

**CITY OF BELLE ISLE
REGULAR SESSION
APRIL 3, 2007
5:30 P.M.
REVISED**

The Belle Isle City Council met in regular session on Tuesday, April 3, 2007 at 5:30 p.m. in the Belle Isle City Hall Council Chambers, 1600 Nela Avenue, Belle Isle, Florida 32809.

Mayor Brooks called the meeting to order and Commissioner Prince gave the Invocation and led the Pledge to the United States Flag.

Upon Roll call the following members were present:

William G. Brooks	Mayor
Thomas G. Petruzzi	District 1
Trudy Prince	District 2
Charles R. Scott	District 3
Larry I. Ady	District 4
Harvey Readey	District 5
Lydia Pisano	District 6

Absent and excused by Council was Commissioner Spaulding, District 7.

MAYOR'S REPORT:

Mayor Brooks commended Code Enforcement Officer Suzanne O'Shea for the good response to code enforcement issues.

He reminded Council that the convenience store on Daetwyler Drive was investigated in the past by the Metropolitan Bureau of Investigation and found to be selling drug paraphernalia and adult entertainment materials.

Mayor Brooks stated he stopped in that store over the weekend and they are at it again. He encourage all residents to boycott that business and asked that Code Enforcement visit the site to determine what action is necessary to enforce our codes.

Mayor Brooks stated the Winn Dixie property and retention pond look much better and thanked Susan O'Shea for her good work.

He reported on Legislative Action Day in Tallahassee and his phone calls to bring the property tax issue to the attention of Andy Gardiner and Dan Webster.

Mayor Brooks advised he had added a resolution of support for the Nemours Children's Hospital of Central Florida to the consent agenda.

CITY MANAGER'S REPORT:

City Manager Williams reported the following:

- a. M-I Homes has submitted plans which include brick pavers at the entrance to the subdivision and he asked Council to determine if pavers would be allowed as part of the entrance feature. He recommended approval be conditioned upon a developer's agreement with the City that the HOA would be responsible for repair and maintenance of the brick paved entry area.

Commissioner Petruzzi moved to approve smooth surface pavers with a developer's agreement including provision that perpetual maintenance and repair be the responsibility of the mandatory HOA. Commissioner Scott seconded the motion which passed unanimously.

CITY ATTORNEY REPORT:

City Attorney Bennett reported that a recent variance application was filed for a commercial vehicle and scheduled before the Planning and Zoning Board. He wanted to make Council aware that there are no provisions in the Belle Isle Code for a variance for parking of commercial vehicles. The item was pulled from the P & Z agenda.

CITIZEN'S COMMENTS:

Mayor Brooks asked if anyone wished to speak on any item not included on the agenda. There were no public comments.

APPROVAL OF CONSENT AGENDA

Commissioner Petruzzi moved to approve the consent agenda which included Resolution 07-07 vacating a portion of the Lagoon Park maintenance easement; minutes of the March 6, 2007 Regular Session and February 28, 2007 Workshop Session; February 2007 Monthly Financial Report; and Resolution 07-08 in support of Nemour's Orlando Children's Hospital. Commissioner Pisano seconded the motion which passed unanimously.

ACCEPTANCE ON ANNUAL AUDIT REPORT FOR FY 2005-2006

Commissioner Ady moved to accept the report. The motion was seconded by Commissioner Prince and passed unanimously.

ADOPTED ORDINANCE 07-06: AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA AMENDING CHAPTER 41, SECTION 41-4 AMENDING THE DEFINITION OF "DWELLING" TO PRECLUDE TIME SHARES AND SHORT TERM RENTALS, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Mayor Brooks asked for the ordinance to be read by title. City Manager Williams read the ordinance by title as printed above.

Mayor Brooks opened the public hearing. There were no public comments and the public hearing was closed.

Commissioner Petruzzi moved to adopt the ordinance. Commissioner Pisano seconded the motion.

Upon roll call the votes were as follows:

Commissioner Ady	Aye
Commissioner Prince	Aye
Commissioner Petruzzi	Aye
Commissioner Pisano	Aye
Commissioner Scott	Aye
Commissioner Readey	Aye

With six ayes and no nay votes the ordinance was therefore adopted.

General Discussion:

Mayor Brooks advised he attended the Regal Marine Grand Opening ceremonies and more than 800 people were in attendance. Everyone had a great time and the newest yacht in their line was on display. Part of the program focused upon their family center and the commitment made by Regal Marine Industries, Inc. to build a sports stadium on their grounds for the Pine Castle Christian Academy home games.

Mayor Brooks reported on the joint meeting with City of Edgewood and other interested parties to discuss common issues and problems relating to the Pine Castle/Orange Avenue corridor.

Mayor Brooks advised the City of Edgewood's Clerk will transcribe the minutes and provide our Clerk with a record copy.

General discussion ensued regarding various issues of concern including the location of a light rail stop at Sandlake Road adjacent to the current Howard Fertilizer facility; Orange County Commissioner's interest in having an intermodal plan, and a development plan to enhance the area.

CONTINUANCE OF AN APPEAL HEARING TO THE PLANNING AND ZONING BOARD'S DENIAL OF A VARIANCE TO FRONT SETBACK FROM 30' TO 6' AND FROM 30' TO 6' 1' FOR FOR THE COLUMNS OF AN EXISTING PORTE COCHERE REQUESTED BY VINCENT AND KATHIE DEFILIPPO, 801 N. LAKE TRIPLET DRIVE AND PROPERTY OWNERS OF 3501 CULLEN LAKE SHORE DRIVE, AKA PARCEL I.D. # 17-23-30-4380-04-150

Applicant's attorney, Mary Solik, 111 S. Orange Avenue, Orlando, Florida, representing Mr. and Mrs. DeFilippo, presented the request and gave a brief history of the issue. During the presentation of the request she also presented documents submitted for the record which were labeled as exhibits as follows:

- Exhibit A – 2004 City Staff recommendation for approval
- Exhibit B – Copy of the original variance application which was approved in 2004
- Exhibit C – [Original letter of support from Dyson's](#)
- Exhibit D – [Original letter of support from Johnson's](#)
- Exhibit E – [Letter from City Staff re: denial of request by P&Z Board](#)
- Exhibit F - a two page map of survey of subject property [& photos](#)
- Exhibit G – ~~photographs~~ [Stop Work Order](#)
- Exhibit H – letter of support of request from Mrs. Dyson
- Exhibit I – letter of support of request from Mr. and Mrs. Jones
- Exhibit J – letter of support of request from the Sherrard's (Mrs. Dyson's daughter and son-in-law)

Ms. Solik advised the issue before the Council was the result of a design flaw which was corrected by the contractor in the field. She stated that at the recent Planning and Zoning Board hearing she and the applicant did not consider whether the request was the minimum variance for reasonable use and the minutes of the meeting do not demonstrate discussion of the specific criteria which are to be considered. She further stated the Board discussion seemed to go back to a previous variance request.

Ms. Solik continued by addressing the criteria of the special conditions and unnecessary hardship. The shape of the driveway and adjacent garages creates

a special condition and not granting the variance will create a hardship in that it would preclude the use of the porte cochere and the driveway area it covers.

Ms. Solik referred to photos submitted for the record and advised that the original hole for the column location can be plainly seen.

Contractor Bill Haan advised the Council that the columns are 16" X 16" and the original location placed it within the paved driveway area. He reviewed the drawings and plans and moved the columns forward and out of the driveway. The current location of the columns would allow for use of the porte cochere and covered drive.

Mr. Haan stated the request is not injurious or contrary to the character of the neighborhood. He said people make mistakes and this was a mistake.

Ms. Solik stated she would like Council to know that both the Dyson family and the Jones family have signed letters supporting this request.

City Attorney John Bennett advised Council that the request for variance to setback is for the columns and does not include the overhang.

Attorney Solik responded that in Chapter 54 s/s 132 of the Belle Isle Code of Ordinances is specifically allows for a roof projection to extend beyond the setback up to a maximum of 24".

Mr. Haan advised the current projection is 18".

Attorney Bennett responded that Chapter 41 s/s 4 of the Belle Isle Code of Ordinances gives a very specific definition for front yard and yard which does not allow for encroachment into the required setback by any projection from the ground up to the sky.

Discussion continued with concerns expressed by the Council that the applicant did not come back to the city for the variance prior to allowing them to be moved by the contractor without the necessary approval.

Ms. Solik stated that the DeFilippo's from the beginning have tried to do the right thing and they have been frustrated by the length of time all these issues have taken and the significant delay in completion of construction of their home.

Mayor Brooks asked Mr. Haan if it would be possible to support the porte cochere without the columns.

Mr. Haan said it would be possible, though he did not know what the expense would be to do so.

Commissioner Scott asked if both the left and right garages are large enough to house two vehicles each.

Mr. Haan responded they are both double garages.

Commissioner Scott asked if the footers would further encroach into the required setback and whether it would result in any detrimental impact.

Mayor Brooks responded that typically footers are below ground.

Kathie DeFilippo, 3501 Cullen Lake Shore Drive, asked what she needs to do to resolve this issue. She asked if a change in the language of the request is necessary.

Attorney Bennett advised that both the issues should have been addressed in the variance request and subsequent appeal since projection beyond the columns is not allowed by definition.

Attorney Solik disagreed and stated that the staff had advised her client the overhang of the eave was not an issue.

Mayor Brooks asked Attorney Bennett to read Chapter 41 s/s 4., definition of front yard and yard.

Mr. Bennett read the pertinent section of Code.

Attorney Solik referred back to Chapter 54 s/s 132 and stated that is the section of the code the staff relied on and therefore her client had no reason to believe differently.

Discussion continued regarding what the variance request should be and if the Council can consider something other than was advertised.

City Manager Williams asked if the survey the Council has before them this evening is accurate to what is currently there.

Attorney Solik replied affirmatively noting the newly constructed garages are not shown.

Commissioner Readey stated that the Council should not be expected to consider the matter with incorrect data and asked that the appeal be postponed until the Council is provided with accurate information.

~~Mayor Brooks stated he wanted to verify that the overhang would require a variance from 30' to 4' 6" and 4' 7".~~

NOTE: Addition to previous draft minutes from tapped record:

Mayor Brooks asked if the Contractor had plans for construction of the building and Mr. Haan responded affirmatively.

Mayor Brooks said he assumed the contractor was making notes on the plans of the field conditions so there will be an accurate set of "as built" plans. He said the reason he was asking is because he wanted to verify that the distance between the columns and the street-side edge of the roof is indeed 18" and not 22" or 24" or some other dimension.

Mayor Brooks stated that if the City's interpretation is correct in where the setback is measured to, you would now be asking for 4' 6" and 4' 7", respectively, as apposed to the 6' and 6' 1" .

Mr. Haan stated that in his 23 years contracting experience he has never encountered this interpretation of measuring the set back and that all the communities he has built within the setback is measure from the upright portion of the structure, not the overhang. He stated it is common that the overhangs all permitted to encroach in the set back up to 24".

Mr. Haan stated that the columns are 4' and 4' 1" encroaching into the setback which would require a 24' variance.

Mr. Haan also stated the survey shows the old structure, prior to the new construction of the garages.

Mayor Brooks asked Attorney Bennett, that if the staff recommendation originally stated the variance from 30' to 10' was in harmony with the neighborhood, would the additional encroachment of 4' and 4' 1" now cause the issue of harmony with the neighborhood to be revisited. He stated he would think it would be at the Council's discretion to decide if a 6' setback is in harmony with the neighborhood or not.

Mr. Bennett responded that he agreed with that statement.

Attorney Solik advised that the Porte Cochere is still there and that will not change.

City Manager Williams stated the staff opinion is merely that, a staff opinion and what credence it has, we really don't know. When it comes before the Council as a staff opinion, that does not mean it is the Gospel. City Council rules on their interpretation as to whether or not they agree.

Mayor Brooks stated he wanted to ask one more question. He asked Mrs. DeFilippo if the letters presented in support from Mrs. Dyson, the Johnson's and Jones' were written by them or if she prepared them herself.

Mrs. DeFilippo responded that she had spoken with the parties first and then prepared the letters for their signatures.

NOTE: End of addition to previous draft minutes.

Mrs. DeFilippo asked what the next step should be. She asked if they needed to start over with a different variance request?

Attorney Bennett stated they are asking for a variance to what is located there now.

Commissioner Ady asked that the matter be continued.

Attorney Bennett asked if the applicant was willing to have the matter continued to the next City Council meeting and received an affirmative response.

Commissioner Ady moved to continue the appeal until the May 1, 2007 City Council meeting. Commissioner Readey seconded the motion.

Commissioner Scott asked if the decision to be made by Council will be on what is there now.

Mayor Brooks responded that there was a design flaw by the architect which if it were built as the plans showed, a car could not drive through the porte cochere.

City Manager Williams stated that a design flaw is not the city's problem and without seeing where the new garages are actually located, there is insufficient information for the Council to make an informed decision.

The vote on the motion was five ayes and one nay, the nay vote expressed by Commissioner Scott.

Mayor Brooks stated the matter will be continued at the next City Council meeting.

COUNCIL REPORTS:

Commissioner Readey reported on attending Legislative Action Day with Commissioner Ady. He advised that Representative Gardiner said the tax issue for retaining and maintaining municipal home rule authority for cities located within charter counties will not be done this year but may be dealt with in 2008.

Commissioner Readey expressed his concerns about the damage on the four corners of the bridge and said the response from the engineer that it was covered in the scope of work under Type C repairs and that they would probably use a flex mortar to solve the problem. He said that was not a satisfactory answer to him as it sounded highly experimental. He stated he would continue to bird dog the construction. He asked the Engineer and Structural Engineer to get back to the City Manager on the issue.

Mayor Brooks responded that de-coupling is not a small task and he did not believe it was in the original scope of work. He advised that structural engineers require specific technical skills for the specialty.

Mayor Brooks stated he would ask the City Manager to meet with Avcon. Avcon should evaluate the problem and propose a fix that is signed and sealed by the structural engineer.

There being no further business to discuss, the meeting was adjourned at 7:38 P.M.

Belinda L. Bateman, MMC
City Clerk