



**REGULAR MEETING OF
THE PLANNING AND ZONING BOARD
MINUTES**

Tuesday, November 7, 2017

7:01 PM

City of Margate
Municipal Building

City Commission

Mayor Tommy Ruzzano

Vice Mayor Arlene R. Schwartz

Anthony N. Caggiano

Lesla Peerman

Joanne Simone

City Manager

Samuel A. May

City Attorney

Douglas R. Gonzales

City Clerk

Joseph J. Kavanagh

PRESENT:

Todd E. Angier, Chair
Antonio Arserio
August Mangeney
Richard Zucchini

ALSO PRESENT:

Julie F. Klahr, representative from Interim Attorney Goren, Cherof, Doody & Erzol, P.A.
Reddy Chitepu, Acting Director of Economic Development and Director of D.E.E.S
Andrew Pinney, Senior Planner
Andy Dietz, Associate Planner

ABSENT:

Phil Hylander, Vice Chair
Douglas Gonzales, City Attorney

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 7:42 p.m. on Tuesday, November 7, 2017. A roll call of the Board members was done followed by the Pledge of Allegiance.

- 1A) APPROVAL OF THE MINUTES FROM THE PLANNING AND ZONING BOARD MEETING ON OCTOBER 3, 2017

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

MOTION: SO MOVE TO APPROVE

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes; Mr. Hylander, Absent; Mr. Angier, Yes. The motion passed with a 4-0 vote.

- 2) **NEW BUSINESS**

ID 2017-582

- 2A) **PZ-17-17** CONSIDERATION OF AN ORDINANCE TO AMEND SINGLE FAMILY HOME FENCE REGULATIONS ON SYMMETRICAL CORNER LOTS

Economic Development Department

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PETITIONER: CITY OF MARGATE, ECONOMIC DEVELOPMENT
DEPARTMENT

Andy Dietz led with a PowerPoint presentation. He explained that the purpose of the ordinance was to change the fence regulations so that a fence would be able to be erected on a symmetrical corner lot in the same manner that it would be if the corner lot was asymmetrical. He showed a diagram of an existing symmetrical corner and pointed out that it currently held two front yard classifications. He said the line of text being added to the ordinance would reclassify a side yard as the street side yard which would allow a fence.

Mr. Zucchini asked if there was a setback from the sidewalk for the side yard. Mr. Dietz responded that the sidewalk would be in the right-of-way and the setbacks would be measured from the property line. He said the setback for the fences would stay the same. He said on an asymmetrical lot, the fence could be built up to the property line which was usually also the location of the sidewalk. Mr. Zucchini commented that having a fence abutting a sidewalk could create a potential problem for the City if they had to repair the sidewalk. Mr. Dietz said it had not been a problem in the past; this ordinance would treat fencing on symmetrical corner lots the same as all other home property lots. Mr. Zucchini commented that it would not be a problem because the Code currently did not allow a fence in a side front yard.

Mr. Pinney, offered a Point of Information, noting that the current fence laws allowed 95% or more of the corner lots to bring a fence all the way to the sidewalk. He said in the rare instance where there was a symmetrical corner lot where the front property line was the same length as the side property line, the City's definition of corner lot identified the lot as having two front yards. He said there were a handful of homes in the City that were not able to enjoy the same fence privileges as the vast majority of other corner lots in the City. He said currently corner lots were permitted to have the fence brought out to the sidewalk on the side yard.

Mr. Zucchini asked if there was a setback for a fence on a front yard. Mr. Pinney responded that fences were not allowed anywhere on a front yard. Mr. Zucchini said he had several issues with allowing a fence along the side that abutted to the edge of the house. He said if the house were too close to the sidewalk in the front, there could be a line of sight problem at the corner. Mr. Pinney responded that the street side setback for a house was 15 feet in most of the zoning districts. Mr. Zucchini asked if it were possible for homes to have variances on their setbacks. Mr. Pinney said it was possible if there were unique conditions on the property and the homeowner pursued a variance. Mr. Zucchini said having a fence that directly abutted the sidewalk was a concern and that there should be some minimum setback for the side yard fence. Mr. Pinney responded that when the City first adopted a zoning code in the 1960's, it used to require that fences were in line with the sidewall of the house. The code was later amended so that the fence had to be 15 feet back from the side yard. He said there was a code change 5-7 years ago that allowed the fence to come all the way out to the sidewalk on the side yard. He reiterated that symmetrical lots were unique in that they had two front yards rather than a front yard and street side yard; the ordinance was intended to correct that issue so that all corner lots would be treated the same. Mr. Zucchini suggested that the Board might want to consider a minor setback from the sidewalk. He said another issue had to do with easements that ran along the side of a house. He asked if a fence could be built across the easement. Mr. Pinney responded that a fence could be built if the owner had easement

agreements from the five utility companies that serviced Margate, adding that it was common practice in the Building Department. He said fences were considered temporary structures and homeowners signed away their rights when the utility company signed off on them.

Mr. Zucchini commented that the ordinance pertained to single family homes, and he asked how townhomes were defined. Mr. Pinney responded that they were considered multi-family. Mr. Arserio said the Florida Building Code defined them as single family homes. Mr. Pinney said that they were multiple dwellings that were attached and were one structure. He said for zoning purposes, townhomes were only allowed in multi-family dwelling districts.

Mr. Zucchini expressed his concern about young planning graduates that had the idea to urbanize the environment and allow the construction of townhomes that were located at the edge of the sidewalk, and the possibility of also having fences allowed at the edge of the sidewalk on both sides which could create line of sight problems. Mr. Pinney, as a Point of Information, said the last code change which took place 5-7 years ago and allowed fences to come out to the sidewalk was a commissioner led initiative.

Mr. Arserio said Mr. Zucchini made some valid points and that he was not completely against it. He said there would not be a line of sight issue with chain link fences, but he agreed that there should be some type of setback. He said having a chain link fence up against the sidewalk was a safety issue, especially for someone riding a bike. Mr. Arserio made the following motion:

MOTION: TO CREATE A TWO-FOOT SETBACK FROM ANY
SIDEWALK OR RIGHT-OF-WAY

Mr. Pinney interjected that the sight line issue was addressed in the prohibition of allowing fences in both the front yard and the corner yard. He pointed out the locations of the front and corner yards on the diagram, noting that fences were prohibited in those vital areas. Mr. Zucchini said it was under the assumption that there was a setback for single family homes but not for a townhome built on the edge of the sidewalk. Mr. Pinney reiterated that the provision in the ordinance applied to single family homes and duplexes only. He clarified that under the City Code, there was a special R-2 district that was for duplexes and many times duplexes were treated the same as single family homes for driveways, fences, setbacks, etc.

Mr. Zucchini asked if any of the other board members had comments with regards to setback of the fence. Mr. Angier said he was fine with it. Mr. Mangeney said he was fine with it as it stood.

Mr. Chitepu advised that the ordinance was to allow the property owner of a symmetrical lot to put a fence at the property line just like any other property owner that had an asymmetrical lot. He said the item before them was not looking at setbacks. He said if setbacks needed to be established, then they would need to look at setbacks for all other property owners.

Mr. Arserio said his concern was for safety reasons, noting that people were not passing back and forth on a daily basis between the fence lines of two homes whereas on a sidewalk, a bicycle could get caught on a chain link fence.

Mr. Chitepu explained that the intent was to give homeowners on symmetrical lots the same rights to have a fence as other single family homeowners. Mr. Arserio agreed but said that a setback was needed because he did not think the fence should be allowed to run up against the sidewalk.

Mr. Angier asked how many incidents had occurred with fences on the other (asymmetrical) types of properties. Mr. Chitepu said he did not have the information at the time but he said all sight line issues went through his office and they would go out and look at them. He said when they approved any fences, they also looked at line of sight issues. Mr. Angier asked Mr. Chitepu if the City were having problems with fences on the other (asymmetrical) types of properties. Mr. Chitepu said more problems existed with bushes and landscaping than fences for line of sight issues.

Mr. Chitepu said if the Board wished to look at the setbacks, setbacks should be looked at for all of the single family homes. He said it would be discriminatory to ask for setbacks on single family homes on symmetrical lots but not the others. Mr. Arserio commented that properties in the Enclave in the Carolina Club off of Holiday Springs Boulevard all had wooden fences that were setback from the sidewalk one to two feet. Mr. Zucchini said he disagreed that it would be discriminatory as it was something that was not currently allowed. He said he thought a minor setback from the sidewalk should be required on symmetrical lots. Mr. Chitepu said his earlier point was that if setbacks were an issue, they should be looked at as a whole as a separate item.

Mr. Arserio said his concern was that amendments to ordinances were often advised or recommended to ordinances that already existed.

Mr. Mangeney said he agreed that it was important that the setbacks were uniform for all single family homes. He said there would be situations where some fences would be out to the sidewalk while others were setback within two feet and aesthetically it would not be good for the City. He said people have not been on notice that the City might change the setbacks. He said he did not have enough information or knowledge on fence setbacks to know whether they were needed. He said he would be happy to revisit the topic. He said he understood the safety and line of sight issues but that he would need additional information in order to vote on it.

Mr. Arserio suggested they should consider tabling it rather than amending one piece of an ordinance only to find out later that it affected something else. He suggested they look at fences as a whole and then come back and advise the Commission all at once.

Mr. Mangeney asked if there were any outstanding permit requests that were waiting for the Board's decision. Mr. Pinney said this item came up at the Building permit window when a couple with young kids said that there had been someone walking through their side yard and looking in their windows and they wanted to secure the yard with a fence. He said the permit could not be passed because it was a symmetrical lot and it had two front yards. He said the best that could be done would be to have them fence off their rear yard but it would still leave their side windows exposed. Mr. Zucchini commented that they should not object to a having a minor setback requirement.

Mr. Angier stated that his understanding of what he had heard was a request to place a setback requirement on symmetrical corner lots which would be inconsistent with asymmetrical homes.

He added that staff's suggestion was to pass the ordinance which would keep everything consistent, and then to go back and address setbacks as a whole for both symmetrical and asymmetrical lots. Mr. Pinney said that was a good approach, but as a recommending body, he said they could pass it with a recommendation to add a setback. Mr. Zucchini said he did not agree that an asymmetrical lot was analogous to a symmetrical lot because a non-symmetrical lot could have different shapes and might not necessarily abut along the sidewalk. Mr. Angier clarified that the problem with the symmetrical lot was that, in the Code, it had two front yards instead of a front yard and a side yard and people who wished to fence in their side yard were being penalized by the Code. Mr. Zucchini responded that he was in agreement with it as long as the new symmetrical side yard had a minimum setback.

Mr. Zucchini seconded the motion made previously by Mr. Arserio.

There was additional discussion clarifying the motion. Mr. Angier clarified that the ordinance was for all single family and not just symmetrical lots. Mr. Arserio asked whether a sidewalk was considered a right-of-way. Mr. Chitepu clarified that a sidewalk was in the right-of-way and that most of the time the right-of-way was the back of the sidewalk but sometimes the right-of-way could be ten feet into a resident's yard with the sidewalk closer to the road, depending on the lot. He said limiting it to sidewalks only would not work because if the sidewalk were in the right-of-way and there was space between the right of way and the sidewalk, the homeowner would not be able to put the right-of-way up to the sidewalk; he could only go to the right-of-way line. He suggested using right-of-way. Mr. Arserio gave a scenario where the sidewalk could be fenced in if the street were the right-of-way. Mr. Chitepu clarified that there was a difference between the right-of-way and the right-of-way line and, for this purpose, the right-of-way line should be used because the right-of-way line and property line were the same. He said the right-of-way was owned by the City of a public entity, and the sidewalk was always in the right-of-way, and most of the time, the backside of the sidewalk was the right-of-way line or the property line, but sometimes it was not. He said sometimes the property line or the right-of-way line was towards the structure so there was more green space between the sidewalk and the right-of-way line or the property line. In that situation, the property owner would not be able to come up to the sidewalk; he would only be allowed to put the fence at the property line. The motion was restated as follows:

MOTION: TO CREATE A SETBACK OF TWO FEET FROM ANY
RIGHT-OF-WAY LINE AND/OR PROPERTY LINE ON ALL SINGLE
FAMILY HOMES

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, No; Mr. Zucchini Yes;
Mr. Hylander, Absent; Mr. Angier, No. The motion failed with
a 2-2 vote.

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

MOTION: TO DENY AS PRESENTED

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, No; Mr. Zucchini, Yes;
Mr. Hylander, Absent; Mr. Angier, No. The motion failed with
a 2-2 vote.

Mr. Mangeney made the following motion:

MOTION: TO TABLE TO THE NEXT MONTH

Mr. Chitepu advised that the item would need to go before the City Commission and any recommendations or comments from the Board would be included in the meeting minutes as well as incorporated in the agenda fact sheet for the City Commission to review and consider at the City Commission meeting, rather than table and delay the item.

Mr. Mangeney withdrew his motion.

Mr. Angier, passed the gavel, and made the following motion, seconded by Mr. Mangeney:

MOTION: TO APPROVE

Mr. Angier asked if the concerns raised by board members regarding the need for setbacks should be incorporated. Mr. Chitepu said information from the meeting minutes would be incorporated in the agenda fact sheet for the commissioners to review.

Mr. Arserio commented that he was in favor of the ordinance but he thought there should be some sort of setback.

ROLL CALL: Mr. Arserio, No; Mr. Mangeney, Yes; Mr. Zucchini, No;
Mr. Hylander, Absent; Mr. Angier, Yes. The motion failed with
a 2-2 vote.

ID 2017-694

2B) DISCUSSION OF VEHICLE STACKING REQUIREMENTS FOR DRIVE-THROUGH USES

Andrew Pinney explained that the Planning and Zoning Board had previously expressed concerns about the City's drive-through stacking requirements; in response, he prepared a memorandum that was included in the meeting back-up and described Margate's current Code requirements and compared them to other local cities in Broward County. The analysis, he said, showed several opportunities for Margate to enhance its drive-through stacking requirements. He highlighted food service which he said he understood to be the Board's most important issue.

Mr. Pinney explained that four vehicle reservoir areas were required for food service, and each reservoir area needed to be ten (10) feet by twenty (20) feet. He said the reservoir area started at the vehicle that was being serviced. For example, at a drive-through restaurant, he said it would be the window where the patron paid and picked up their food. He said many cities had longer stacking and they started from the first stopping point, i.e., the menu board where orders were placed. He said there were a few restaurants in Margate where the traffic sometimes overflowed into the road and created traffic issues where during busy times, specifically, the Dunkin Donuts at Atlantic Boulevard and Banks Road.

Mr. Pinney said he would take recommendations from the Board and include them in the ordinance. He said the ordinance would go through the Development Review Committee and the Planning and Zoning Board before it went on to the City Commission.

There was a short discussion about reservoir spaces sizes with Mr. Pinney pointing out that it was 10 feet by 20 feet in Margate, but it varied up to 22 feet in some cities, and was not specified at all in other cities.

Mr. Arserio commented that it six cars seemed to be prevalent in the comparison provided. He suggested that it be counted from the first stopping point. However, he said in those situations where they ordered from the window, it should be eight cars. He suggested that Margate increase from four to six cars starting at the first stopping point.

Mr. Manganey commented that he liked the simplicity of Parkland's which was 100 feet, noting that it would be a big improvement and it provided little wiggle room for interpretation. He said it did not necessarily have to be 100 feet. Mr. Pinney commented that there was still some wiggle room depending on the part of the lane from which they were measuring, i.e., inside, center, etc. Mr. Pinney said he preferred the vehicle reservoir areas because they could be boxed out so one could visibly see the layout.

Mr. Zucchini commented that the starting point and other terms needed to be defined. Mr. Arserio responded that he had suggested the starting point be the point at which the order was placed; and if no ordering board, it would be further back. Mr. Zucchini said that would be a problem if a food establishment, like Chick-fil-A, had employees taking orders before people reached the ordering board. Mr. Pinney said the first stopping point, as recognized on a site plan, would be where the order was taken via the intercom system. Mr. Angier said that the drive-through lane interfered with parking and was a problem at a particular Chick-fil-A.

Mr. Manganey said that in addition to adding reservoirs, where one picked up the food should always be counted so there would not be an issue if one did not order from a window. Mr. Arserio said it could be done from the point where the food was picked up as long as the length was increased. Mr. Manganey agreed, noting that the simplest language would work the best.

Mr. Zucchini asked if consideration should be given to having a standby reserve area, similar to McDonalds. Mr. Pinney said that it made sense, noting that some cities required an escape lane, although Margate did not. He said an escape lane requirement could be added if it were something the Board wanted.

Mr. Angier said he agreed that the point where the food was picked up should be counted and the reservoir area should be longer if the order was placed somewhere other than the ordering window. He said he also agreed with having an escape lane. He asked the Board if they had a recommendation for staff to bring to the City Commission.

Mr. Manganey said he preferred the stacking increase to eight cars to include for the window and the escape lane, noting that many of the cities had six.

Mr. Zucchini asked about having a separate reserve area for waiting in those cases where someone has a large order. Mr. Angier asked if the City could require it. Mr. Pinney responded that he thought it fell under the City's zoning authority where it could require special parking. Mr. Zucchini indicated that two spots would work.

Mr. Arserio said he agreed with the other's comments but suggested that staff talk with the police and fire departments to see where the safety exit should be placed because it might not

make sense for all drive-through businesses. Mr. Pinney said that his experience had been that the escape lane was the entire length and duration of the service lane; it was a separate lane there in the case of an emergency.

There was a short discussion about whether the suggested changes would apply to other drive-through businesses. It was agreed that the recommendations were specific to drive-through businesses providing food service.

Mr. Zucchini said there were talking about the number of reservoir spots per service aisle, adding that some businesses like Checkers were multi-aisle. Mr. Mangeney commented that requiring future Checkers to have 16 reservoir areas seemed excessive. Mr. Pinney commented that the more the City enhanced the drive-through stacking, the bigger the properties would need to be. Mr. Mangeney asked how Checkers reservoir areas were counted. Mr. Pinney said they had a drive-through on each side of the restaurant so each drive-through would have its own number of vehicle reservoir areas and its own escape lane.

Mr. Arserio asked how it worked with McDonalds where there were two lanes next to each other that fed into one lane. Mr. Mangeney said the real point was to keep cars off the road and from blocking parking spaces. He said in the cases of Checkers and McDonalds, parking was not being blocked with much less setback because they had two lanes. Mr. Pinney suggested the possibility of sharing of an escape lane when there was a set-up like McDonalds where two lanes fed into one.

Mr. Angier summarized the Board's recommendation which were as follows: increase from four to eight reservoir spaces starting at the pick-up window; add an escape lane; and, add two order waiting parking areas. Attorney Klahr said a vote was not needed since it was a discussion. She said it could be viewed as a consensus as it would be brought back for approval.

After further consideration, Mr. Pinney said that since McDonald's only had one window providing food service, it would be technically considered one lane.

Mr. Pinney said he would something for them to review in the next few months.

ID 2017-701

2C) DISCUSSION OF BYLAWS FOR THE PLANNING AND ZONING BOARD

Attorney Julie Klahr, representative from Interim City Attorney Goren, Cherof, Doody & Ezrol, P.A., explained that there had been rules and regulations adopted by a prior Board many years ago and some of those rules had since changed. She said the Board's duties, authorities, roles and responsibilities were dictated by the City Commission and set forth in the City's Code of Ordinances, as well as by State Statute. She said it was through the Statutes that the City Commission derived its direction to delegate authority to them. She said the bylaws were generally not referred to as bylaws, but the Board could adopt Rules of Procedure that would guide their action. She advised that the Board could look at the rules that were provided many years ago to the prior Board as a stepping stone from which they could work. She said her office could assist and work with them. She said the bylaws that were provided as examples "stepped on the toes" of what had already been provided for in the City's ordinances. She said they should rely on the Code as it were written and take it from there. She said her

recommendation would be to adopt Rules of Procedure to govern how they conducted their meeting.

Mr. Arserio agreed and he recommended they look at the rules currently in place and update them to match the Code. He suggested they might want to add the order in which the roll was called as she had mentioned in the Board of Adjustment meeting earlier. Ms. Klahr said that it was just an example of the type of rules they might adopt.

Mr. Zucchini said he was okay with the rules of order from 1992, and that he agreed with most of the items. He suggested that they define a quorum which he said should enable a majority decision, i.e., three or five members present. He said if there were a vacancy, it should be filled from the Board of Adjustment as per City ordinance.

Mr. Angier said he believed that quorum had already been defined as being at least three of the five members so there was no need to redefine it.

Mr. Mangeney asked whether the amended ordinance that had been made for the Board of Adjustment had also been made for Planning and Zoning. He asked for it to be read out loud as it would serve as a good base point from which to work off for the updated Rules of Order and Procedure.

Andrew Pinney said he read from Ordinance 2017-20 at the Board of Adjustment meeting which he said related more to the scheduling of the Boards. He said the old language about having the Planning and Zoning Board start first was struck out and the new language read, "Meetings of the Planning and Zoning Board shall be held once per month unless cancelled by the Chair for the lack of agenda items. Meetings of the Planning and Zoning Board may be held at the call of the Chair and at such other times as the Board may determine. Meetings shall be held in the Commission Chambers of the City Hall of the Margate unless said chambers are unavailable. The Board may, by the adoption of its own rules and regulations consistent with the provisions of this division, establish a regular meeting night and rules for the calling of regular and special meetings of the Board."

Mr. Mangeney asked whether the ordinance defined a quorum. Attorney Klahr said that it did not. Mr. Mangeney said the old rules referred to Robert's Rules of Order; he asked if the ordinance did as well. Attorney Klahr said she had not looked for reference to Robert's Rules, but noted that many municipalities required their boards to operate under Robert Rules. Attorney Klahr said there was a provision regarding Robert's Rules in the City Code but it was not specifically for this Board. She said that since it was what the Commission was regulated by, it was generally what the boards and committees used to guide themselves.

Mr. Angier asked whether it would be the City Commission's decision as to what constituted a quorum, the number of board members needed to hold a meeting, and, if one were absent, that they must have someone from the Board of Adjustment. Attorney Klahr responded that generally it would be the City Commission as they were the ones who appointed the Planning and Zoning Board, adding that they had already given some delegation of authority to the Chair of the Planning and Zoning Board to fill temporary vacancies. Mr. Angier commented that during orientation board members were advised that their meetings would be held according to Robert's Rules of Order and, as such, they were under the assumption that a quorum was three. If it were to change, he asked whether it would be the board members or the City Commission to make the change. Attorney Klahr said it would most likely be set by the

Commission if they wanted them to do something different. She said that was generally how many of the boards in the Code were set whereas a quorum was identified as a majority of members. She said there were various boards of different numbers and some of them had different quorum requirements because they had a different number of members. Mr. Angier asked, specifically for the Planning and Zoning Board, if the Commission would need to decide what a quorum was, and how many members would need to be present to hold a meeting and make decisions. Attorney Klahr said that was correct.

Mr. Zucchini disagreed. He referenced the Rules of Order and Procedure and read the last item, "These rules of order may be amended, added to, or suspended by a majority of the Board at any meeting." He said the Board could decide to define a quorum as enough people to break a tie, because it was not defined for them. He commented how they had been deadlocked on a few issues that evening. He said there should be enough members to break a deadlock, i.e., either three or five. He said provisions already existed in the ordinance that the Board shall replace a member with the Board of Adjustment if there were an absence.

Attorney Klahr asked the Chair if she could provide a clarification on a response to a question he had posed to her. She said her suggestion would be that if the Board made some decision or determination that the Commission did not agree with, ultimately the Commission would be the arbiter of that determination. She said the Board had authority because the Commission bestowed it upon them, and if the Commission did not agree with a rule or procedure that the Board might adopt, they would ultimately make the determination either by their acquiescence to the rule or by adopting a different rule.

Discussion ensued about Mr. Zucchini's recent comment with Mr. Angier asking whether a board member would need to be sent home in the event that one board member was missing or whether they would select someone from the Board of Adjustment so that a quorum could be achieved. Mr. Zucchini said a board member would not be sent home. Mr. Arserio clarified that what was meant was that they would need to add someone to prevent a tie-breaker. Mr. Zucchini said if there were two people missing, then the Board would not need to fill those two spots, adding that the Board was not allowed to replace more than one member.

Mr. Arserio commented that the ordinance was not written correctly as it should have listed quorum. He asked what would happen if only the Board Chair showed up. He said that since the City ordinance indicated that only one person could be appointed and it did not identify quorum requirements, the meeting would have to be cancelled.

Mr. Zucchini asked if he could ask a question of Vice Mayor Schwartz, who was seated in the audience, because he said he believed the City Commission had discussed the issue of allowing the Board to add one representative from the Board of Adjustment. Mr. Angier asked Vice Mayor Schwartz if she would like to respond.

Vice Mayor Arlene Schwartz said the Commission made the decision because it felt that it was being misunderstood that the Chair had the right to appoint one person if two board members showed up for a meeting. She said it was her personal opinion that a quorum was one more than half; for example, for seven people, a quorum would be five; and, for five people, a quorum would be three. She said that if two people showed up, the Chair would appoint one and they would never have a deadlock because they would have an odd number. She said if the Chair were the only person to show up, there would be no need to appoint one person as they still would not have a quorum and a meeting could not be held. She said the whole idea was to

make sure that the members of their Board had the lasting vote to determine an item that came before them rather than what happened at a prior meeting when three members from another Board had the majority to rule on items that came before the Board of Adjustment. Having a majority from another board could possibly change their opinion, and appointees might not necessarily have had all the information to make a decision. She said a quorum in the Commission's mind would have been three in their case, and that the Chair could only appoint one person.

Mr. Mangeney asked if the Commission envisioned a fifth person being appointed if only four board members appeared. Vice Mayor Schwartz said "no." She said the reason it came before them was because three members of the Planning and Zoning Board sat on a Board of Adjustment meeting, and the reason they had three was because one of the members felt that having four members could have resulted in there being a deadlock. She said the Commission envisioned three which would never leave them in a position of having four and a deadlock vote. She also commented that, depending on the board, petitioners may have paid money to have their items heard and, if they were deadlocked, they would be worse off. Mr. Arserio said he agreed with the spirit of the Statute but his only concern would be that they were doing it to ensure that they would have a quorum because there had been attendance issues in the past. Mr. Arserio expressed a concern about only one person showing up, the Chair being able to only appoint one person so there would not be a quorum, and the business person having to pay. Vice Mayor Schwartz said there should not be an additional burden placed on the petitioner who came to the meeting in good faith.

Mr. Angier said he thought part of the Commission's decision to appoint one person from the other board was based on the concern that the Board of Adjustment had three members from the Planning and Zoning Board on it and the Board of Adjustment felt as though they were no longer the Board of Adjustment. He said appointing one member from Planning and Zoning would have given them a quorum so they could hold their meeting. Vice Mayor agreed. She also pointed out a scenario where staff might have made a recommendation to deny and the Board of Adjustment members who had reviewed the back-up might have felt differently, but the three Planning and Zoning Board members might have agreed to go along with staff's recommendation because it sounded reasonable to do so. However, she said it may not have been what the full board of the Board of Adjustment might have chosen to do. She said it was envisioned years ago that only one person would be appointed so that a quorum would be three. Mr. Angier restated that three was a quorum, and Vice Mayor Schwartz said that was correct in her mind and, though she could not speak for the other commissioners, she believed they were all in agreement that three was a quorum.

Mr. Angier asked Attorney Klahr and Vice Mayor Schwartz if the definition of three being a quorum needed to be codified. Vice Mayor Schwartz said that based on that evening's discussion and the interpretation of "shall" and "temporary," it appeared that it should be put in print so that the question did not come up again. Mr. Angier asked if it needed to come to her as a staff recommendation. With Attorney Klahr's concurrence, Vice Mayor Schwartz suggested that they do so because there had been an issue with how the language was perceived by both boards. She said she understood that the City Attorney saw it as them having the right to do it, but they did not necessarily have to, while others interpreted it as them having the right and that they absolutely must do so because of the word "shall."

Mr. Arserio asked what would happen if two board members came to a meeting and the Chair decided that they did not want to [appoint a third member]. Mr. Angier said if two members were missing, and they had three members present, they had a quorum and they did not need to have anyone from the Board of Adjustment. Vice Mayor Schwartz agreed.

Mr. Mangeney commented that, while he was not there that evening in his capacity as an attorney, neither he nor Attorney Klahr thought the use of "shall" meant that the Chair must act. Vice Mayor Schwartz concurred. He said, "He shall be granted the authority," was clearly permissive. He pointed out that if the Board adopted a rule that read "he must" and the language in the ordinance was permissive, he would not be comfortable with the Board having bylaws that were more restrictive than the ordinance. Vice Mayor said that would put them back in the same position that if three of the Board members did not show up, then they would be looking at a stacked deck with members from the other board.

Mr. Zucchini said he recalled at the last Commission meeting, that the commissioners interpreted "shall" to mean "must." Vice Mayor Schwartz responded that they actually changed the word "may" to "shall" so that "may" was no longer permissive.

Mr. Mangeney said, "He shall have the authority" meant that his authority was not permissive. He said if it said, "He may have the authority," that would be a problem. "Shall have the authority" was not "he shall be obligated to appoint." He said if the commissioners wished to change the language, they should but he would never vote for a provision of their rules that contradicted the language of the ordinance. He said the Commission adopted an ordinance that gave the Chair the ability but not the obligation to do it. He said he did not understand why the Board would place an obligation that had not been created by the Commission. Mr. Arserio said the rules needed to be cleaned up and they should define a quorum.

Vice Mayor Schwartz said staff understood that the Board had come to the conclusion that there should be no less than three people to make a quorum. Mr. Angier asked if the Board should go through City staff in order to bring something to the Commission. Vice Mayor Schwartz agreed that they should since they were an advisory board. Mr. Angier suggested to staff that something be placed before the Commission about codifying the definition of a quorum for the Planning and Zoning Board and Board of Adjustment as well as whether "shall" or "must" meant that someone from another board absolutely had to be placed on their board in a board member's absence even after the definition of a quorum was had been codified. Vice Mayor Schwartz commented that the use of discretion was being questioned as far as whether "shall" meant one must do so or that one had the discretion to do so.

Attorney Klahr commented that from the context of interpretation, it was very unclear in the way it [ordinance] was crafted if the intent were that somebody would be required to do something under one set of circumstances but not under another. She said they could help clarify it. Vice Mayor Schwartz responded that it would be a good idea because even though it had not come up for many years, it had now and she had seen the 2-2 votes. She said in the Commission's mind, it was nothing more than adding one more person to make a quorum. Mr. Angier commented that even though an item had a 2-2 vote, the item still moved forward to the City Commission as the Planning and Zoning Board was a recommending body.

Mr. Arserio said he agreed with the spirit of it, and that it just needed to be cleaned up because many times he went by the way things were written.

Vice Mayor thanked the Board for calling on her. Mr. Angier thanked the Vice Mayor.

Mr. Mangeney asked whether the ordinance required the appointment of a secretary. He said it seemed redundant because the job of the secretary was to take minutes which was being by staff, as well as maintaining the records, providing notices, etc. He said all the work of a secretary was being done by professional staff. Attorney Klahr said that the Code of Ordinances read that the Board was entitled to adopt rules and regulations of procedure. She said rather than calling them bylaws, she suggested they be called Rules of Procedure.

Andrew Pinney read from Section 2.86 Creation; appointment; terms; officers; advisors, "A city planning and zoning board for the City of Margate is hereby created and established, consisting of five (5) members. The said board members shall be appointed by the city commissioners, and shall serve without compensation and at the pleasure of said city commission. All appointments shall be for a two-year period. The members of the said board shall elect a chairman, a vice chairman, and a secretary from its membership..."

Attorney Klahr said in that context, generally the secretary would be someone to oversee to ensure that the clerk was taking the minutes and other things and coordinate them and bring them back to the board. She said there was no other role or responsibility of that office.

Mr. Arserio mentioned the order in which the vote was taken and there was a short back and forth about what order was being used. Rita Rodi clarified that in her experience the Chair voted last, the Vice Chair second last, and the rest were based on their seniority on the board. She said in this case, the other three members were appointed at the same time, so she called them in alphabetical order.

Mr. Mangeney said he thought the commissioners should eliminate the secretary position. Mr. Angier said he agreed. He said the position of secretary may have been important at one time but staff currently did a great job and none of the board members had the time to perform it. He said the secretary position was just a title with no function. Mr. Arserio agreed.

Attorney Klahr said there were several items in the existing rules that needed to be updated. She said staff would update them and they would be brought back before them for their consideration. Mr. Mangeney asked if the Board would operate under the existing rules until they were updated; Attorney Klahr said that was correct.

ID 2017-702

2D) DISCUSSION OF THE APPOINTMENT OF A BOARD SECRETARY TO THE PLANNING AND ZONING BOARD

Mr. Mangeney referenced his comments in the previous item, but noted that it was required under the current Code. Mr. Arserio agreed the position was not needed but he also agreed that the law needed to be followed. Mr. Arserio made the following motion, seconded by Mr. Mangeney:

MOTION: TO APPOINT RICHARD ZUCCHINI AS SECRETARY

Mr. Zucchini said he accepted and understood it was to fill in the hierarchical structure. Mr. Angier said his role was strictly a figurehead as the job function was already being done by Rita Rodi.

Vice Mayor Arlene Schwartz said it was her understanding that, per the bylaws, the secretary signed the minutes and would also read the agenda items which was likely because the City Attorney normally had not been present at their meetings. Mr. Angier commented in his six years' experience, the Chair had asked the Vice Chair to read the items. Mr. Arserio commented that since the City Code did not specify the length of time in which to appoint a secretary, he would retract his motion and table it until such time as the City Commission eliminated the position. He made the following motion which died for the lack of a second:

MOTION: TO TABLE

Vice Mayor Schwartz said it was possible the City Commission might not be in agreement. She suggested that the Board appoint a secretary and it could change in the future if necessary. She said they should not arbitrarily decide to bypass their existing bylaws. Attorney Klahr said she agreed with the Vice Mayor.

Mr. Mangeney commented that the bylaws did not specify the duties of the secretary. Attorney Klahr said it was in the City Code.

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

MOTION: TO APPOINT RICHARD ZUCCHINI AS SECRETARY

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes;
Mr. Hylander, Absent; Mr. Angier, Yes. The motion passed with a 4-0 vote.

PZ 2017-705

2E) DISCUSSION ON MEETING TIME FOR PLANNING AND ZONING BOARD MEETINGS

Chair Angier stated that earlier that evening, the Board of Adjustment had decided to meet on the first Tuesday of the month at 6:30 p.m., so that the Planning and Zoning Board could continue to meet at 7:00 p.m., on the first Tuesday of the month. He said he had not experienced a Board of Adjustment meeting that had extended beyond one-half hour so it should not affect the Planning and Zoning Board's meeting time of 7:00 p.m. He asked the other Board members if they were in agreement.

Mr. Mangeney, Mr. Zucchini, and Mr. Arserio each said they were in agreement with meeting on the first Tuesday at 7:00 p.m.

Mr. Arserio said he believed the City Commission had discussed the ability for the Chairs to decide whether to switch the order of the meetings in the event the Planning and Zoning Board had fewer items than the Board of Adjustment.

Mr. Angier said he and Ben Ziskal had several discussions about the Board of Adjustment's consensus that the Planning and Zoning Board talked too much. He said he had told Mr. Ziskal

that he was fine with switching the meeting order when the meeting agenda for the Board of Adjustment was smaller. He said he thought a verbal agreement existed for them to be able to switch the meetings. He said he understood it had recently been changed by the City Commission where the meetings were now set in stone. He said he was fine with meeting on the first Tuesday of the month at 7:00 p.m., as long as the other board members were as well.

Attorney Klahr advised that since the boards had items that requiring posting and public notice for the meetings, it was important to adhere to the posted meeting times from the perspective of the Sunshine Law and public notice.

Mr. Angier asked the board members if they understood that their meeting could not start until 7:00 p.m., even if the Board of Adjustment meeting finished in five minutes. Mr. Arserio suggested the Board of Adjustment might start at 6:45 p.m., to avoid that scenario. Mr. Angier said he recalled that the original ordinance said that the Board of Adjustment meeting would start no later than 20 minutes after the end of the Planning and Zoning meeting. Attorney Klahr reiterated that if a meeting were noticed at a certain time, it would be disenfranchising to the person who was not able to make the meeting and had planned to speak on the item, in addition to Sunshine Law issues.

Vice Mayor Arlene Schwartz clarified that the City Commission had not said that the Board of Adjustment should always go first. She said that staff would determine each month which board would go first, depending on the length of the agendas. Mr. Angier asked if that conflicted with the City Attorney's comments. Vice Mayor said the attorney's point was that the meeting could not start sooner than the posted time. Attorney Klahr reiterated that it was not just the agenda; rather, it was the public notice that got mailed and posted two weeks in advance. Vice Mayor Schwartz acknowledged that switching the meetings did not work well and having the meetings set in stone would be better. Mr. Angier said he thought that the boards had the ability to set the meeting time. Attorney Klahr said that they did based on what had recently been adopted. She said previously the Code had language that said one meeting had to occur within 20 minutes of the other, but it had been stricken. Vice Mayor said the direction was that staff would make the decision based on the length of the agenda. Attorney Klahr said staff had sufficient knowledge well in advance to know how it would occur.

Reddy Chitepu said that when it was discussed at the City Commission meeting, it was staff's understanding that it would notify the two board chairs prior to the advertising being sent out. He said the decision would be made well in advance of when the petitioners would need to send out notifications. He said once staff reviewed the agendas and the number of items on each, staff would coordinate with the board chairs to decide which meeting would go first, prior to any public notices or postings. Vice Mayor commented that, as a resident, it did not make sense to flip the meetings back and forth and, perhaps there should be a workshop between the chairs to discuss.

Mr. Angier said he did not have a problem with the Planning and Zoning meeting starting at 7:00 p.m., on the first Tuesday of the month nor did he think that anyone else did. He said he had no issue having it written into an ordinance that the Planning and Zoning Board would start at 7:00 p.m., and the Board of Adjustment would start at 6:30 p.m. He said he understood if the Board of Adjustment meeting needed to run over, it was okay that the Planning and Zoning Board meeting would start a few minutes late because people who came to speak would have that opportunity.

Mr. Arserio said that another issue that needed to be in writing had to do with the agendas because he said they typically came out less than one week before the meeting. Vice Mayor Schwartz said if the board wanted to model the City Commission, the agenda and back-up were made available the Thursday prior to the Wednesday meeting, but if the board needed more time, the board should do something that worked for them. Mr. Angier said he felt that the information he received on the agenda items seemed to come in plenty of time, but he said there were a few times where they received a great deal of information and would have liked to have had more time. He said he appreciated having the Development Review Committee meeting minutes and sometimes they were not available until last minute. Mr. Arserio agreed. He said his point was that if the two board chairs got together before the agenda was posted publicly to decide which meeting went first, it could be an issue. He said it should be put in writing. Mr. Angier said the meetings should have set times. Vice Mayor Schwartz agreed.

Mr. Mangeney commented that everyone agreed that the meeting should have a set time. He pointed out that the Board had already adopted a set time of 7:00 p.m., and the Board of Adjustment had adopted a 6:30 p.m. meeting time.

Mr. Zucchini commented that the issue was that the Commission had voted to flip flop the meetings. Vice Chair Schwartz clarified that the Commission voted to allow staff to make the decision based on the length of the meeting agendas which she said did not make sense to her personally.

Mr. Angier reiterated that the Planning and Zoning Board agreed they would continue to meet at 7:00 p.m. on the first Tuesday of the month.

3) **GENERAL DISCUSSION**

Richard Zucchini commented that at a previous meeting, the board had requested clarification on the elevator code requirements for multi-story, multi-family housing. He asked if the board should make a motion to add it as an item to the next meeting agenda. He said had received a response and a clarification from the city attorney but after that, the issue died. He said the issue was that the City was looking at new, multi-family construction and there had already been some pockets of two and three-story, high-density walk-ups, and they were magnets for low rent and higher crime. He said there had been an issue with walk-ups on Melaluca Drive in the past. He suggested that they look at the Code to see if anything above one-story in a higher density, multi-family format should be required to have elevators. Mr. Angier asked Mr. Pinney if it were possible. Andrew Pinney said he spoke to Mr. Zucchini a few weeks ago about this subject. He said it was his understanding that the elevator requirements were set forth in the Florida Building Code. He said that he was not an expert in the Florida Building Code. Mr. Mangeney said that City Attorney Doug Gonzales stated at the last meeting that the Florida Building Code was a floor and not a ceiling. He said he had heard previously from Attorney Gonzales that the City could not go against the Florida Building Code. Mr. Angier asked Mr. Pinney if it were possible for him to meet with the Building Department and ask them to look into Mr. Zucchini's request. Mr. Pinney said he could meet with the Building Official.

Mr. Arserio suggested that it also be looked at from the perspective of the American with Disabilities Act (ADA), which he said superseded the Florida Building Code. He said he also believed that the police had the ability to set certain rules for safety issues under the Florida Statutes, such as not allowing a convenience store to fully block their windows. Attorney Klahr

said that it was through a City ordinance rather than a police regulation. She clarified that ADA did pre-empt the Building Code. She said it had certain requirements and, for some things under the Building Code, there were other ability type regulations, but it did not supersede the Building Code. She said there were different rules that married together in a different way. Mr. Arserio said that if a handicapped person wanted to move into a facility, they would have to be allowed full use of it under ADA. Attorney Klahr said if the place did not have an elevator, they would not be required to install one. Mr. Arserio said he felt that as a resident, if it were something that could be done, it should be done. He said he visited all the fire rescue stations and feedback from the firefighters was that there was a significant cost increase to them because of the need for special tools and equipment to enter apartments that had no elevators. He said he would also like to obtain the opinions from the police and fire rescue. Reddy Chitepu said it could be added as a discussion item for the next meeting with some back-up materials.

Mr. Zucchini said another issue that had come before the Board of Adjustment was a petitioner for a beer and wine license for hours of operation. He said currently the Code did not differentiate between restaurant beer and wine sales versus a liquor store, night club, or package store. He said that in fairness to the City's restaurant owners, the Code should differentiate the distinction in the Code. He said the Code for restaurants should be much less restrictive than it was for liquor stores, package goods, and night clubs. Discussion ensued about the variance request and Mr. Zucchini explained it was due to a distance requirement. Mr. Angier explained that the reason it went before the Board of Adjustment was to prove a hardship in order to get a variance. Mr. Zucchini said the Board of Adjustment gave the variance with restrictions and the petitioner appealed to the City Commission. He said it was an obvious mistake in the City Code that there was no differentiation. Mr. Angier commented that the variance process worked. He said if the item became a recurring problem, the City Commission would have to deal with it from a codification standpoint; it would not be the Planning and Zoning Board's responsibility. Mr. Arserio said the issue had to do with the fact that the manner in which the City did the measurement differed from the County and he thought they should be done the same.

Mr. Angier asked if this came under their jurisdiction. Mr. Pinney responded that as a recommending body, they could give direction for staff to prepare a draft ordinance. He said that while restaurants were different than bars and should have different regulations, his concern was crafting language to make those distinctions since most bars offered food service and they would have a food license. Even though they were called a bar, he said they were essentially the same inside. Mr. Zucchini said he was speaking about beer and wine versus liquor. Mr. Pinney said there were 2COP bars in the City, but many of the bars in the City also had food licenses so it would be difficult to distinguish between the two in the Code unless an exemption was given to anyone that had a food service, but then it would be a bar.

Mr. Mangeney said he agreed that it was something that should be visited. He said when the constitutional cigarette ban came down, it differentiated between restaurants and bars and it was done by percentages of their sales that were alcohol and food. He said it was just a suggestion but he did not know how the City could verify it.

Mr. Pinney said another idea would be to waive the distance requirements for any 2COP and only have the separations for liquor sales. He asked the Board what they thought about his idea, noting that it would be only for consumption on premises. Mr. Pinney commented that he

had been to Chuck E. Cheese's for kid's birthday parties and they sold beer and wine there. He said the City's Code had not caught up with the changing times.

Mr. Angier asked Andrew if he could put something together from the 2COP standpoint; Andrew agreed.

Mr. Zucchini said he had some additional items that could be addressed at the next meeting.

Mr. Pinney said the 2018 meeting schedule would be put on the next agenda for their approval. He said there would be two conflicts: in July, the City Commission would be meeting on the first Tuesday so they might want to move their meeting to another day that week or move it to the following week; in August, National Night Out fell on the first Tuesday. Mr. Mangeney suggested that they meet on the same night as the Board of Adjustment. It was agreed that it would be discussed at the next month's meetings.

Mr. Angier wished Doug Gonzales lots of luck in his next venture. He thanked Attorney Klahr for attending.

There being no further business, the meeting was adjourned at 9:33 p.m.

Respectfully submitted,

Prepared by Rita Rodi

Todd E. Angier, Chair