

**APPROVED MINUTES
CITY OF INDIAN ROCKS BEACH
REGULAR CITY COMMISSION MEETING**

The Indian Rocks Beach Regular City Commission Meeting was held on **TUESDAY, MARCH 26, 2019**, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

Mayor-Commissioner Kennedy called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance.

Reverend Frank Peterman gave the Innovation.

ROLL CALL:

PRESENT:

Mayor-Commissioner Joanne Moston Kennedy, Vice Mayor-Commissioner Edward G. Hoofnagle, Commissioner Diane Flagg, Commissioner Phillip J. Hanna, and Commissioner Nick Palomba.

OTHER PRESENT:

City Manager Brently Gregg Mims, City Attorney Randy D. Mora, City Clerk Deanne B. O'Reilly, MMC, Public Services Director Dean A. Scharmen, and Planning Consultant Hetty C. Harmon, AICP.

(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)

1A. REPORTS OF THE PINELLAS COUNTY SHERIFF'S OFFICE:

The Pinellas County Sheriff's Office (PCSO) presented the February 2019 Crime Analysis Report for the City of Indian Rocks Beach.

1B. PRESENTATION: MARIA AND MATT LODER:

Mayor-Commissioner Kennedy presented Maria and Matt Loder, owners of Crabby Bill's Seafood, with a plaque recognizing them for their contributions to the City over the past 40 years.

1C. PRESENTATION: PLEIN AIRE COTTAGE ARTISTS.

Mayor-Commissioner Kennedy recognized the Plein Aire Cottage Artists for receiving the Gasparilla International Film Festival Audience Award for the Best Florida Production: "Save Our Cottages Documentary".

Mary Rose Holmes thanked all the people of Indian Rocks Beach that helped make this possible, the City Commission, the City Manager, Action 2000, IRB Homeowners' Association, the Plein Aire Cottage Artists Finance Committee, the IRB History Museum, the IRB Beach Art Center, and the many Indian Rocks Beach citizens that supported and encouraged them.

2. PUBLIC COMMENTS.

Phil Wrobel, 112 13th Avenue, spoke on the following issues: golf carts on the sidewalks, four bicycles abreast on Gulf Boulevard on Saturdays and Sundays, congratulated the City Clerk on being with the City for 25 years, and spoke on the 5th Avenue Pocket Park, which was funded by grants and civic organizations.

Mr. Wrobel stated he had an exit interview with the City Commission and presented the City Clerk with a list of his recommendations for City needs, which he also presented to the City Manager, and asked that the list be distributed to the City Commission.

Mayor-Commissioner Kennedy thanked Mr. Wrobel for his two years of service as a City Commissioner.

Don House, 2104 Beach Trail, stated it is time to address removing Joanne Kennedy as Mayor-Commissioner because when the City was dealing with commercial activity on the beach, Mayor-Commissioner Kennedy was not in favor of enforcing the current City Code, which is a direct violation of the oath of office and as such should be removed from office.

Frank Peterman, stated he was a former St. Petersburg Councilmember, former State Legislator, and former State Cabinet Member. He stated this is one of the finest cities of the 24 cities in Pinellas County. The City is fortunate to have the Mayor it has. She is a wonderful leader. He stated he supports the Mayor, the City Commission, and staff.

R.V. Clemmer, 1216 Bayshore Boulevard, inquired about the fence at 2404 1st Street being out of code, stating the fence is backward — the good side is facing Judy's Seaside Cottages. He stated he likes the 6-foot gated fences and he thinks all of Indian Rocks Beach should become a gated community because it is commercial property now.

Mayor-Commissioner Kennedy stated when a person comes up before this City Commission during public comments, it is not appropriate to single out a member of the City Commission. If a person has anything to say it should be said to the entire City Commission.

Julie Hoofnagle, 2 5th Avenue, stated it is easy to come up here and say anything, and when it is directed at one person or to all of the City Commission, everyone is listening and then people in the audience start shaking their heads when they have no idea what the speaker is talking about, so she does think it is important for the people to address a city commission member before the meeting about such issues.

Ms. Hoofnagle stated the City Commission's record stands for itself and the City Commission has done a great job.

Ms. Hoofnagle welcomed Commissioner Flagg and welcomed back Commissioner Hanna and thanked the City Commission for all the work they do.

Peter Sawchyn, 1206 Gulf Boulevard, Unit F, thanked the City for erecting a fence between his condominium complex and the 12th Avenue Park after raising safety issues during the Holiday Tree Lighting Ceremony.

John Thayer, 1819 Bay Boulevard, expressed his concern with unlicensed golf cart drivers and suggested the City step up enforcement.

3A. REPORTS OF the City Attorney.

City Attorney Mora reported on the City's ADA Accessibility Website progress.

City Attorney Mora reviewed the bills introduced in the 2019 Legislative Session: Preemption of Local Regulations, Smoking on Public Beaches, Beach/Customary Use, Coastal Management, and Short Term Rentals.

3B. REPORTS of the City Manager.

City Manager Mims thanked Phil Wrobel for his two years of service as City Commissioner.

City Manager Mims welcomed Commissioner Diane Flagg to the City Commission.

City Manager Mims reviewed the City Code on golf carts and encouraged the public to call the Pinellas County Sheriff's Office to report any violations.

City Manager Mims reported the City has received a grant from Duke Energy to install two pay park & plug vehicle recharge stations in Indian Rocks Beach. One location will be located at City Hall and other will be located in the Business Triangle District, and acknowledged that Commissioner Palomba was instrumental in receiving this grant for the City.

City Manager Mims reported the City received the American Public Works Association (APWA) Project of the Year Award for the 5th Avenue Pocket Park.

City Manager Mims stated the City is working on the improvements to the Historical Museum, i.e., replacement of historic windows with modern historic windows in the museum and the addition of new parking spaces for the museum.

City Manager Mims stated he and staff are working on the budget and postcards have been sent out to every registered voter asking for input, suggestions, and feedback on the budget.

City Manager Mims stated in the 5-Year Capital Improvement Plan, \$200,000 has been allocated for the possibility of developing a park at the end of East Gulf Boulevard and is referred to as the East Gulf Boulevard Nature Park. The City Commission did workshop this park. However, during the budget process, it was agreed to and committed to the public to have an open house-type setting where the public could come and see renderings of what this is and what this is not. Therefore, he would like to schedule a “drop-in” style meeting.

3C. REPORTS of the City Commission.

VICE MAYOR-COMMISSIONER HOOFNAGLE:

- Welcomed Commissioner Diane Flagg and Commissioner Hanna.
- Stated he is very excited about the visioning sessions that will be starting soon and the related market assessment, which is being done to provide some background material to help with the visioning sessions. He thinks it will be good for the City and he hopes it will set a road map for the long term and is hopeful that will be reflected into the City’s ordinances.

COMMISSIONER FLAGG:

- Thanked everyone for being here this evening and for the support that she had. She is honored to be part of the City Commission and she takes it very seriously. She looks forward to working with the City Commission, staff, and with residents because they can make a difference this coming year with all the visioning sessions and the things that they would like to accomplish.

COMMISSIONER HANNA:

- Thanked everyone for their support.
- Stated the visioning sessions are an opportunity for the residents to give their input on how to move the City forward.

COMMISSIONER PALOMBA:

- Stated at the end of the day, they are all neighbors and they all have the same goal and objective for the City. They all want to keep Indian Rocks Beach the way it is.

MAYOR-COMMISSIONER KENNEDY:

- Welcomed Commissioner Flagg to the City Commission.
- Announced the events and meetings of the City Commission and civic organizations.
- Announced that the 2nd Women’s Tea will be held on November 2.

4. ADDITIONS/DELETIONS. None.

5. CONSENT AGENDA:

- A. APPROVAL of the February 12, 2019 Regular City Commission Meeting Minutes.**
- B. APPROVAL of the Fiscal Year 2019/2020 Budget Calendar.**

City Attorney Mora read the Consent Agenda, consisting of Agenda Item Nos. 5A and 5B, by title only.

MOTION MADE BY COMMISSIONER HANNA, SECONDED BY VICE MAYOR-COMMISSIONER HOOFNAGLE, TO APPROVE THE CONSENT AGENDA, CONSISTING OF AGENDA ITEM NOS 5A AND 5B, AS SUBMITTED. UNANIMOUS APPROVAL BY ACCLAMATION.

6A. ABT CASE NO. 07-2019 — QUASI-JUDICIAL PROCEEDING.

Thomas E. George, Jr., d/b/a Hurricane Eddies IRB, Inc., has requested a 4COP (liquor, consumption on-premises and package sales) Alcoholic Beverage Use Designation for the establishment Hurricane Eddies, located at 1407 Gulf Boulevard, Indian Rocks, Beach, Florida, and legally described as Indian Beach Re-Revised, Block 29, Lot 16. Parcel No. 01-30-14-42030-029-0160.

[Staff Report Begins]

SUBJECT: ABT CASE NO. 07-2019 — Thomas E. George, Jr., d/b/a Hurricane Eddies IRB, Inc., has requested a 4COP Alcoholic Beverage Use Designation (liquor, consumption on-premises and package sales) for the establishment Hurricane Eddies, located at 1407 Gulf Boulevard, Indian Rocks, Beach, Florida, and legally described as Indian Beach Re-Revised, Block 29, Lot 16.

BACKGROUND: On January 28, 2019, Thomas E. George, Jr., submitted a DBPR ABT-6002-Division of Alcoholic Beverage and Tobacco Application for Transfer of Ownership of the Red Lion Pub 4COP Alcoholic Beverage License with the State of Florida.

On February 1, 2019, Mr. George, d/b/a Hurricane Eddies, located at 1407 Gulf Boulevard, received a 4COP (liquor, consumption on-premises and package sales) temporary license/permit from the State of Florida. Hurricane Eddies should receive their permanent license/permit within 60 to 90 days from the State of Florida.

The State's 4COP, a quota beverage license, allows for the sale of beer, wine, and liquor by the drink, or in sealed containers for consumption on or off the premises where sold.

It should be noted that on a transfer of ownership license, the State does not require the "zoning authority governing the business location" to approve the location.

All alcoholic beverage licenses are under the control of the State of Florida, Division of Alcohol Beverages and Tobacco.

On February 6, 2019, Mr. George, submitted an Alcoholic Beverage Use Designation Application requesting a 4COP, (liquor on-premises and package sales), for Hurricane Eddies, located at 1407 Gulf Boulevard, Indian Rocks Beach, pursuant to Code Section 6-32(e).

Mr. George has advised that they will be updating and remodeling the inside and outside of the building and will provide an updated seating floor plan once the remodeling is completed.

ANALYSIS: Alcoholic Beverage Use Designations are governed by Chapter 6, Alcoholic Beverages.

Hurricane Eddies is located within the B-Business zoning district. The surrounding zoning is B-Business on the east side of Gulf Boulevard with CT-Commercial Tourist on the west side of Gulf Boulevard.

Hurricane Eddies is located on the southeast corner of Gulf Boulevard and 15th Avenue.

A review of the application by the Pinellas County Sheriff's Office, per records maintained within the PCSO records management system, identified offenses for Tom George. The PCSO record was provided to the City Commission for review.

After review of the application by the Planning Consultant, it was determined that Hurricane Eddies was in compliance with Section 6-32 and Section 110-131(6)(b.), Permitted uses, of the Indian Rocks Beach Code of Ordinances. However, the applicant is not in compliance with Resolution No. 2002-95. The maximum number of seats allowed at this location is 98 with 25 parking spaces.

Section 6-33, Authority of City Commission to designate locations, empowers the City Commission to designate the location and classification and to place reasonable restrictions that deem appropriate such as: Repeated or intermittent nuisance activity and/or unlawful noise levels originating from the establishment or the parking area may result in the revocation of the alcoholic beverage designation.

Staff is recommending approval with the following stipulations:

- Maximum number of seats is 98 with 25 parking spaces as provided by Resolution No. 2002-95.
- Repeated or intermittent nuisance activity and/or unlawful noise levels originating from the establishment or the parking area may result in the revocation of the alcoholic beverage designation.

FISCAL IMPACT: If approved, Hurricane Eddies will be required to obtain a business license tax annually from the City.

Pursuant to a legal notice published in the March 15, 2019-edition, of the St. Pete Times Section of the *Tampa Bay Times*, a public hearing has been scheduled on March 26, 2019, for ABT No. 07-2019.

[Staff Report Ends]

City Attorney Mora read ABT No. 07-2019 by title only and advised this is a quasi-judicial proceeding.

City Attorney Mora briefly explained the procedure for a quasi-judicial proceeding.

City Attorney Mora inquired if any City Commission Member needed to disclose any ex-parte communications or conducted any site visits regarding this application; to which all members of the City Commission responded in the negative.

All persons planning to give testimony during the quasi-judicial proceeding were duly sworn in by the City Attorney.

Mayor-Commissioner Kennedy opened the public hearing.

City Clerk O'Reilly reviewed the Staffing Report, consisting of the background, analysis, and financial impact for ABT No. 07-2019. She stated the applicant submitted a request for 4COP (liquor, consumption on premises and package sales), Alcoholic Beverage Designation for Hurricane Eddies, located at 1407 Gulf Boulevard.

City Clerk O'Reilly presented a PowerPoint Presentation depicting photographs of the property, outdoor seating, parking areas, a survey of the property, and a seating chart.

City Clerk O'Reilly advised the applicant was in compliance with Section 6-32 and Section 110-131(6)(b) of the Code of Ordinances; however, the applicant is not in compliance with Resolution No. 2002-95, as the maximum number of seats allowed at that location is 98 with 25 parking spaces.

Thomas George, Jr., applicant, 2676 Crystal Circle, Dunedin, Florida, explained his alcoholic beverage designation 4-COP request and his background and experience with the ownership of bars/restaurants.

Mr. George stated he and his father are in the process of doing a total rehab on the Red Lion, including ADA compliant restrooms, new kitchens, new furniture throughout, and they will come into compliance with the 98 seats.

Mr. George stated the community has asked them not to change the name from Red Lion to Hurricane Eddies, so they will submit paperwork to change the name back to Red Lion.

Seeing and/or hearing no one wishing to speak, the public hearing was closed.

MOTION MADE BY VICE MAYOR-COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER PALOMBA, TO APPROVE ABT 07-2019, A 4COP (LIQUOR, CONSUMPTION ON-PREMISES AND PACKAGE SALES) ALCOHOLIC BEVERAGE USE DESIGNATION TO THOMAS E. GEORGE, JR., D/B/A HURRICANE EDDIES IRB, INC., FOR THE ESTABLISHMENT HURRICANE EDDIES, LOCATED AT 1407 GULF BOULEVARD, INDIAN ROCKS, BEACH, FLORIDA, AND LEGALLY DESCRIBED AS

INDIAN BEACH RE-REVISED, BLOCK 29, LOT 16, WITH THE FOLLOWING STIPULATIONS: (1) MAXIMUM NUMBER OF SEATS IS 98 WITH 25 PARKING SPACES AS PROVIDED BY RESOLUTION NO. 2002-95 AND (2) REPEATED OR INTERMITTENT NUISANCE ACTIVITY AND/OR UNLAWFUL NOISE LEVELS ORIGINATING FROM THE ESTABLISHMENT OR THE PARKING AREA MAY RESULT IN THE REVOCATION OF THE ALCOHOLIC BEVERAGE DESIGNATION.

ROLL CALL VOTE:

AYES: HANNA, FLAGG, PALOMBA, HOOFNAGLE, KENNEDY.

NAYS: NONE.

MOTION CARRIED UNANIMOUSLY.

6B. BOA CASE NO. 2019-01 — QUASI-JUDICIAL PROCEEDING.

Mike Farrington has requested a variance of 5 feet into the required 25-foot rear yard setback, resulting in a total rear yard setback of 20 feet, to allow for an addition on the property located at 541 20th Avenue, Indian Rocks Beach, Florida, and legally described as Indian Beach Re-Revised 15th Addition, Lot 40 & W 1/2 Lot 39 & rip rts. Parcel No. 06-30-15-42300-000-0400.

[Staff Report Begins]

SUBJECT: BOA CASE NO. 2019-01: A variance request of 5 feet into the required 25 feet rear yard setback, resulting in a total rear yard setback of 20 feet to allow for an addition for property legally described as Lot 40 and the west 1/2 of Lot 39, 15th Addition to Re- Revised Map of Indian Beach located at 541 20th Avenue, Indian Rocks Beach, Florida. Property ID # 06-30-15-42300-000-0400.

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152, staff recommends denial of the request.

BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION: Denied by a vote of 4-0.

OWNER: Mike Farrington
PROPERTY LOCATION: 541 20th Avenue
ZONING: Single Family Residential

Direction	Existing Use	Zoning Category
North	Residential	S
East	Residential	S
South	Residential	S
West	Intracoastal	N/A

BACKGROUND: Mr. Farrington is requesting a variance of 5 feet of the required 25 feet rear yard setback to allow for an addition to the residence.

Sec. 2-152. Variances.

- (a) *Generally; criteria for granting variances from the terms of subpart B.*
- (1) The Board of Adjustments and Appeals shall make recommendations on and the city commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following.
- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. *The existing structure was built in 1973 and meets current setback requirements of the Land Development Code.*
 - b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant has proposed a new addition that would encroach into the rear yard setback.*
 - c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would confer special privileges to the applicant that is not allowed by the Land Development Code to other lands, structures, or buildings in the same zoning district.*
 - d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval/denial of this variance request would not deprive other owners of use and enjoyment of their properties.*
 - e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *Granting of this variance would allow the structure to have a reduced rear yard setback.*
 - f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with general intent and purpose of subpart B.*

Pursuant to a legal notice published in the March 15, 2019-edition, of the St. Pete Times Section of the *Tampa Bay Times*, a public hearing has been scheduled on March 26, 2019, for BOA Case No. 2019-01.

[Staff Report Ends]

City Attorney Mora read BOA Case No. 2019-01 by title only and advised this is a quasi-judicial proceeding.

City Attorney Mora inquired if any City Commission Member needed to disclose any ex-parte communications with the applicant, with Commissioner Hanna and Commissioner Palomba responding in the affirmative.

City Attorney Mora inquired of Commissioner Hanna and Commissioner Palomba if each felt his conversations with the applicant would in anyway impair his ability to impartially adjudicate this manner, with Commissioner Hanna and Commissioner Palomba responding in the negative.

City Attorney Mora inquired if any City Commission Member did a site visit for the limited purpose of evaluating the application, with all members responding in the negative.

Any and all persons planning to give testimony during the quasi-judicial proceeding were duly sworn in by the City Attorney.

Mayor-Commissioner Kennedy opened the public hearing.

Planning Consultant Harmon reviewed the Staffing Report consisting of the background, and variance criteria for BOA Case No. 2019-01. She stated Michael Farrington, the applicant, is requesting a variance of 5 feet into the required 25-foot rear yard setback to allow for an addition to the residence for the property located 541 20th Avenue.

Planning Consultant Harmon presented a PowerPoint Presentation depicting photographs of the property, an aerial view, a survey, and proposed addition. She stated the reason for the addition is for his in-laws to move in and they would like to keep all living area on one floor. She further explained the applicant's seawall lies within the property line and would like to measure the setback from the property line versus the seawall.

Planning Consultant Harmon read the following letter into the record:

"March 15, 2019

IRB City Council
1507 Bay Palm Boulevard
Indian Rocks Beach, Florida 33785

Dear IRB City Council,

We support Mr. and Mrs. Farrington's request for 5 ft variance at 541 20th Avenue, Indian Rocks Beach, Florida 33785.

This request has no negative impact on the property or surrounding properties in the neighborhood. The request is to update and improve the current property for a long term residence and not for weekly/monthly rentals. We collectively support this variance and urge the council to approve this request.

Thank you for your consideration collectively.

C.J. Brown
465 20th Avenue, Indian Rocks Beach, Florida 33785

Kevin McGrath
473 20th Avenue, Indian Rocks Beach, Florida 33785

Steve Small
544 20th Avenue, Indian Rocks Beach, Florida 33785

Adam Jensen
533 Harbor Drive North, Indian Rocks Beach, Florida 33785

Kelly Huether
414 Harbor Drive South, Indian Rocks Beach, Florida 33785

Elizabeth Daniels
530 20th Avenue, Indian Rocks Beach, Florida 33785

Michael Farrington, applicant, 410 Harbor Drive South, explained his variance request, stating he would like to make this a long term residence for his wife and his family. The long term goal is to move his in-laws into his home and for that reason, he does not want to build up. The hardship is the location of the property line behind the seawall.

Seeing and/or hearing no one wishing to speak, the public hearing was closed.

MOTION MADE BY VICE MAYOR-COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HANNA, TO APPROVE BOA CASE NO. 2019-01, A VARIANCE OF 5 FEET INTO THE REQUIRED 25-FOOT REAR YEAR SETBACK, RESULTING IN A TOTAL REAR YEAR SETBACK OF 20 FEET, TO ALLOW FOR AN ADDITION ON THE PROPERTY LOCATED AT 541 20TH AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS INDIAN BEACH RE-REVISED 15TH ADDITION, LOT 40 & W ½ LOT 39 & RIP RTS.

Vice Mayor-Commissioner Hoofnagle stated the question is whether there is a hardship created by the location of the seawall because clearly the City Commission would not be having this discussion if the seawall mirrored the property line. He is of the opinion that the

existence of that seawall being off the property line has created a hardship that the buyer did not create. The City Commission was advised that the seawall was rebuilt prior to the purchase of the property by the applicant, so he does view that as a defect in the land. Given that, it seems to him to be a defect in the land, and he would be inclined to grant the variance because from what he is seeing on the survey, it seems like it would not be a variance if there had not been a defect in the seawall.

Commissioner Hanna stated he concurs with Vice Mayor-Commissioner Hoofnagle as it was his view as well. He stated by bringing the seawall back in, he has lost property that he has no utility for or use of, and if it had been constructed properly, this application would not be before the City Commission tonight.

Commissioner Flagg stated when the BOA reviews the cases, they go by City Codes based on all properties. She stated there are irregular properties located throughout the City with accreted land, with seawall irregularities, and when property is purchased, the irregularities are shown on the property survey. She would certainly like to see a remodel, but feels the City Commission needs to be careful about opening up variances for owners wanting to remodel by going into the rear setbacks. This is something the City Commission needs to think about for future variances.

Commissioner Flagg clarified with the applicant that the location of the seawall was correctly shown on the survey when he purchased the property.

ROLL CALL VOTE:

AYES: PALOMBA, HANNA, HOOFNAGLE

NAYS: FLAGG, KENNEDY

MOTION CARRIED BY A VOTE OF 3 TO 2.

6C. BOA CASE NO. 2019-02 — QUASI-JUDICIAL PROCEEDING.

Beach Trail Group III LLC has requested a variance of 7.0 feet into the required 7.0-foot side yard setback, resulting in a total side yard setback of 0.0 feet, to allow for a new structure on the property located at 2 4th Avenue, Indian Rocks Beach, Florida, and legally described as Indian Rocks Beach, Block 7, Lot 11 & pt Beach Drive (Gulf Drive) adj on W. Parcel No. 12-30-14-42858-007-0110.

[Staff Report Begins]

SUBJECT: BOA CASE NO. 2019-02: A variance request of 7.0 feet into the required 7.0 feet side yard setback, resulting in a total side yard setback of 0.0 feet to allow for a new structure for property legally described as Lot 11, Block 7, Indian Rocks Beach Subdivision located at 2 4th Avenue, Indian Rocks Beach, Florida. Property ID # 12-30-14-42858-007-0110.

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152, staff recommends approval of the request.

BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION: Approved by a vote of 4-0.

OWNER: Beach Trail Group III LLC
PROPERTY LOCATION: 2 4th Avenue
ZONING: Commercial Tourist (CT)

Direction	Existing Use	Zoning Category
North	Residential	CT
East	Residential	CT
South	Residential	CT
West	Intracoastal	N/A

BACKGROUND: Beach Trail Group III LLC is requesting a variance of 7 feet of the required 7-foot side yard setback to allow for redevelopment of the site.

According to one of the previous owners, the original plot called for a 50-foot wide lot but the actual land conveyed, dating back to the 1930's, only conveyed 45 feet. Around 1951, the neighbors in the area entered into a boundary line agreement in an effort to resolve an aspect of this 5-foot disparity. In 1962, a prior owner also conferred with the City and secured the passage of Resolution No. 1962-18, which deals with a small encroachment into the right of way.

At some point in the late 1970s, the City and the previous owner had a dispute over the ownership of the 12-foot stretch of area. The parties entered into a license agreement to resolve this dispute on January 12, 1981, and the fence has remained in the right of way since that time.

At this time Beach Trail Group III, LLC has proposed to remove the fence out of the right of way and is asking to build to the southern property line. The access to the parking would be from the 4th Avenue right of way. Sidewalks and landscaping would also be installed along the right of way.

Sec. 2-152. Variances.

- (a) *Generally; criteria for granting variances from the terms of subpart B.*
- (1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend

or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following.

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. *The existing residences were built in 1927 and the previous property owner has been in litigation with the City for years resulting in an agreement for the use of the public right of way to accommodate the side yard setback and parking for the residences.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant recently purchased the property and did not create the issues with existing improvements in the right of way or the substandard lot width of 45 feet and is proposing to remove the existing fencing.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would not confer special privileges to the applicant as the applicant did not create the issues and will give a larger setback to the property to the east than previously existed.*
- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *Granting of this variance would allow the structure to have a reduced side yard setback, would allow the applicant the use of the property as it was in the past and return the use of the right of way back over to the City.*
- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance would be in harmony with general intent and purpose of subpart B and would provide closure to an ongoing property line dispute and provide greater use of the public right of way.*

Pursuant to a legal notice published in the March 15, 2019-edition, of the St. Pete Times Section of the *Tampa Bay Times*, a public hearing has been scheduled on March 26, 2019, for BOA Case No. 2019-02.

[Staff Report Ends]

City Attorney Mora read BOA Case No. 2019-02 by title only and advised this is a quasi-judicial proceeding.

City Attorney Mora inquired if any City Commission Member needed to disclose any ex-parte communications with the applicant or conducted a site visit, with all members responding in the negative.

Any and all persons planning to give testimony during the quasi-judicial proceeding were duly sworn in by the City Attorney.

Mayor-Commissioner Kennedy opened the public hearing.

Planning Consultant Harmon reviewed the Staffing Report consisting of the background, and variance criteria for BOA Case No. 2019-02. She stated Beach Trail Group is requesting a variance of 7.0 feet into the required 7.0-foot side yard set back, resulting in a total side yard setback of 0.0 feet, to allow for a new structure at 2 4th Avenue.

Planning Consultant Harmon presented a PowerPoint Presentation depicting photographs of the property, an aerial view, a survey, and proposed new construction, and explained the history of the property and the proposed new construction.

City Attorney Mora stated this property has been discussed previously in a different posture, not in a quasi-judicial posture. At that time, the City Commission was considering a license agreement for a then-would-be purchaser who would be permitted to construct within the same footprint and operate in that space because of a decade long history dating back to the 1930s with issues on this property line.

City Attorney Mora stated in lieu of the license agreement, the new owner is moving forward with a variance application to have a zero side yard setback to the beach access where it has been occupied consistently since at least the 1950s.

Katie Cole, Esquire, Hill Ward Henderson, 600 Cleveland Street, Suite 800, Clearwater, representing the applicant, Beach Trail II, reviewed the variance request stating the variance will resolve decades long actual, potential litigation, disputes between the north and south property because there is a question in the title history as to why this lot was platted as a 50-foot lot, but it exists as 45 feet. At the Board of Adjustments and Appeals Meeting, it was learned from one of the members there is a long history of some of these beach accesses and how they were acquired and so this lot is unique at 45 feet despite the fact that it was platted at 50 feet.

Don House, 2104 Beach Trail, stated there are approximately 250 lots that are substandard, and he does believe that a 45-foot lot in this zoning is a substandard lot and Pinellas County does have it listed as 45 feet by 100 feet. There is a grandfather clause in the City Code for a footprint for substandard lots, so he does not see how it can be turned down.

Seeing and/or hearing no one wishing to speak, the public hearing was closed.

MOTION MADE BY COMMISSIONER PALOMBA, SECONDED BY COMMISSIONER HANNA, TO APPROVE BOA CASE NO. 2019-02, A VARIANCE OF 7.0 FEET INTO THE REQUIRED 7.0-FOOT SIDE YARD SETBACK, RESULTING IN A TOTAL SIDE YARD SETBACK OF 0.0 FEET, TO ALLOW FOR A NEW STRUCTURE ON THE PROPERTY LOCATED AT 2 4TH AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS INDIAN ROCKS BEACH, BLOCK 7, LOT 11 & PT BEACH DRIVE (GULF DRIVE) ADJ ON W.

Vice Mayor-Commissioner Hoofnagle stated the hardship was created by the existence of the disputed portion of that property and there is more history than what was discussed here on that section of property, which the new homeowner has graciously agreed to relinquish. It is not clear to him that it was actually owned by the City.

ROLL CALL VOTE:

AYES: HOOFNAGLE, FLAGG, HANNA, PALOMBA, KENNEDY

NAYS: NONE.

MOTION CARRIED UNANIMOUSLY.

7A. RESOLUTION NO. 2019-01. Accepting the official results of the 2019 Municipal Election, for two Commission Seats, held on March 12, 2019.

BACKGROUND: An election was held on March 12, 2019. Many municipal codes require that election results be ratified or declared by the governing body via resolution once the election results are certified by the canvassing authority. Alternately, codes may provide that election results are self-executing upon certification by the canvassing authority without resolution by the governing body. The City's Code is silent on the matter.

ANALYSIS: Although the City Attorney's Office is not aware of any statutory authority requiring ratification outside the context of a bond referendum, there is some old case law suggesting that it is necessary. Because the City's Code does not directly address the issue, the City Clerk has prepared a resolution in an abundance of caution.

The results of the Election are reported as follows:

FOR CITY COMMISSIONER SEATS (TWO OPEN SEATS)

✓Diane Flagg	648	32.73%
✓Phillip J. Hanna	746	37.68%
John Pfanstiehl	586	29.60%

Total Registered Votes: 3,173

Mail Ballots	846	
Election Day	374	
Total Votes Cast:	<u>1219</u>	
Turnout:		38.42%

City Attorney Mora read Resolution No. 2019-01 by title only.

MOTION MADE BY VICE MAYOR-COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER PALOMBA, APPROVING RESOLUTION NO. 2019-01, ACCEPTING THE OFFICIAL RESULTS OF THE 2019 MUNICIPAL ELECTION, FOR TWO COMMISSION SEATS, HELD ON MARCH 12, 2019. UNANIMOUS APPROVAL BY ACCLAMATION.

7B. RESOLUTION NO. 2019-02. Appointment of Vice Mayor-Commissioner.

[Staff Report Begins]

BACKGROUND: Charter Section 4.4 authorizes the City Commission to appoint a Vice Mayor-Commissioner from among the members of the City Commission at its first regular meeting following certification each year.

The duties of the Vice Mayor-Commissioner shall be to preside over the meetings of the City Commission during the absence of the Mayor-Commissioner, and in general, in the absence or the incapacity of the Mayor-Commissioner, he or she shall do and perform those acts and things provided in the City Charter to be done by the Mayor-Commissioner.

ANALYSIS: The City Commission should appoint a member of the City Commission to serve as Vice Mayor-Commissioner, which term shall commence on March 26, 2019, and shall expire on the newly elected City Commission's first meeting following certification of the March 17, 2020, Municipal General Election results.

[Staff Report Ends]

City Attorney Mora read Resolution No. 2019-02 by title only.

Vice Mayor-Commissioner Hoofnagle nominated Commissioner Palomba, and Commissioner Palomba accepted.

MOTION MADE BY VICE MAYOR-COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER FLAGG, APPROVING RESOLUTION NO. 2019-02, APPOINTING COMMISSIONER NICK PALOMBA, TO SERVE AS VICE MAYOR-COMMISSIONER EFFECTIVE MARCH 26, 2019, AND UNTIL THE FIRST MEETING OF THE NEWLY ELECTED CITY COMMISSION FOLLOWING CERTIFICATION OF THE MARCH 17, 2020 MUNICIPAL GENERAL ELECTION RESULTS. UNANIMOUSLY APPROVAL BY ACCLAMATION.

7C. RESOLUTION NO. 2019-03. Appointing a voting delegate and first and second alternate voting delegates to represent the City at the Barrier Islands Governmental Council (BIG-C) meetings.

[Staff Report Begins]

BACKGROUND: The BIG-C By-Laws, Article III, Section 2, Representation, states that all elected officials of each municipality shall be members of the council, one of whom shall be appointed by the municipality as the voting delegate. Each municipality may appoint other elected officials as alternate voting delegates. Each municipality shall designate their delegates in writing.

Delegate #1 - Name - Voting Delegate.

Delegate #2 - Name - Alternate to Delegate #1.

Delegate #3 - Name - Alternate to Delegate #2.

An alternate voting delegate may vote when the voting delegate is absent. Each city is entitled to one vote.

The object of the BIG-C is to stimulate communications between the barrier islands cities to focus on problems common to all, including but not limited to: tourism, recycling, public transportation, beach preservation, renourishment and access, marine environment, air and water quality, public safety, density management, waterway regulation, taxation based on permanent residents and average transient population, to unite and be able to have one voice addressing the county, state, and federal governments while respecting the individuality of each.

April, 2018 - April, 2019 - Voting Delegates

Mayor-Commissioner Joanne Moston Kennedy - Voting Delegate

Commissioner Nick Palomba -1st Alternate

Vice Mayor-Commissioner Ed Hoofnagle - 2nd Alternate

ANALYSIS: The City Commission needs to appoint a voting delegate and two alternate voting delegates to the BIG-C.

The BIG-C meetings are held the last Wednesday of each month at 9 a.m., with the location rotating between the membership cities.

[Staff Report Ends]

MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY VICE MAYOR-COMMISSIONER PALOMBA, APPROVING RESOLUTION NO. 2019-03, APPOINTING MAYOR-COMMISSIONER KENNEDY AS THE CITY'S VOTING DELEGATE AT THE BIG-C MEETINGS, WITH COMMISSIONER DIANE FLAGG AS THE FIRST ALTERNATE VOTING DELEGATE, AND VICE MAYOR-COMMISSIONER PALOMBA AS THE

SECOND ALTERNATE VOTING DELEGATE. UNANIMOUS APPROVAL BY ACCLAMATION.

8. **WORK SESSION ITEMS [DISCUSSION ONLY]:** None.

9. **OTHER BUSINESS.** None.

10. **ADJOURNMENT.**

MOTION MADE BY VICE MAYOR-COMMISSIONER PALOMBA, SECONDED BY COMMISSIONER HANNA, TO ADJOURN THE MEETING AT 8:35 P.M. UNANIMOUS APPROVAL BY ACCLAMATION.

April 9, 2019
Date Approved

/dor