mr. Million responded, three.

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

Mr. Million confirmed.

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

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

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

Mr. Million responded concrete.

Mr. Langello acknowledged the graphics presented by the applicant make sense however the vehicle to get to the plan is the Variance. He asked the applicant to explain how the request is not created by them.
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Mr. Million answered that due to the need for septic, you are limited in development ability.

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

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

Chair Boyd opened the item for public hearing:

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

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

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

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

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

Fran Bennett, of the Hammock, spoke in opposition to the request due to intensity of the project and the rear setback of 35’.

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

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

Jim Buckley, 2891 John Anderson Hwy, owner of the subject property explained that the intent of the proposal is to make the property as attractive as possible and to meet the intent of the Scenic
A1A Committee. The larger unattractive version would be able to be constructed without the
Variance. He is attempting to retain the beauty of the byway and make the use economically
feasible and provide a nice waterfront restaurant.

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

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

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

Chair Boyd closed public comment.

Motion by Mr. Goodman to deny Application #3179, seconded by Laureen Kornel.
Discussion on the motion:
Mr. Langello asked if there are any regulations related to the gas storage tank that the County
will see on the site plan.

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

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

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

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

Mr. Conner acknowledged that he likes the concept and it is consistent with the uses provided
for in the zoning. He echoes Mr. Langello on the purpose of the meeting not being about use. As
he understands the Variance process is used to avoid a hardship not created by an applicant, and
for that reason is unable to support the Variance.
Ms. Kornel acknowledge that this is an excellent opportunity for re-development, mixed use concept is great. She does not see the Variance process as a remedy due to lack of hardship, and for that reason unable to support the request.

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

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

Vote on the Motion 6 Aye and 1 Nay with Mr. Corbett dissenting.
Motion carried.

6. Staff Comments
None.

7. Board Comments
None.

8. 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.
None.

9. Adjournment
Meeting adjourned at 7:38 p.m.

Prepared by: Gina Lemon
Reviewed by: Adam Mengel