

**PLANNING AND ZONING COMMISSION MINUTES
REGULAR MEETING
July 11, 2017**

Chair Rutter called the meeting to order at 7:00.

ATTENDANCE: Chair Patrick Rutter, Vice Chair Ankur Patel; Comms. MB Hague, Brett Leone, Peter Robbins, Larry Roberts, Cheryl Schneider, David Flinchum (1st Alternate); John Sickler, Director of Planning and Zoning; Stephanie Thoburn, Assistant Director of Planning and Zoning; Martin Schneider, Senior Planner; Garret Watson, Planner; Thomas Baird, Attorney; Valerie Hampe, Secretary.

MINUTES: Regular Planning and Zoning Commission meeting, June 13, 2017.

Comm. Leone moved to approve the minutes; seconded by Comm. Hague. The minutes were approved unanimously by consensus.

CITIZEN COMMENTS: None.

REGULAR AGENDA:

A. OLD BUSINESS:

1. **22 Eganfuskee Street** - Variance request to Section 27-1397(4)(a) entitled "Shoreline Stabilization" to install a seawall at the mean high water line on an existing unarmored shoreline, located at 22 Eganfuskee Street. (PZ# 2371)
Acting as the Zoning Board of Adjustment

Mr. Baird conducted the swearing in of witnesses and Chair Rutter asked for ex-parte disclosures. No one on the Board indicated that they had had contact with the applicant.

Chair Rutter noted that the survey did not indicate the mean high water line and had not been signed and sealed. He said the application seemed almost incomplete. Comm. Flinchum agreed and said the mean high tide information was clearly a peak occurrence and is a misrepresentation.

Jon Newman, the applicant, said he had submitted a signed and sealed survey. He disagreed with Staff that criteria four and five, the variance would be the minimum variance and the variance would not be contrary to the Town's Comprehensive plan, had not been met. He said the mean high tide line had become higher because of commercial boats moored in the area and erosion. Mr. Newman said he needed to know where the seawall would be to plan setbacks for a building on the property.

Mr. Watson, planner, said the survey provided by the applicant and the Department of Environmental Protection (DEP) permit show conflicting information on the location of the mean high water line. The survey shows the high water line, taken during the King Tide event in October, rather than the

mean high water line. Staff recommended two conditions if the Board determined that the applicant met all seven criteria: provide a survey with the mean high water line and maintain the existing mangrove with a suitable environment.

Comm. Flinchum asked if a signed and sealed survey had been submitted as stated by the applicant. Mr. Watson said that it was possible it had been submitted with the Building permit application but he had not seen it.

Comm. Hague said the commercial boats in the area are moored perpendicular to the land rather than parallel as encouraged by Code. There is congestion in the canal and some of the boats are in violation of Code.

Vice Chair Patel asked the following:

Why does the survey show the high water line rather than the mean high water line? Mr. Newman responded that he provided what he understood to be Staff's request.

Would the applicant be willing to work on the vegetation if that was a condition of the variance? Mr. Newman said yes but he wanted the dock to be centered rather than eastward toward the residential property.

Was the applicant made aware that the Code requires the mean high water line on the survey? Mr. Watson said yes but the surveyor confirmed that this was done during King High Tide. Mr. Watson said that because of time constraints, the applicant wanted to move forward rather than have the survey corrected.

Comm. Robbins asked if there would be a benefit to bringing this property into conformance with surrounding properties. Mr. Watson said this would be the only property in the area required to provide vegetation and that would be because of Comprehensive Plan requirements. Comm. Robbins asked if the application was urgent and Mr. Newman said no.

Vice Chair Patel asked how long the applicant would need to get a signed and sealed survey to Staff and Mr. Newman said about two weeks. Vice Chair Patel asked Staff how much time they would need after receiving the survey and Mr. Watson said another two weeks.

Comm. Hague noted that the applicant did not want to build the wall between connecting ends of the adjacent seawalls. Mr. Newman clarified that he was required to preserve the mangrove and wanted to construct a straight wall that adhered to the five foot setback from the traditional high tide line prior to erosion.

Chair Rutter opened the floor to public comment and there was no response.

Comm. Flinchum said he would like to see the Building permit for the building that the applicant mentioned since setbacks for the building may require a variance. Mr. Watson said the plans for a building are conceptual. Comm. Flinchum requested all the information be presented at one time.

Vice Chair Patel moved to continue the application to August 8th; seconded by Comm. Leone. The Board was polled and the motion carried unanimously (7-0 vote).

Flinchum – Y Leone – Y Robbins – Y Roberts – Y
Schneider – Y Hague – Y Patel - Y

2. **Boat Mooring on Canals less than 50 Feet** – Zoning Text Amendment to Section 27-1399(2), entitled “Private dock regulations”, to allow boat mooring and boat lifts on canals less than 50 feet in width. (PZ# 2409)

Town Council consideration:

August 15, 2017 – 1st rdg
September 19, 2017 – 2nd rdg

Dave Markarian, attorney, gave a PowerPoint presentation on behalf of the Penn Waterway Homeowners Association (HOA). The proposed text amendment would make all man-made surface waters in the Town subject to Town Code and require building permits for docks, mooring space and mooring pilings. He submitted a petition for the change signed by the majority of owners in the association.

Garret Watson, planner, noted that the Penn Waterway HOA had asked for the Town to prohibit boat lifts on waterways less than 50 feet wide in 2002, but is now asking for them to be allowed. He said the Penn Trail canal is largely the only one affected by this change, since almost all others are more than 50 feet wide. The HOA would be required to approve all lifts.

Comm. Roberts asked how canal widths are measured. Mr. Watson said from the mean high water line on both sides extending at 45 degree angles from the center of a proposed dock.

Comm. Schneider asked how far lifts extend into a canal when they are lowered. Mr. Watson said it would depend on the type of lift and described a few of the designs. Comm. Schneider asked if Staff had concerns about future navigability. Mr. Watson stated that fifty percent of the canal must remain open for navigation and the HOA could regulate lifts further if they had additional concerns.

Vice Chair Patel asked how conflicts between owners would be resolved. Mr. Watson said if there was a Code violation related to projection distances, the Town would be involved. Otherwise, conflicts would be a civil matter. Ms. Thoburn said navigability is the main issue for the Town and it's typical for boats to be staggered along the canal to provide more room for navigation.

Comm. Hague noted that one side of the Penn Trail waterway is in the County and the other side is in the Town. She said it was not dug out by the Army Corps of Engineers but is a County drainage ditch down the middle. People dug it out over time to get their boats out.

Comm. Hague said there had been problems because of boat lifts permitted by the County on the other side of the canal. Self-policing among residents is a difficult situation. She questioned whether this change will really be a benefit to the Town. Mr. Sickler said Staff was responding to the request of residents and will try to minimize impacts as building permits are reviewed.

Comm. Hague noted that the submerged land is owned by Penn Waterway HOA. She asked Staff to confirm that the water itself belongs to the public. Mr. Watson said that is correct and the State has jurisdiction up to the mean high waterline.

Chair Rutter asked how many waterfront lots would be affected. Mr. Sickler said there are 14 lots on each side of the canal.

Chair Rutter opened the floor to public comment and there was no response.

Comm. Hague asked if Staff had reached out to any other canal property owners that would be affected. Mr. Watson said there was public notice but he didn't reach out to individual homeowners.

Comm. Leone moved to recommend approval of the Staff recommendation as presented; seconded by Vice Chair Patel. The Commission was polled and the motion carried (5-2 vote).

Leone – Y	Robbins – Y	Roberts – Y	Schneider – N
Hague – N	Patel – Y	Rutter - Y	

3. **Love Street Commercial Development** – Amendments to the approved small-scale Planned Unit Development (PUD) and site plan for retail, restaurant, and office on 2.0+/- acres at 1116 Love Street. (PZ#'s 17-2319 & 17-2320)

Town Council consideration: August 3, 2017

Comm. Schneider, Comm. Hague and Comm. Leone said they had received letters from Mr. Baird, Town attorney, raising questions as to whether they should participate in the Love Street item. All three commissioners said they could be impartial. Comm. Schneider and Comm. Hague said they had contacted the Palm Beach County Commission on Ethics and were waiting for a response. Comm. Leone chose to recuse himself.

8/9/17
[Handwritten signature]

Comm. Schneider said that Mr. Baird had a conflict of interest because he represented the Town in the *Love Street litigation*. She said it is therefore important to have a determination made by a third party not involved in the litigation.

Mr. Baird said he is counsel for the Town of Jupiter in the litigation; not the applicant. The decision of whether or not to participate is up to the individual commissioners. The issue is whether or not they can be impartial.

Phillipe Jeck, attorney for the applicant, said it would be unfair to punish the applicant by delaying the hearing. He said it is the responsibility of the individuals to determine whether they are complying with the ethics rules of the County and State. Participants should be impartial and appear impartial.

Comm. Schneider moved to continue the item to the August 8th meeting; seconded by Comm. Hague. The Commission was polled and the motion carried (4-3 vote). Comm. Leone abstained.

PLANNING & ZONING COMMISSION - Page 5
July 11, 2017

Flinchum – N	Robbins – Y	Roberts – N	Schneider – Y
Hague – Y	Patel – Y	Rutter - N	

ADJOURN:

Chair Rutter adjourned the meeting at 8:23 p.m.

Valerie Hampe, Secretary

PATRICK RUTTER, CHAIR