



City Commission

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REGULAR MEETING OF THE PLANNING AND ZONING BOARD MINUTES

Tuesday, March 1, 2016

7:00 PM

City of Margate
Municipal Building

PRESENT:

Todd E. Angier, Chair
Anthony Caggiano, Vice Chair
Teresa DeCristofaro
Catherine Yardley

ALSO PRESENT:

Benjamin J. Ziskal, AICP, CECd, Director of Economic Development
Andrew Pinney, Associate Planner

ABSENT:

Pat Mayer

The regular meeting of the Planning and Zoning Board of the City of Margate, having been properly noticed, was called to order by Chair Todd Angier at 7:00 p.m. on Tuesday, March 1, 2016. The Pledge of Allegiance followed. A roll call of the Board members was taken.

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- 1) **APPROVAL OF THE MINUTES FROM THE DECEMBER 1, 2015 PLANNING AND ZONING BOARD MEETING**

Mrs. DeCristofaro made the following motion, seconded by Mrs. Yardley:

MOTION: SO MOVE TO APPROVE THE MINUTES AS WRITTEN

ROLL CALL: Mrs. DeCristofaro, Yes; Ms. Maher, Absent; Mrs. Yardley, Yes; Mr. Caggiano, Yes; Mr. Angier, Yes. The motion passed with a 4-0 vote.

- 2) **NEW BUSINESS**

- 2A) **PZ-01-16:** CONSIDERATION OF AN ORDINANCE TO PROVIDE PARKING STANDARDS FOR BOLLARDS AND WHEELSTOPS

Economic Development Department

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Ben Ziskal explained that the ordinance drafted by staff was to provide that bollards could be used in lieu of wheelstops in areas where a parking space abutted a sidewalk. He advised that the item had been before the Development Review Committee and he would be addressing the comments at this meeting.

Mr. Ziskal advised that the new landscape code had been adopted years prior which significantly changed the way parking lot design was done for new development. He explained that in the current development pattern, parking spaces that abutted each other each had a wheelstop. Under the revised landscape code, he said there was a requirement that there be a landscaped median between parking spaces that abutted each other, which eliminated the need for wheelstops and also assisted with site drainage. He said a concern brought up by the Engineering Department was that the ordinance did not include a provision whereby wheelstops could be replaced with bollards instead of landscaping in a parking lot. Mr. Ziskal said that the ordinance provided for that because it stated that parking spaces had to abut a sidewalk, but a clause could be added that clarified that it was for areas around buildings. He said another comment was that the ordinance applied only to sidewalks that were less than seven feet wide. He said the landscape code allowed for a seven foot sidewalk to not have a wheelstop or bollard because there would still be five foot of clear sidewalk even if cars pulled up to the curb and their bumpers overhung by two feet. He clarified that the purpose of the ordinance was to allow for bollards instead of wheelstops in those instances where sidewalks were less than seven foot wide; however, he cited the example of Ace Plaza and said that it was not the intent to have bollards lining the entire front of the building. He explained that the intent of the ordinance was to protect property and people. Mr. Ziskal said staff's recommendation, after speaking with the City's engineer, was for the protection of outdoor seating areas. He noted that there were two petitioners that had both requested bollards to protect an outdoor seating area. He suggested revising the ordinance whereby bollards would be allowed in those instances where a parking space abutted a sidewalk that was directly adjacent to a seating area. He reiterated that the intent was to allow bollards in those areas that had customer interaction or needed safety, as well as to eliminate tripping hazards.

Mrs. DeCristofaro asked whether the bollards would be used like they were at Target. Mr. Ziskal commented that those bollards were being used for safety of the structure. He said that this ordinance pertained to the use of bollards in lieu of wheelstops in a parking space.

Mr. Angier asked if there was already a process in place to request bollards. Mr. Ziskal responded that the use of bollards had been granted through the variance process when a hardship had been proved. Mr. Ziskal said that when repeat requests for variances were received, Economic Department would look into whether the Code needed to be changed. Mr. Angier said he was not in favor of having too many bollards; he was fine with bollards for the purpose of protecting an area, but they should be considered a special exception for other purposes.

Mr. Caggiano agreed. He said he was fine with them against a walkway, but he saw no reason for them.

Mrs. DeCristofaro stated that the ordinance should include that bollards were for safety and to protect patrons.

Mr. Ziskal said the ordinance would be revised to state that their use would be for parking spaces that were adjacent to an approved walkway, cafe or seating area.

Mr. Caggiano made the following motion, seconded by Mrs. DeCristofaro:

MOTION: TO AMEND THE ORDINANCE BASED ON MR. ZISKAL'S RECOMMENDATIONS

ROLL CALL: Mrs. DeCristofaro, Yes; Ms. Maher, Absent; Mrs. Yardley, Yes; Mr. Caggiano, Yes; Mr. Angier, Yes. The motion passed with a 4-0 vote.

Mr. Caggiano made the following motion, seconded by Mrs. Yardley:

MOTION: TO APPROVE THE ORDINANCE AS AMENDED

ROLL CALL: Mrs. DeCristofaro, Yes; Ms. Maher, Absent; Mrs. Yardley, Yes; Mr. Caggiano, Yes; Mr. Angier, Yes. The motion passed with a 4-0 vote.

2B) **PZ-02-16:** APPROVAL OF AN ORDINANCE TO AMEND THE LANDSCAPING AND ZONING CODES TO ADD VERBIAGE FOR "ENCROACHING ON PROPERTY OF OTHERS"

Ben Ziskal provided some background on the item. He explained that the City's Code currently followed the common law of property ownership and property maintenance. With regards to landscaping, he said the Code allowed property owners to trim any vegetation from an adjacent property that encroached onto their property, such as overhanging tree branches. He said certain guidelines had to be followed which included no tree abuse, no hatracking, etc. He said there were some residents that had found it to be cost prohibitive or physically prohibitive for them to maintain landscaping that had encroached onto their property. After hearing from a resident who stated that it was not fair that she should have to pay someone to trim the branches of her neighbor's tree that were hanging over her property, the City Commission directed the City Attorney and staff to look at how other cities handled the matter. Mr. Ziskal said they found that only one city, Deerfield Beach, had a law that required someone to trim the branches that hung over onto their neighbor's property.

Mr. Ziskal said that this ordinance provided that if a branch encroached onto a person's property and that person could not or did not want to maintain it, the person could notify the property owner in writing and, in turn, they would need to grant the neighbor access to their property so they could come onto the property to prune the encroaching tree.

Mrs. DeCristofaro asked if 'in writing' meant that it needed to be a notarized, official letter, and sent via certified mail. Mr. Ziskal said it was not specified in the ordinance. He said the way the ordinance was written, if a branch encroached onto one's property, it was deemed accessible unless written objection was given. He said he could clarify with the City Attorney whether there was a required form of notice and if it needed to be notarized or sent via certified mail.

Mr. Caggiano asked if a copy of the notification letter should also be sent to the City as proof of the action. Mr. Ziskal said he would also discuss it with the City Attorney.

Mr. Caggiano asked if the City received many of these types of complaints. Mr. Ziskal responded that there was one resident that came to the City Commission and that he was aware of only three or four in the past few years where the City got involved in assisting adjacent property owners with resolution.

Mr. Caggiano asked about tree abuse. Mr. Ziskal said the trimming had to be done in a manner that would not kill the tree or constitute tree abuse. Mr. Caggiano asked which party would be responsible for paying for the trimming. Mr. Ziskal said the party that had the tree on their property would be responsible for maintaining the part that was encroaching onto the neighbor's property.

Mr. Caggiano asked whether there was a time frame within which a property owner could request that encroaching vegetation be trimmed; for example, could a property owner suddenly ask to have a tree trimmed that had been encroaching for many years. Mr. Ziskal said the ordinance was written to give a property owner the ability to trim the encroaching vegetation and the right to require that the neighbor do it to the extent that there was no tree abuse. Mr. Ziskal said that in the case of a stalemate over the amount that would be considered proper trimming, the tree would win out. He explained that it was a code and it would be treated by a code violation. He said the neighbor could be cited for not maintaining their property if they refused to trim a tree that was overhanging the adjacent homeowner's property; however, if the tree was trimmed as much as it could be without causing tree abuse, they would not be cited as they would have met the intent of the Code.

Mrs. Yardley asked if the neighbors could choose to handle it in their own way. Mr. Ziskal said if the Board chose to do nothing, the City Commission would decide whether to change the Code. If the Code were not changed, every resident would still be able to maintain trees that were encroaching onto their property, but there would be no legal way to force a neighbor to come onto your property to prune the encroaching vegetation.

Mr. Ziskal reiterated that the City had been following the common law since 1955 and the research showed there was only one city that had chosen not to follow the common law.

Mr. Angier commented that he felt it would have a negative impact. He said he did not like being forced into letting his neighbor come onto his property. He said the common law was fine.

Mr. Caggiano referenced page 3, sections 10-13 of the ordinance and said it read that the homeowner could not be forced to allow the neighbor to come onto his/her property to do the trimming. Mr. Ziskal clarified that the section closed the loop so that if the homeowner wanted the neighbor to trim the encroaching vegetation, after giving written notice, the homeowner would have to give the neighbor access onto their property in order to do so.

Mrs. Yardley asked who would be responsible if property was damaged or a person got hurt when the neighbor was on the other owner's property. She said it was opening the door for liability issues.

Mrs. DeCristofaro made the following motion which died for the lack of a second:

MOTION: TO APPROVE AS WRITTEN

Mr. Caggiano made the following motion, second by Mrs. Yardley:

MOTION: TO DENY THE CHANGES

ROLL CALL: Mrs. DeCristofaro, No; Ms. Maher, Absent; Mrs. Yardley, Yes; Mr. Caggiano, Yes; Mr. Angier, Yes. The motion passed with a 3-1 vote.

3) **GENERAL DISCUSSION**

There was no discussion.

There being no further business, the meeting was adjourned at 7:31 p.m.

Respectfully submitted,

Prepared by Rita Rodi

Todd E. Angier, Chair

cc: City Commission, City Manager, City Attorney, City Clerk, Director of DEES, Engineer, Building Director, Board of Adjustment, Petitioner(s)