CITY OF MARGATE
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REGULAR MEETING OF THE PLANNING AND ZONING BOARD MINUTES

Tuesday, May 2, 2017
7:00 PM
City of Margate
Municipal Building

PRESENT:
Todd E. Angier, Chair
Phil Hylander, Vice Chair
Antonio Arserio
August Mangeney
Richard Zucchini

ALSO PRESENT:
Douglas Gonzalez, City Attorney
Benjamin J. Ziskal, AICP, CEcD, Director of Economic Development
Timothy Finn, Senior Planner
Andrew Pinney, Associate Planner

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 7:03 p.m. on Tuesday, May 2, 2017. The Pledge of Allegiance was recited, followed by a roll call of the Board members.

1) APPROVAL OF THE MINUTES FROM THE PLANNING AND ZONING BOARD MEETING ON APRIL 4, 2017

Mr. Mangeney made the following motion, seconded by Mr. Arserio for discussion:

MOTION: TO APPROVE MINUTES WITH THE ADDITION OF THE ROLL CALL

Mr. Arserio advised that the roll call taken on the last item on the agenda was not reflected in the minutes. He was in favor approving the minutes with the addition of the roll call.

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes; Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 5-0 vote.

2) **NEW BUSINESS**

2A) **PZ-07-17** CONSIDERATION OF AN ORDINANCE TO REZONE THREE REAL PROPERTIES TO S-1 RECREATIONAL DISTRICT AND ONE REAL PROPERTY TO S-2 OPEN SPACE DISTRICT.

Timothy Finn led with a PowerPoint presentation and provided some background information. He advised that inconsistencies existed between the Margate Comprehensive Plan and the Margate Code of Ordinances. He explained that it was the result of the Code of Ordinances being adopted six years prior to the adoption of the Margate Comprehensive Plan. He said amendments to the Future Land Use Map (FLUM) had been made without the benefit of updating either the Zoning map or the Code of Ordinances. He said the Economic Development Department initiated a project to clean up the discrepancies through text amendments and rezonings to the Zoning Code, Zoning map, and the FLUM. He advised that this was the first set of rezonings to be heard before the Planning and Zoning Board.

Mr. Finn advised that the following nine standards for reviewing the proposed amendments to the official Margate Zoning Map were considered:

1. The consistency with goals, objectives and policies of the City's Comprehensive Plan;
2. The compatibility with the surrounding area's zoning designation(s) and existing uses;
3. The physical suitability for the uses permitted in the proposed district;
4. The availability of sites in other areas currently zoned for such use;
5. The contribution to redevelopment of an area in accordance with an approved redevelopment plan;
6. The effects on traffic patterns or congestion;
7. The impacts to population density on demand for water, sewers, streets, recreational areas and facilities, and other public facilities and services;
8. The environmental impacts on the vicinity;
9. The effects on the health, safety, and welfare of the neighborhood of the City as a whole.

Mr. Finn showed aerials views of the four parcels and provided a brief explanation of the proposed rezonings:
-Parcel 1 located at Banks Road and Northwest 17th Street was the site of the expansion for the Margate Sports Complex. He said it would be rezoned from M-1A Industrial Park District to S-1 Recreational District.
-Parcel 2 was the location of Southeast Park. He said it would be rezoned from R-1C One Family Dwelling District to S-1 Recreational District.
-Parcel 3 would be rezoned from R-1D One Family Dwelling District to S-1 Recreational District
-Parcel 4 would be rezoned from R-1 One Family Dwelling District to S-2 Open Space District

Mr. Finn said that staff found parcels 1, 2, 3, and 4 were in compliance with the nine standards of reviewing amendments to the Margate Zoning Map; staff recommended approval of the parcels.

Mr. Arserio asked why plans had been submitted at the previous Planning and Zoning Board meeting for a covered Sports Complex prior to the rezoning being approved. Mr. Angier explained that the Planning and Zoning Board had previously approved an ordinance which allowed for text amendments whereby new zoning districts were added, deleted or updated in an effort to clear up the inconsistencies that existed. Mr. Arserio said he understood the need for everything to be consistent. He said he wanted to understand why money was being spent on plans for a covered sports park when the properly was not zoned for one.

Ben Ziskal explained that the Margate Community Redevelopment Agency (CRA) had previously appeared before the Planning and Zoning Board seeking a plat note amendment for the property adjacent to the Margate Sports Complex. He said the previous owner of that property had recorded a plat note that had restricted the land to industrial warehousing. Since that time, he said the owner had sold the property to the Margate CRA with the intention of the CRA expanding the Sports Complex for a covered field. He clarified that it was the CRA that was seeking the approval and had spent the funds on the site plan, and it was the City that was initiating the rezoning. He explained that a change to a plat note that required County approval added three to four months to the approval process for a development project. He said it was not uncommon to have the platting process started before the rezoning or site plan approval. He said the cost to a developer to draw up the plans prior to the plat approval was minimal in comparison to the loss of time if the developer had to wait and do everything in the correct order. He said that a plat was also a tool used for concurrency with regards to impact fees in Broward County, i.e., traffic, water and sewer, drainage, etc. He said it was more of a financial reconciliation of any impact fees that might be due the County. In those cases where a property was changing from a dirtier, more intense use to a cleaner, less intense use as in this case, he said he had never seen where it was denied by the County. He said the City was the applicant and it saw the long term use of the property as recreational versus industrial, regardless of whether the plat was approved.

Mr. Zucchini commented that Parcels 2 and 3 seemed to be recreational properties that were imbedded in communities that were common areas for associations. Mr. Finn responded that Parcel 2 was a park, and Parcel 3 was part of the Paradise Gardens II Homeowners Association with a clubhouse and a pool. He said Parcel 3 was currently zoned R-1D and technically a home could be built on it. He said it was being rezoned to its proper zoning district, S-1 Recreational. Mr. Zucchini asked if the community association was notified of the change and whether any objections had been received. Mr. Finn said they were notified and no objections had been received.

Commenting on the residential zoning districts of R-1, R-1C, R-1D, Mr. Hylander asked how it came about that a water treatment plant could be located in a residential neighborhood noting that it seemed incompatible. He asked what other uses might be permitted and how was it allowed 20-40 years ago. Mr. Ziskal explained that the zoning code that was adopted in 1967 differentiated between single family districts based on lot sizes, setbacks, and the size of the structures on the properties. He said the zoning designations on the properties, i.e., R-1A, R-1B, R-1C, R-1D, still existed; however, he said the text for districts R-1C and R-1D had been removed from the City Code so there would be no ability for a water treatment plant to locate on those parcels. He said a private utility company owned the City's water and waste management plant in 1967. He surmised that when the City started expanding and the water and sewer systems were being installed, provisions were put in the Code to allow for additional

lift stations, infrastructure or a small plant. He said the existing plant on Northwest 66th Avenue had a Community Facilities zoning district, the same as all other utility and City buildings. Mr. Hylander referenced the back-up and asked why the descriptions for the R-1 and R-1 D zoning districts in Parcels 3 and 4 still showed water treating plants as possible uses. Mr. Angier asked Mr. Ziskal to provide a list of the zoning district changes that were approved earlier in the year to the new Board members.

Mr. Ziskal provided some additional background for the benefit of the new Board members and the public in attendance. He explained that there were two maps in the State of Florida that regulated the use of land: The Future Land Use Map (FLUM) and the City's Zoning Map. He said the FLUM was approved by the State of Florida and was a part of the City's long-range Comprehensive Plan. The Zoning Map used local zoning regulations and was approved by the City Commission. He explained that the Zoning Map must be compatible with the FLUM under State law. He said that over the years as development and expansion occurred and properties were rezoned, it was discovered that the Zoning Map and the FLUM were in conflict with each other. He said the City's Zoning Map was adopted in 1967, prior to the State of Florida requiring cities to adopt a comprehensive plan and a land use map. He reiterated that the Zoning Map must be compatible with the FLUM per State law. He said a comparison of the parcels in the City was done and where the staff found inconsistencies, it appeared that the zoning of the adjacent neighborhood was incorrectly applied to a common area adjacent to that neighborhood. He used Parcel 3 as an example. He explained that the Comprehensive Plan map was the governing map, and in the case of a conflict, the Comprehensive Plan would be the legally binding document. He explained that the intent of the rezoning's was to clean up the conflicts that existed and to allow the City to properly report the amount of recreational space it had in the City versus residential space. Mr. Ziskal described the discrepancies that existed for each of the four parcels that were part of the ordinance.

Mr. Zucchini asked if an association could object to the designation and require that the Comprehensive Plan be changed. Mr. Ziskal said the association could object and they could apply for a land use amendment. He said every property owner had the ability to apply to change a land use designation.

Mr. Arserio pointed out that a club house already existed on Parcel 3 and by rezoning it to a park/recreational area did not mean that the general public could use the club house. Mr. Ziskal advised that the rezoning would not affect any of the regulations of the homeowners association or its documents.

Mr. Hylander commented that the waste water treatment plant was not in affect but it still appeared in the zoning description as an option, almost like a scare tactic. He recalled a discussion last year about parcels in the Transit Oriented Corridor and commented that staff sometimes presented items in a confusing manner. Mr. Angier said the City was trying to bring things into alignment and he did not take it as intimidation. Mr. Hylander said he agreed with making the changes, but he said it was the second time where something was shown incorrectly in the back-up as being a possibility. He questioned why the language for R-1C and R-1D districts was still being shown when Mr. Ziskal said it had been deleted years ago. Mr. Ziskal responded that the text in the Zoning Code that used to govern R-1C and R-1D was no longer in the City Code and no property could be rezoned to R-1C or R-1D. He said, however,

those properties that were built under those previous codes and were still in existence, had those designations. Mr. Hylander acknowledged a misunderstanding.

Pat Lahey, 1605 N.W. 68th Avenue, said she lived across the street from the clubhouse. She asked if she could get something that identified the parameters for the S-1 district. Mr. Ziskal asked that she provide her contact information to Rita Rodi and staff would provide her with a copy of the Code.

Mr. Mangeney made the following motion, seconded by Mr. Arserio:

MOTION: SO MOVE TO APPROVE

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes; Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 5-0 vote.

2B) **PZ-08-17** CONSIDERATION OF AN **ORDINANCE** FOR REZONING OF FELLOWSHIP LIVING FACILITIES, INC., LOCATED AT 451, 461 & 471 BANKS ROAD
PETITIONER: CITY OF MARGATE, ECONOMIC DEVELOPMENT DEPARTMENT

Timothy Finn advised that this ordinance had been initiated by the Economic Development Department. He proceeded with a PowerPoint presentation which started with a slide that showed the following proposed rezonings from Community Facilities (CF-1) to Multi-Family (R-3): 451 Banks Road; 461 Banks Road; 471-A Banks Road; 471-B Banks Road; and 471-C Banks Road.

Mr. Finn provided some background on the properties. He explained that Richard Riccardi requested a rezoning from Multi-Family (R-3) District to Community Facilities (CF-1) in 2015 to allow for the expansion of Fellowship Living Facilities, a sober living facility located at 451, 461, and 471 Banks Road; it was approved via ordinance 2015-RZ-1. In November, 2016, a Reasonable Accommodation meeting was held and it was agreed that the City would initiate a rezoning application to rezone the properties back to R-3 which would make all the properties legal, non-conforming status and thereby maintain the residential character of Banks Road and only allow R-3 uses. He said any future care facility and/or hospital would not be allowed.

Mr. Finn showed an aerial view of the properties and noted that they were adjacent properties and considered as one parcel.

Mr. Finn advised that the following nine standards for reviewing the proposed amendments to the official Margate Zoning Map were considered:

1. The consistency with goals, objectives and policies of the City's Comprehensive Plan. He said the proposed rezoning was consistent with the Comprehensive Plan.
2. The compatibility with the surrounding area's zoning designation(s) and existing uses. He said the subject properties were multi-family units which housed over 100 residents and the current occupancy level at Fellowship Living Facilities would be vested.
3. The physical suitability for the uses permitted in the proposed district. He said uses and occupancy levels were suitable.

4. The availability of sites in other areas currently zoned for such use. He said there were no other sites available in other areas currently zoned for such use.
5. The contribution to redevelopment of an area in accordance with an approved redevelopment plan. He said the zoning code designation was being rezoned to preserve the existing residential character of Banks Road.
6. The effects on traffic patterns or congestion. He said the proposed R-3 zoning would not adversely affect traffic patterns or congestion.
7. The impacts to population density on demand for water, sewers, streets, recreational areas and facilities, and other public facilities and services. He said there would not be any adverse impacts on any these items.
8. The environmental impacts on the vicinity. He said there would be no adverse impact on the vicinity.
9. The effects on the health, safety, and welfare of the neighborhood of the City as a whole. He said the proposed change would not have any adverse effects.

Mr. Finn said staff found that 451, 461, 471-A, 471-B, and 471-C Banks Road showed compliance with the nine standards of reviewing amendments to the Margate Zoning Map and it recommended approval of the rezoning of the parcels.

Mr. Hylander commented that the parcel at 471 Banks Road included the pool which was part of the common area and was available to all the residents in the row of multiple family homes. He asked if it would affect the use of the pool by the other residents. Mr. Finn responded that it would not.

Mr. Hylander commented that it (Fellowship Living) was being considered one property and he asked about the 1,000 foot separation. He asked what would stop the owner of a group home from buying adjacent properties and having them considered all one parcel. Mr. Arserio responded that it did not matter how many parcels they owned but they could not exceed the maximum as was established by the regulatory agency that governed them.

Mr. Ziskal reminded the Board that the action they were voting on that night was to rezone the property from Community Facilities (CF-1) to residential. He said the residential district was stricter. He said a single family home was limited to six or fewer residents regardless of whether they were sober or disabled. He said multi-family allowed a higher number and Community Facilities allowed an even higher number. He said the intent of this rezoning was to ensure that this particular facility and any subsequent owner property maintained a residential nature to the property. He said the operator of the facility had requested Reasonable Accommodations to allow additional residents in years past and it was granted because it had a CF-1 zoning designation. He said the intent was to preserve that stretch of Banks Road as residential by rezoning it back to a residential zoning designation.

Mr. Zucchini commented that 100 occupants were being vested. Mr. Angier referenced a past Development Review Committee meeting where Rick Riccardi spoke about how his business would be affected with this change. He said he saw the City planning for the future. He said only Mr. Riccardi was vested based on his existing business and once he sold the business, the property would go back to residential only and it could not have any type of community facility. He said his existing business was grandfathered under Reasonable Accommodation.

Mr. Zucchini asked if Mr. Riccardi's business was classified as a group home. Mr. Ziskal acknowledged that it was a group home. Mr. Zucchini commented that the group home was being described as a business. Mr. Angier responded that all group homes were businesses.

Attorney Gonzalez commented, for the record, that group homes were residences under the City Code and under State law. He said there was business being operated out of the residential facility, but that was how the State delineated between a long-term facility and a short-term facility. He said the short-term facilities were for three to five days of detoxification or other types of hospital use were considered differently under the zoning laws. He said they were considered as medical/hospital uses whereas a group home was considered a long-term facility where the tenants there generally signed leases for a year, and they were strictly considered residential properties under both the City's Code and the State law.

Mr. Zucchini asked if group homes were required to have a business tax receipt. Mr. Gonzalez responded that they were required to have a tax receipt as were all other businesses, including those that operated out of a residence. Mr. Gonzalez reiterated that group home facilities were residential properties under the law; shorter term facilities were regulated businesses under the law and under the zoning code.

Mr. Arserio clarified that the three parcels were already being operated as a recovery center, vested at 100 people, and the Board's approval that night would not allow him to build a larger facility. He said it was his understanding that under the current zoning they could set up a detoxification center, so this was change was actually an insurance policy for the future. Mr. Ziskal explained that the current owner had been operating it as a sober living facility, but because it had the CF-1 zoning designation, someone could build a city hall, a fire station, a library, a church, a school, or a hospital on that property. He said the City's interest was assuring that whoever operated whatever use on the three parcels that it would be done in a residential nature instead of having a hospital or a school built on it.

Mr. Arserio asked if there was any liability to the City for making the change as it could affect his livelihood should he (Mr. Riccardi) decide to sell his business in the future. He also asked if the zoning was attached to the property in the event Mr. Riccardi passed away. Mr. Ziskal responded that the zoning designation remained with the land which was the reason it was being done that way.

Mr. Zucchini asked whether Mr. Riccardi could sell the business, still own the land, and still have the grandfathered units. Mr. Ziskal responded that the vested property rights would pass on to the new owner if he sold the business or sold the land. He said, however, there was a provision in the Code that stated that if a use was in continuation and was not abandoned for more than 180 days, the use could continue with subsequent property or business owners.

Mr. Gonzalez, responding to Mr. Arserio's question about liability, said there would be no liability to the City since Mr. Riccardi had requested a Reasonable Accommodation to expand several years ago and the City came back with its recommendation to rezone it to residential.

Mr. Zucchini asked if the Board had to approve the item with the grandfathered occupancy level even in the event the business and/or the land were sold. Mr. Gonzalez said it had to be done that way as a matter of law. He said the change would follow to the next owner of the property

which he noted was a benefit to the City as it would remain residential instead of CF-1. Mr. Ziskal asked if it were possible to put in caveat where only Mr. Riccardi and his business were vested and, if he sold, the new property owner would not get the benefit of the vesting. Mr. Gonzalez said that could not be done because zoning laws provided the protection for the City and for the property owners, as well as a succession as to what would happen upon the death or sale of the property under the zoning in which the use had been approved. In this case, if Mr. Riccardi died or sold the property, he said the approved use would be under residential, if the item was approved that night. He said the zoning attached to the property and any subsequent buyer would be entitled to that zoning; and, if it were done within the six months of the cessation of the current use, the use would be allowed to continue.

Mr. Ziskal commented that if Mr. Riccardi were to sell the property to a residential landlord that wanted to lease it as apartments, as soon as it passed 180 days, any new sober living facility would be treated as a new facility and it would need to go through approvals and any vesting as far as the number of residents would expire on day 180.

Mr. Arserio asked what would prevent the owner from tearing down the facility and building a bigger facility. Mr. Ziskal said if the facility became non-conforming to the existing Code, he would not be able to expand, alter, or enhance the property because it was a condition of the approval. He said the non-conformity warranted by the rezoning prevented him from being able to expand. He said there was a specific provision in the Code regarding non-conforming uses and non-conforming structures.

Mr. Hylander read the following statement from back-up materials provided by the City Attorney's office on the APA Policy Guide on Community Residences:

"Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or single block. For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to each other and be placed in the same block, the ability of the group homes to advance their residents' normalization would be compromised and would in fact create a de facto social service district with many facets of an institutional atmosphere."

Mr. Hylander said this described exactly what currently existed and changing of the zoning was not going to change it. Mr. Angier agreed but noted that it would change it for the future.

Mr. Arserio asked whether someone checked to see if the three parcels were under the same property owner. Mr. Ziskal responded that they were all the same owner.

Mr. Arserio made the following motion, seconded by Mr. Mangeney:

MOTION: SO MOVE TO APPROVE

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes; Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 5-0 vote

2C) **PZ-09-17** CONSIDERATION OF AN ORDINANCE TO UPDATE THE CODE OF ORDINANCES' REFERENCES TO THE DEPARTMENT OF ENVIRONMENTAL AND ENGINEERING SERVICES TO THE ECONOMIC DEVELOPMENT DEPARTMENT
PETITIONER: CITY OF MARGATE, DEPARTMENT OF ECONOMIC DEVELOPMENT

Timothy Finn led with a PowerPoint presentation and he explained that the ordinance would replace the references of "Department of Environmental and Engineering Services" with "Economic Development Department" within Chapter 2-Administration, Article 1, in General, Section 2-18 Official Zoning Confirmation Letters; within Appendix A Zoning, Article III General provisions, Section 3.30 Reasonable Accommodation procedures.

Mr. Finn provided some background and explained that prior to 2012, the Planning and Zoning function operated under the Department of Environmental and Engineering Services (DEES). He said the Economic Development Department was created and separated from DEES in 2012. He explained that this ordinance was a clean-up item correcting outdated references to DEES and replacing them with the Economic Development Department.

Mr. Finn the five following standards for reviewing proposed amendments to the text of the Code of Ordinances were considered:

1. The proposed amendment was legally required because corrections and/or deletions of any outdated references within the Code of Ordinances must be done by ordinance.
2. The proposed amendment was consistent with the goals and objectives of the Comprehensive Plan.
3. The proposed amendment was consistent with the authority and purpose of the Code of Ordinances.
4. The proposed amendment furthered the orderly development of the City.
5. The proposed amendment improved the administration or execution of the development process by providing updates to reflect current organizational structure of the City administration.

Mr. Finn stated that staff recommended that the Planning and Zoning Board approve the proposed ordinance.

Mr. Hylander made the following motion, seconded by Mr. Arserio:

MOTION: SO MOVE TO ACCEPT

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes, Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 5-0 vote.

3) **GENERAL DISCUSSION**

Mr. Zucchini said he was stuck on the definition of group home as discussed at last month's Board meeting. Mr. Angier suggested he make an appointment to meet with City Attorney Gonzalez and to also meet with Ben Ziskal.

Mr. Zucchini said there was a legal question that had not been answered which was whether a homeowner association (HOA) or a condo association could usurp the ability to have a group

home. Mr. Gonzalez said he was not aware of that question. He responded that it seemed to him that a HOA or condo association would have ownership over a property and could dictate the appropriate uses of the property and what could take place through its Declaration. Further, he said it would seem that a group home wanting to locate into one of those developments would have to comply with the Declaration of Covenance that was recorded for the property; and, to the extent the Declaration of Covenance did not permit that type of use, he said it would seem to him that it would be prohibited. Mr. Gonzalez said he never looked at it before as he had not been asked about it, but he could look it up.

Mr. Arserio commented that Mr. Zucchini's question had evolved into a conversation. He said in his experience with HOA's, it was Fair Housing and they could not deny anyone based on a disability. He said Mr. Gonzalez was insinuating that if there was a rule that said they could only have two cars or five people, and the facility wanted reasonable accommodation for 15 cars and 20 people, than the HOA could say no. Attorney Gonzalez said he was trying to explain that it seemed to him that an HOA could set forth restrictions that only single families reside in each individual property and it would probably be enforceable if it were recorded as a Declarative Covenant that allowed only single family use with two vehicles outside so as to keep the use as least intensive as possible. He said if it were viewed by the court not to abrogate any type of constitutional right of having a home, which there was not, than it probably would be appropriate. Attorney Gonzalez reiterated that his comments were subject to the fact that he had never reviewed this area, noting that there was probably a whole body of law about it. He said the Declaration could not say that those types of facilities were not allowed, but they could prohibit anything that was not permitted in the zoning category where the HOA was located, i.e., residential. He said that, by virtue of the fact that a detox facility was not residential, it would not be permitted in those facilities whether or not it was in the Declaration. He said it went back to whether the Declaration that was recorded when the HOA or condo association was started prohibited or limited it to single family uses.

Mr. Zucchini asked if he had to be in the docs or whether it could be in the association rules. Attorney Gonzalez responded that it had to be in the docs as it was a Restrictive Covenant that was recorded in the public records.

Mr. Hylander commented that most Declarations included verbiage that read that properties must be used for single family residence for the owner, their family, residents, guests, and invitees.

Mr. Zucchini asked whether someone who had been arrested for driving under the influence (D.U.I.) or had a summons for smoking marijuana would lose their eligibility to be a resident in a recovery home. He asked if there was a mechanism to be able to observe that. Attorney Gonzalez said the City had no enforcement rights over such; it would be between the resident and the facility where they resided. He said a D.U.I. would require law enforcement intervention and a criminal process would be followed. Similarly, he said there would be a process followed for the facility in terms of what they would do to get rid of that type of resident.

Mr. Zucchini asked whether a sexual predator that was also recovering from substance abuse would be permitted to live in the residence without the restriction of the geography. He asked which one trumped the other. Attorney Gonzalez responded that a sexual predator was

required to register with the Florida Department of Law Enforcement (FDLE) and they followed that registration wherever that person went. He said if that person were in need of recovery of some sort, the court would allow them to reside at such a facility. He noted that facilities for short term medical intervention were generally akin to lock down facilities and people were limited to the grounds or inside the facility. Mr. Zucchini asked if they would be required to notify neighbors. Attorney Gonzalez said FDLE would not be concerned where they lived; their concern was that they were registered. He said that once they were registered and found to be residing in the City of Margate, the information would be posted on the board outside City Hall. He said it would trump the general HIPAA (Health Insurance Portability and Accountability Act of 1996) and ADA (American Disability Act) confidentiality of that person.

Mr. Zucchini said current substance use would also invalidate their eligibility to be in a group home. Attorney Gonzalez said if the sexual predator were picked up for violating the terms of their probation, they would go back to jail. He said it would be up to the group home to enforce whether there was substance use.

Mr. Hylander asked if there was any rule in the city, county, or state that regulated the number of people who could live in a one or two-bedroom apartment. Attorney Gonzalez responded that were requirements in the City's Code as to the number of people who could live in a single family residence or multi-family residence. He said the owners of an apartment complex or the leasing agent would dictate the number of people that could reside in their properties. Mr. Hylander asked for the number of people allowed in a single or multi-family residence. Mr. Ziskal responded that from a zoning standpoint, a single family residence was for one family which was defined as no more than three unrelated individuals. He said single family neighborhoods were regulated by that definition and examples included: one person; a couple; a couple with two, three, or four children; or up to three unrelated people. Attorney Gonzalez interjected that a single family could include two parents, three children, both sets of grandparents, and two other unrelated people, or eleven people in total. Mr. Ziskal said a duplex would be two of those same units, and multi-family could be more. He said the Florida Building Code regulated the amount of square footage required per bedroom so multi-family was governed more so by the standards of the Building Code; single family would also have minimum square footage per the Building Code.

Mr. Arserio said he would like to continue discussion on PZ-05-17 and he asked if he could motion to bring it back since he voted for it. Attorney Gonzalez said it could be done. Mr. Arserio made the following motion, seconded by Mr. Zucchini:

MOTION: TO BRING BACK PZ-05-17 FOR RECONSIDERATION

Mr. Ziskal stated that this item was the group home ordinance that was heard by the Board the prior month and it passed with a 4-1 vote. He said that there were a number of questions for which the Board requested legal answers and that were subsequently provided. He said the item was scheduled to go before the City Commission the following night for first reading. He said the Board expressed an interest at the last meeting about possibly discussing the item further once the legal answers were provided.

Attorney Gonzalez stated that the Planning and Zoning Board was subject to the Robert's Rules of Order and Robert's Rules would not permit reconsideration after the item was closed on the

evening that it was considered. Therefore, he said since it was not brought up specifically for reconsideration at the last meeting, it would not be appropriate. He said, however, that Mr. Ziskal had indicated that there was discussion during that meeting that the Board might want to bring it back, so he would allow it.

Mr. Arserio asked if he could discuss why he wanted to bring it back before voting on the motion.

Mr. Angier said his recollection was that the City was aligning what it did with the State Statutes. He said there was a lot of discussion about things that the Board had no ability to change. He said even clarification of some of the questions asked would have no impact on changing State Statute. Mr. Arserio responded that he was not trying to change State Statute, but that he felt the State was placing a big burden on them by forcing them to make the changes, and the Board did not have to settle for the bare minimum. Mr. Arserio said the City Attorney's response to his question about extending the distance said the limit could be extended as long as all facilities were treated the same. He said the change to extend the distance around group home facilities could be made if the same was done around detox centers and hospitals. He commented that the Board members were an advisory to the City Commission and while there were restrictions, he said there were standard operating procedures that could be put in place by the City. He said, for instance, the City allowed group homes in compliance with State law and the Americans with Disabilities Act (ADA), but if the City started receiving multiple fire rescue calls for overdoses, the City should be able to put in regulations such as taking away their local business tax receipt if a certain number of calls were received in a given period of time. Attorney Gonzalez clarified that the Board could recommend to the City Commission that they consider extending the limitations but he said we were presently under the current provision in the Code so anything being considered as under the 1,000 foot restriction was as is. He said, as an aside, the Board could make a recommendation that someone appear at a Commission meeting and state that they had reviewed the Code and would like to make a recommendation, but right now everything had to be under the current provision of the Code.

After further reviewing Robert's Rules concerning the reconsideration motion, Attorney Gonzalez said the motion required a second but it was not amendable once it was made and it was based on a majority vote. As to whether it was debatable, Attorney Gonzalez said there was a little asterisk that read, "Consult the current edition of Robert's Rules of Order newly revised for the specific rule that applies." He said he had the revised edition in his office, but he was open to having a discussion on the topic. Attorney Gonzalez asked, "Can it be reconsidered?" He responded that it could not. Attorney Gonzalez asked, "May it interrupt a current motion?" He responded that it did not matter since that was not being done. He summarized that the motion could be discussed and the Board could vote on the reconsideration portion and, if passed, then they could have the underlying discussion.

Mr. Arserio asked if the motion could be tabled since he could not amend it. Attorney Gonzalez said it would need to be voted on that night because of the current Robert's Rules. Mr. Arserio asked again if he could make the motion to table. Attorney Gonzalez clarified that the motion would be to table the reconsideration. Mr. Arserio said the Board wanted to see the legal opinion and it was not received until Thursday afternoon which gave him only two business days in which to review it. Mr. Arserio said it was a big vote to make and he realized that he

made a mistake. He said he thought it should be tabled until they were able to look into other options that they could advise the City Commission. Mr. Angier said the item at the last meeting was to line up the City with the State Statute. He said there was nothing that could be done by the City in response to many of the questions the Board had because they would have contradicted State Statute. Mr. Zucchini said he did not agree because they had recently received the benefit of the back-up material which he thought they should have had at the first meeting. He said he could find a few ways to introduce additional policies that could be implemented without them becoming an impediment to making group homes available while providing supervisory ability on them.

Mr. Angier asked Attorney Gonzalez whether the City could have an oversight role in any of the group homes. Attorney Gonzalez responded that it was his understanding that group home care facilities had to be zoned properly and have a Certificate of Occupancy (CO) from the City. He said the group home then would then send the CO and their application and necessary paperwork to the appropriate state agency, i.e., the Agency Health Care Administration (ACA), Agency for Persons with Disabilities (APD), or the Department of Children and Families (DCF). He said those agencies had oversight over the functions at residential group homes and, if they determined there were problems, they would come in and shut the home down or they would notify local police and together they would shut it down or make sure it was operating properly. He said the City did not have any direct oversight other than the approval process for the CO under its zoning code. He said if it were a locked down facility, only the Fire Department could enter uninvited because it had inspection rights that the Police did not have. He said the police would not randomly visit a property for oversight purposes; they would only visit if they were called out for a particular law enforcement issue.

Mr. Arserio said he agreed with that type of oversight. However, he asked if there were procedures in place for the City to notify the oversight departments of issues that existed. For example, he asked, if it were learned that a particular recovery facility had five calls for service in 2016 and in 2017 there were 57 calls for service for overdoses or felony arrests, could the City step in and report them to the appropriate State agency. Attorney Gonzalez said only if the City was notified there was something improper happening at the facility. He gave the following example: there was a group home facility that had the appropriate approval for a group home had a CO, paperwork had been submitted to the State and the State approved their group home, but then they began to operate a detoxification facility from the property with short term issues of people staying there 5-7 days and with constant insurance turnover. He said if the City determined and could prove what was taking place at the group home, the City could contact the State agency and ask them to visit the home immediately to determine what was in fact happening there. He said the number of calls might not be a trigger for police oversight; rather, it would be more of the type of violation where the City had a good faith belief that the group home was being run as a hospital use versus a group home.

Mr. Arserio asked whether the City could make an adjustment to the 1,000 foot rule. He said based on the answer he received, the radius could be extended as long as everyone was treated fairly. Mr. Ziskal responded that Chapter 419 of the State Statute specifically provided that if a facility was located more than 1,000 feet from another and it had six or less residents, it could not be precluded from opening. He said the Margate Code was drawn up to exactly match the 1,000 foot line. Mr. Arserio said the legal opinion read differently. Attorney Gonzalez responded that the legal opinion was done before he had all the facts. He said State

law would apply and the Board would not be able to recommend to the City Commission that the City change its rules to go to 1,200 feet. Mr. Arserio asked for a verification of who was correct because if the City could do so, he would recommend that it be amended to be 1,200 or 1,500 feet. Attorney Gonzalez said that Mr. Ziskal would be familiar with the statutory provisions that applied to the Planning and Zoning Board and the type of things he dealt with on a daily basis. He said his opinion was general in nature while Mr. Ziskal's provided specifics on what the Statute read which was that the City was limited to 1,000 feet.

Mr. Zucchini asked if conditions could be applied to the issuance of a CO for this type of facility where any number of performance requirements could be added, if they were applied universally. Attorney Gonzalez asked what was meant by performance requirement. Mr. Zucchini more time was needed to formulate them, but he said an example would be to allow for random, periodic inspections. Attorney Gonzalez responded, "Absolutely not."

Mr. Mangeney started by saying that he did want his comments to come off wrong. He commented that the Board was not for policy making and it was so far off field of zoning. He said the Board was there for the specific purpose of reviewing planning and zoning while policy making decisions were done by the elected officials at the City Commission meetings. He said the Board had no business telling the City Commission what they should be doing with police, fire, etc. He said they all had the right as residents of Margate to attend the City Commission meetings and express concerns and if the Commission wanted to pass an ordinance, legally sound or not, they could do so. He said the Board was there that night to vote on an ordinance to make it conform to State law which, if they did not pass, would have to be done anyway. He said the ordinance needed to read that it was in compliance with State law. He said it was discussed ad nauseam last month and now again this month. He said there was a motion to table it last month but there was no second. If there were a second to it, he said it would have failed and died 3-2. He said there was a motion that night that needed to be voted on, but the idea that the Board would continue to litigate something that the City Commission was having a first reading on the following day on something that was outside the scope of the Board did not make sense.

Mr. Angier repeated the original comments he made at the start of the discussion where he indicated that they were to take the City's ordinance and line it up with State Statute and that they could not put on any restrictions that went beyond State Statue. He said all the questions, suggestions, and all the requests were beyond the Board's responsibility. He said he loved that questions were being asked and answers were received. He said he agreed with Mr. Manganey that the Board needed to stay focused. He said the Board could be concerned with a lot of things, but it did not have the right of oversight or many other things; the Board's job was to stay on point with the item on the agenda which was to line City Code up with State Statute.

Mr. Zucchini responded that the Board was not a policy maker but that it could make recommendations. Mr. Angier agreed that it could make recommendations as long as they did not go beyond State Statute. He said every recommendation presented thus far went beyond State Statute.

Mr. Arserio said the reason he brought it for discussion was that if the Board's role was to make recommendations on decision that affected the safety and well-being of the citizens and visitors of Margate, the Board had every right to bring it up if rezoning an area or planning for a certain

area had those affects. He said his question about 1,200 feet was a legitimate question that wasn't answered at the time, and he waited a few weeks for the legal opinion which he said was different from Mr. Ziskal's response. Attorney Gonzalez clarified that the legal opinion had not said anything different. Mr. Arserio said he read it to mean that there could be a recommendation to extend the distance which was why he asked the question, but had he not brought it up, the Board would not have gotten the answer.

Attorney Gonzalez advised that there was a motion made for reconsideration, there was second, and the present discussion was about underlying issues from the previous meeting. He said it was appropriate to have the vote on the motion for reconsideration, and if it passed, then they could have the more specific discussion.

Mr. Arserio asked to have the motion pulled.

Mr. Angier reiterated to Mr. Arserio that the 1,000 foot requirement was discussed the previous month and it was per State Statute. He apologized that there was some confusion over Attorney Gonzalez's response but State Statue overrode anything the Board could do. Mr. Arserio said he was not suggesting going against State code; rather, whether the Board could enhance it to make it better. He said he would have never brought it up last week had he known then that it could not be extended.

Ben Ziskal advised the Board that members of the City Commission had requested having the board meetings video-taped. He said presently only the audio of the meetings had been being captured. He asked the Board for their feedback and any concerns they might have about the meetings be video-taped prior to implementing the video stream. Mr. Arserio commented that it was a great idea.

Mr. Angier thanked Attorney Gonzalez for being present at the meeting and providing a lot of good answers to the Board.

Mr. Ziskal said the video stream would be on the City website but he was not sure whether it would be on Channel 78 on Comcast initially.

There being no further business, the meeting was adjourned at 8:41 p.m.

Respectfully submitted, Prepared by Rita Rodi

Todd E. Angier, Chair