



**City of Palm Coast
Minutes
Planning and Land
Development Regulation
Board**

City Hall
160 Lake Avenue
Palm Coast, FL 32164
www.palmcoastgov.com

***Chair Clinton Smith
Vice Chair Sandra Shank
Board Member James Albano
Board Member Charles Lemon
Alternate Board Member Hung
Hilton
Alternate Board Member Suzanne
Nicholson
School Board Rep Patty Bott***

Tuesday, September 20, 2022

5:30 PM

City Hall-Community Wing

- Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- Public comment on issues on the agenda or public participation shall be limited to 3 minutes.
- Other matters of concern may be discussed as determined by Committee during the meeting.
- If you wish to obtain more information regarding the agenda, please contact the Community Development Department at 386-986-3736.
- In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing a reasonable accommodation to participate in any of these proceedings or meeting should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- It is proper meeting etiquette to silence all electronic devices, including cell phones while meeting is in session.
- Any person who decides to appeal any decision with respect to any matter considered at this meeting will need a record of the proceedings, and for such purpose, may need to hire a court reporter to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Call to Order and Pledge of Allegiance

Chair Smith called the Planning and Land Development Regulation Board (PLDRB) meeting of September 20, 2022 to order at 5:30pm.

Roll Call and Determination of a Quorum

Present and responding to roll call were:

*Chair Smith
Vice Chair Shank
Mr. Lemon
Ms. Nicholson
Mr. Hilton*

Mr. Albano

Excused:

Ms. Bott

Approval of Meeting Minutes

1 MEETING MINUTES OF THE AUGUST 17, 2022 PLANNING AND LAND DEVELOPMENT REGULATION BOARD MEETING

Pass

Motion made to approve as presented by Board Member Albano and seconded by Board Member Lemon

Approved - 6 - Chairman Clinton Smith, Board Member Charles Lemon, Board Member Suzanne Nicholson, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton

Public Hearing

2 OCEAN VILLAGE MASTER SITE PLAN--APPLICATION #5143

Mr. Ray Tyner, Deputy Chief Development Officer, introduced this master site plan item along with Ms. Jordan Myers, Environmental Planner, who gave a presentation which is attached to this record.

Mr. Craig Morris, GJ Enterprise LLC representing the developer and Ms. Casey Dendor, Planner for England-Thims & Miller, LLC addressed the PLDRB members and gave a presentation which is attached to this record.

Ms. Dendor reviewed the proposed density stating that it is less than the 12 units allowed, she also highlighted that the impervious surface ration is far under the maximum allowance, and that this project is providing greater recreation area than required by the Land Development Code (LDC). All setbacks and buffers are exceeding the LDC requirements. She highlighted the number of green areas, the egress and ingress areas, she showed the plans for the clubhouse which include a gym and a business center. She highlighted the proposed architectural design along with design features of the apartment units.

Mr. Albano asked to clarify the location of the proposed site, specifically its relationship to the Flagler Beach Publix. Ms. Myers showed on an aerial map the location of the proposed development and stated it is just west of Colbert Lane and the Publix on SR 100.

Chair Smith opened this item to public comment at 5:46pm.

Ms. Susan Kerley, 11 Christopher Ct. asked what schools the children located at this development will be attending.

Chair Smith closed this item to public comment at 5:49pm.

Mr. Tyner stated that the City has an interlocal agreement with Flagler Schools and at the time (when and if this Master Site Plan is approved by City Council after the PLDRB recommendation) of the Technical Site Plan stage the developer will work with Flagler Schools to ensure that those new student stations are paid for per the interlocal agreement and the school board's policies.

Pass

Motion made to Recommend Approval for Application # 5143, Ocean Village a Master Site Plan for 416 units, which is found to be in compliance with the Comprehensive Plan and recommend approval to City Council, so the developer may apply for a Technical Site Plan by Board Member Albano and seconded by Board Member Nicholson

Approved - 6 - Chairman Clinton Smith, Board Member Charles Lemon, Board Member Suzanne Nicholson, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton

3 HARBORSIDE MPD – APPLICATION # 5132

Mr. Tyner introduced this rezoning item and gave the history of this property and introduced Mr. Bill Hoover, Senior Planner, AICP, and Mr. Jose Papa, Senior Planner, AICP who gave a presentation which is attached to this record. Mr. Tyner read into the record the following staff members' resumes: Mr. Ray Tyner, Mr. Jose Papa, Mr. Bill Hoover, Ms. Jordan Myers copies of their resumes are attached to this record. Mr. Tyner also introduced a response to a comment letter from Mr. Jay Livingston dated September 4, 2022 which has been provided to the PLDRB members and added to this record. Mr. Bill Hoover gave a PowerPoint which is attached to this record. Mr. Jose Papa, reviewed section B (density analysis) of the PowerPoint presentation which was mentioned earlier and is part of this record.

Mr. Jay Livingston, representing the property owners of JDI Palm Coast LLC & Palm Coast Resort Community Association, Inc. addressed the PLDRB members and read his credentials into the record. Mr. Livingston stated that his letter dated September 4, 2022 was omitted from the staff report and handed a copy of this letter to all the PLDRB members and a copy of this letter has been added to this record. Mr. Livingston disputed the architectural, density, and height issues identified by staff in their report. Mr. Livingston also introduced the history on this project and gave a PowerPoint presentation which is attached to the record.

Mr. Tarik Bateh, representing the property owner of JDI Palm Coast LLC addressed the PLDRB members and he spoke to clarify the proposed plan which is to amend and restate the existing MPD agreement. Mr. Bateh read his resume into the record. Mr. Bateh stated that the staff report was misleading and discussed the review timeline for this project. He addressed the proposed color concept plan and he stated that the iconic destination resort hotel may not happen due to cost and the objection of their condo property owners. Mr. Bateh stated that a restaurant is planned on lot 1, 2 or 3. Mr. Bateh discussed keeping the marina. Mr. Bateh stated that lots 5 & 6 would be multi-family. He stated that

337 residential units are allowed in the PUD and equated the hotel condo residential units as residential units. Mr. Bateh disputed that the hotel is required under the existing PUD. Mr. Bateh discussed the mixed use FLUM designation and how it is comparing to the existing PUD. He disputed the Proposed MPD Entitlements are not possible due to limited space. Mr. Bateh disputed possible traffic impact and showed a slide labeled MPD adoption reduces traffic. Mr. Bateh referenced differences between current PUD vs proposed concept plan. Directional signage up to 3' and 9' wide has been requested. Mr. Bateh highlighted the uniqueness of the project.

Mr. Jay Livingston referenced LDC 3.05.03c mixed use density and referenced an interpretation difference between the applicant's and staff's interpretations. Mr. Livingston stated that there is not an administrative rule that defines how to calculate density in a mixed use FLUM situation therefore it isn't applicable. Mr. Livingston reviewed his responses to September 4, 2022 letter which was previously introduced into this record. Mr. Livingston disputed the points in the Staff Report and addressed how in his opinion the application meets the standards of the LDC for increased density.

Mr. Bateh addressed the environmental impacts to this project and stated that multi-family will be profitable, he stated that he doesn't believe the hotel and the restaurant will be profitable (but will continue to study them) and he stated that the reason to have mixed use future land use is to offset the "money losers".

Vice Chair Shank asked if there is an administrative rule that Mr. Livingston was referring to in the LDC. Ms. Jennifer Nix, legal counsel, stated that the administrative rule hasn't been adopted that she is aware of at this time. However, she stated that one isn't needed for the rest of the LDC provision to be operative. Stating that one cannot double dip and use acreage for both residential and non-residential. Vice Chair Shank asked about how the density for the existing 8 story building was calculated between residential and commercial split in considering those units. Mr. Tyner stated that the original Planned Unit Development (PUD) calculated the entire project on intensity not density. Vice Chair Shank questioned whether the applicant's statement of only 54 additional units is accurate. Mr. Tyner stated that it is the applicant's opinion but that is not our opinion, staff calculates density and intensity, and we believe it is clear in the Comprehensive Plan and the LDC.

Ms. Nicholson asked for clarification if at the time of the original PUD was the property one lot or 5 lots. Mr. Tyner stated that this was originally one lot. Ms. Nicholson questioned whether or not the 5 lots may be sold off in the future to separate developers. Mr. Bateh stated that there are 3 separate lots with 3 owners, and they will eventually submit subdivision master plan for up to 5 to 6 lots. It is the applicant's intention to develop all residential uses. Discussion ensued of whether the marina would be self-renovated or by a marina specialist. The restaurant pad would be hopefully ground leased to a successful restaurant developer. Possibly sell off the hotel. He stated that the residential owner, the applicant, would remain and have major control over the project. Mr. Livingston clarified that the distinguishment of number of lots - condo project with one lot or many lots isn't important. Ms. Nicholson asked how the project with the restaurant, marina and the residential units will flow regarding parking, ingress and egress, and fuel trucks going to the marina. Mr. Livingston stated that the

truck routes will be addressed since the fuel is a money maker. Hotel and restaurant use will most likely have valet service parking. Town homes will have their own garages.

Mr. Bateh, marina parking would be on top of the parking garages. Restaurant would be reserved surface spaces in the area of the restaurant, spaces in overflow parking, valet, and roof of the parking garage. Hotel would be short time parking along with garage parking. Town homes are self-parked. Condo residents would have 35 parking spaces around their property and their parking spaces in the garage. A civil engineer will address the fuel truck access. Egress would be provided by a stabilized emergency access only, north of the existing entrance or another location approved by staff and the fire department.

Mr. Bateh stated that in discussion with Flagler Schools he was told that the condo hotel units would be assessed school impact fees should they be built.

Mr. Hilton asked if the term iconic resort is defined. Mr. Papa stated that it isn't defined other than it is the term used in the approved documents from 2005. Ms. Nicholson stated that it was more like Hammock Beach Resort development rather than a residential development.

Mr. Albano asked staff about maximum height allowed for the buildings is it per track or for the property. Mr. Hoover stated that he knows on portions of the site it is 89 ft. but he would need to check if that height is for the entire property. Mr. Bateh it is for the most part 89 ft, however there are 2 buildings limited to 6 stories but doesn't know the height. Mr. Livingston read from section 9.2 of the PUD for each building as follows:

Building B - 89 ft - 8 stories; building C - 69 ft. - 6 stories; building D - 89 ft. - 8 stories; building E- 89 ft. - 8 stories; and building F - parking facility 61 ft. - 5 stories.

Mr. Lemon commented on the lack of parking to accommodate the proposed uses. Mr. Livingston stated that the parking garage has 525 parking spaces along with surface parking that will be reserved for specific uses.

Vice Chair Shank asked about the timing of the review application. Mr. Tyner clarified the timeline of the MPD agreement which is a negotiated development agreement between both parties. Typically, the concept plan is discussed in advance and Mr. Tyner read the submittal and response time frames. He stated the big concerns were discussed early on where the inconsistencies with the Comprehensive Plan with the density. Mr. Tyner stated that the advertising deadline was approaching, and he recommended delaying until the issues were resolved. However, the applicant requested to go to public hearing, which is their right. Normally, we would not continue with an application with so many outstanding comments. Mr. Livingston stated that the PLDRB has the power to approve, deny or approve with conditions. Mr. Livingston stated that the ultimate negotiator is the City Council. Mr. Tyner added that there could be conditions imposed however the proposed concept plan is inconsistent with the comprehensive plan. Mr. Tyner stated that City Council has appointed the PLDRB as the land planning agency to uphold the LDC and the Comprehensive Plan. Furthermore, it is staff's opinion that if there are to be a lot of changes on the floor with City Council than this item may have to come back to the PLDRB

as the land planning agency to review those changes and to ensure they are consistent with the Comprehensive Plan. Mr. Bateh reviewed the application time line again and the applicant's position that new items were added to later comment letters after the first letter was issued. Mr. Livingston stated that staff has ignored his responses to their Comprehensive Plan and LDC incompatibilities concerns which he addressed in his letter of September 4th.

Mr. Albano asked of the applicant if they feel they are at an impasse with the City or do feel that more time would resolve the issue. Mr. Bateh stated that he feels they are running in place, and he doesn't have confidence in more time would resolve the issues.

Chair Smith asked the same question of staff. Mr. Tyner stated that staff is always willing to continue to discuss, it sounds like we have an impasse on the Comprehensive Plan and the density issue. This isn't what was approved in 2005, it is a totally different product. He stated that the development could be multi-family or town homes or if the hotel would be found there. If no hotel it could go straight zoning.

Ms. Nix stated that it isn't incumbent on the PLDRB to find a compromise. It is the applicant's burden to bring an agreement to the PLDRB for your review and recommendation. And it was their choice to bring this version to you. Mr. Livingston stated that it is the applicant's burden to bring forth their justifications to meet the Comprehensive Plan policies and it was submitted on September 4th and it was excluded from the staff report, thereby eliminating the applicant's opportunity to present their case. Mr. Bateh stated that there are 12 necessary changes that were reviewed with staff in a meeting yesterday, but he can't say if definite agreement was made but they are closer.

Chair Smith stated that the PUD is 17 years old and asked if the hotel is something you're stuck with or something you're going to do it if it is financially viable. Mr. Bateh stated that the applicant sees some merit to an overall mixed-use project and activation of the site. If it was financially viable and if the community expressed interest in having the hotel then they have a slight interest in doing it.

Vice Chair Shank read from the Ordinance 2007-24 regarding the use of iconic resort found in General Section 2.1 of this ordinance which is quoted here: The Developer shall be entitled to redevelop the Property as an icon destination resort to include enhanced conference and meeting facilities and a variety of recreational and leisure activities. The Developer shall be entitled to redevelop the Property into a 209-unit icon resort condominium hotel and/or hotel with up to 47,000 square feet of accessory hotel uses to include, but not be limited to, ballrooms, restaurant, kitchen, fitness center, boardroom, conference/meeting space, back-of-house support areas, harbor master/ship store with fuel service, a parking garage, surface parking, pools, trails, outdoor leisure areas and other similar uses. The Developer shall be entitled to continue use of the Property for the existing 84 slip marina in order to provide slips for resort guests, private members and members of the public. In addition, the Developer shall be entitled to develop up to 169 new resort condominium units, 72 of which have been constructed and issued a certificate of occupancy for Building "E" as depicted on the Conceptual Master Development Plan (Exhibit "2") (The improvements

described above, together with the redevelopment referred to in Section 2.2 are collectively referred to as the "Project"). She summarized that to her the issue seems to be intensity vs. density and if she has interpreted the ordinance correctly it is clearly intensity vs. density and therefore not in compliance with the Comprehensive Plan.

Mr. Bateh stated that he disagrees with Vice Chair Shank's interpretation and responded that the ordinance states shall be entitled to and not up to and he stated that it isn't as though they had to build it, he gave an additional reason covering the condominium hotel units, condo hotel units are legal residents and he stated that the "Flagler" schools believes so. He disputes that a difference exists between a residence that can be rented and a condominium unit that can be put into a pool for rental. Vice Chair Shank asked Mr. Bateh what percentage of the existing 72 units are owner occupied. Mr. Bateh stated he didn't know for a fact but was informed by the board and the association manager the bulk of the units are owner occupied. He further stated that it was suggested about 90%, perhaps or more of the units are owner occupied. Vice Chair Shank asked then if 90% of the units are owner occupied then they are homestead exemption. Vice Chair Shank stated that there are a number of statements being made but the PLDRB members do not have facts. Mr. Livingston referenced the Comprehensive Plan, section 1.1.2.2 which permits intensity and density allowed increases provided you meet the criteria, he further stated that many of the items listed in the Centex agreement will remain. Vice Chair Shank referenced loss of economic impact to the community, due to the lack of jobs as outlined in the original PUD. Vice Chair Shank questioned the evidence of agreement because we don't know what was agreed to as recently as yesterday all we have is what is before us today. Mr. Livingston reviewed the items on exhibit A in the staff report and stated that staff and the applicant agreed to the architectural standard and language was added. Vice Chair Shank said we have nothing to review as to your agreement. Mr. Bateh suggested that they can go through the list now with the PLDRB members as to their resolution. Mr. Tyner stated that staff and the applicant had a conversation yesterday yes, but that he would want to analysis the language in the Master Planned Development Agreement and what the proposed language to resolve the outstanding issues is and he doesn't agree to move forward without seeing that specific language.

Mr. Albano questioned the 9 4 2022 letter asking did staff review this letter. Mr. Tyner stated that this letter was reviewed by staff and that the letter wasn't in the agenda packet, however a copy was provided to you by staff. Mr. Tyner suggested taking a recess for the PLDRB members to review the letter if they didn't have a chance to review previously. Ms. Nix highly recommended taking a recess for the PLDRB members to review the letter. Mr. Hilton stated that he didn't have time to review the letter and he would like staff and the applicant to spend more time to resolve the issues. Ms. Nicholson stated we did receive the letter today from staff in an email. Chair Smith stated that he wasn't sure taking a recess to review the letter would help everyone to digest it. However, I did receive it and didn't have time to review the letter in detail. Ms. Nix commented on Mr. Livingston's statement on section 1.1.2.2 of the Comprehensive Plan about allowing deviations and the fact that the word iconic is not found in the LDC, but it is found in the PUD. And if the PLDRB did recommend approval of the application currently before the board, then the board would also have to find

it is consistent with the Comprehensive Plan and that is a creatively planned project.

Chair Smith opened this item to public comment at 8:18pm.

Michael Fisher - 7 Avenue De La Mer #401 - addressed the PLDRB members and is concerned about the height of the building stating that a residential multi-family building will create a canyon effect. Original Centex plan did not have that issue. He doesn't feel that this is a signature project. Asked if the developer would consider capping the project at 306 unit.

Elaine Penirio - 35 Crystal Bay Court - very confused- traffic concerns and is questioning the level of traffic analysis that has been done. Parties are in disagreement and this meeting is scheduled too early. Isn't in favor of this project - it is too much development in the area including a restaurant.

Charles Wiese - 146 Palm Coast Resort Blvd. - 18-year Palm Coast resident- commented on the original plan and he didn't buy at that time and bought after Centex left the project. It is a beautiful property, and the nature of the property should be maintained and even expanded. He is not in favor of any bail out of developers.

Mike Sellora - Cherry Court - believes the hotel and the resulting bed tax is better for the City. If it is a hotel traffic would be less impacted than apartments. He is concerned about the school impact and traffic impacts. Questions on the impacts on the infrastructure as well based on the size of the development proposed.

Charles Pezoric - 146 Palm Coast Resort Blvd.- owner since 2010. He suggested a study on environment, traffic, sewer impacts prior to approval of this application. Concerned about the impact on this small area and the requested density.

Bob Kernin - 146 Palm Coast Resort Blvd. - missed the neighborhood meeting - 30 parking spaces for the restaurant is too little and suggested using common sense since someone will not park on the 5th floor of the garage to go to the restaurant. He is encouraging an architectural review for consistency with the neighborhood.

Amy Listowski - Crystal Bay Court - apologized for the developers who she thinks were disrespectful to the PLDRB. She believes that the development shouldn't deviate from the PUD - difference from a hotel designation and multi-family residential - clarified the condo hotel definition, which includes a requirement to be limited to the amount of time you can use the property and the rest of the time you are required to put it into a rental pool, so the hotel also benefits from the rental property. She questioned the architectural design and questioned this location for multi-family homes as not being compatible with the neighborhood. Also questioned the impacts on traffic - high rise building and the loss of jobs which would be created from not having a hotel and restaurant location.

Dennis Ryan - Waterside resident - impact of this proposed project on traffic based on proposed density will be outrageous.

Bob Letterman - Palm Coast Resort resident - lived there 7 years, Marina is a ghetto, and the parking garage isn't in good shape. Would like the staff and the applicant to work together to resolve the issues.

Ken Polowski - 110 Club House Drive - expressed support for City staff - the project as proposed is too tall and too dense.

Daryl Kiernan - 146 Palm Coast Resort Blvd. – Questioned the parking garage plans which is currently over used on certain days. Townhome residents are they going to park in garages or share the street parking. Parking for staff and livery is a question. Where are the people using the marina going in and coming out of the property and where will they park? She stated that there will be lots of people with vehicles who will require parking.

Chair Smith closed this item to public comments at 8:42pm.

Mr. Tarik Bateh addressed the comments from the public:

As to height along Palm Coast Pkwy. staff has expressed concern about canyon effect along the road so the developer's proposal is to setback the building 35 ft. off their property line to the west in which building height would be limited to 4 stories and beyond that eight stories which is lower than the currently approved PUD. In regard to the canyon effect between the multifamily building and the garage, it is what it is.

As to the question of dialing back the development to 306 units, no that would not be viable. Chair Smith stated that the total approved is 378 less the 72 that are already built equals 306. Mr. Bateh stated that it isn't that simple for him to consider limiting to 306 units to answer right now but it would be considered as a cleanup of all issues.

As to traffic our traffic engineer ran the calculations, we are at 17% reduction in daily trips from the PUD and a formal traffic study addressing the level of service of the roadways comes later in the process.

As to the restaurant use at the neighborhood meeting there was a lot of support for that use.

As to incentives from the government there are none, this project is privately funded. Impact fees and taxes will be paid by the project.

As to maintenance of the park land that is our full intention including renovation to the gazebo.

As to hotel tax revenue would be beneficial to the City however not if no one is staying there.

As to concern about apartments, Mr. Bateh stated that these will be high-end units, class A, luxury units, expensive rent at \$2000.00/month, higher end apartments will attract apartment owners that will take care of their property.

Whether we own it or not we will exert force with the restaurant owners.

As to the possibility that the restaurant being sold off, the management organization will still exert their influence over that restaurant to ensure quality if maintained.

As to environmental, water, sewer, traffic impacts a review process is built into the City's and other governmental entities review process.

As to parking and the proposed plan's adequate parking the development will be held to the City's parking standards, the developer can't exceed the parking requirements as they are based on the project's uses.

As to architectural compatibility Mr. Bateh believes they got close on this issue with staff, and they would be using either Florida Coastal or Mediterranean architectural style.

As to condo hotels they are based on rental agreement and according to this PUD for this property there is no rental requirement.

As to the Comprehensive Plan and residential density, staff has their arguments what should be included and it is our opinion that density should be based on the overall project 17.64 acres/24.5 units/acres, an increase of 54 residential units.

As to the comment of the project being too dense and too tall depends on how you define density. He would base density at the overall project density/intensity. This project is less tall as compared to the PUD.

As to parking the developer is contemplating a parking agreement with the condo association to dedicate to them exclusive use of the 35-space parking circle closest to their building. Similarly, we are looking to dedicate parking spaces in the parking garage that would be convenient to the condominium tower.

Chair Smith asked as to the existing approved PUD if the units are vested for traffic. The answer is no. Chair Smith asked about utility fees. Mr. Tyner stated that they have paid their capacity fees and that those fees run with the land.

Mr. Tyner referring to the September 4th 2nd submittal comment letter that was part of our agenda packet, you also have an application for the project that was submitted on May 31st also in your agenda packet, but this one (referring to the September 4th letter from Mr. Livingston titled Application for Rezoning to Master Planned Development, MPD) appears to be a second application and although Mr. Tyner stated it should be reviewed by the PLDRB members he isn't sure why we received a second application. Also Mr. Tyner stated that Policy 1.1.2.2 we look at intensity and density differently and we have been consistent in the City of Palm Coast with regard to commercial vs. multi-family density. Even if you convert what was already approved to residential density even if we agree to do this, but we don't, it doesn't comply with 1.1.2.2. of exceeding the density of 25 units per acre. It is staff's opinion that this isn't the same project.

Mr. Livingston stated that the letter of September 4th was an amendment to the original rezoning cover letter, no attachments were changed including the application. Mr. Livingston stated that staff saying that the project is inconsistent with the Comprehensive Plan is their opinion it doesn't make it inconsistent. The final decision maker is City Council with regard to compliance with the Comprehensive Plan.

Vice Chair Shank made a motion that the Planning and Land Development Regulation Board find the project not in compliance with the Comprehensive Plan's Goal 1.1 and Policies 1.1.1.2 and 1.1.2.2 and not in compliance with the Land Development Code's Sections 3.03.04, 3.03.04.B.2, 3.03.04.B.3, 3.03.04.D, and 3.05.03.C and recommend denial to City Council to rezone 17.64 +/- acres from Harborside Inn & Marina PUD to Harborside MPD as shown in the attached Master Planned Development Agreement and Conceptual Master Plan, Application No. 5132.

Vice Chair Shank's motion died for lack of a second.

Ms. Nicholson suggested that the staff and the applicants take into consideration the comments they heard and regroup and come back to them with an updated plan.

Mr. Bateh stated that he would continue to work with staff, but he is not interested in continuing this item, even if that means that this application is denied.

Mr. Livingston asked if what level of changes would occur between the applicant and staff prior to the City Council hearing would force this application to come back to PLDRB and who makes that decision.

Mr. Tyner stated that legal counsel for City Council has been on the conservative side and in the past any significant changes has triggered the application to be returned to the PLDRB for review and their recommendation. Mr. Tyner stated in his opinion there would be significant changes to the application if both parties are to agree on this project.

Discussion ensued of possible timing when this application would come back to the PLDRB if continued.

Chair Smith called for a 5-minute recess at 9:06pm while the applicant discussed the continuance option vs. a PLDRB vote on the application tonight.

Chair Smith called the meeting back to order at 9:11pm.

Pass

Motion made to continue to a date certain of October 19, 2022, to the next regularly scheduled PLDRB meeting, at 5:30pm to be held at the Community Wing of City Hall, so that staff and the applicant work together to have a revision come before us by Board Member Nicholson and seconded by Vice Chairman Shank

Approved - 6 - Chairman Clinton Smith, Board Member Charles Lemon, Board Member Suzanne Nicholson, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton

4 OAK TRIALS ALF REZONING--APPLICATION #5153

Chair Smith provided the Recording Secretary with the required Form 8B and recused himself from participation and voting on this agenda item as he has a conflict of interest on this item having had a relationship with the property owner.

Mr. Tyner, Deputy Chief Development Officer, introduced this rezoning agenda item and Ms. Jordan Myers, Environmental Planner, who presented a PowerPoint which is attached to this record.

Mr. Tom Norton, Seaway Design, addressed the PLDRB members and gave a presentation which is attached to this record.

Vice Chair Shank asked if this facility will be private pay or will it accept Medicare, Medicaid, or veterans' benefits. Mr. Norton referred to Mr. Jason Rodrigues - Director of Operation for the Merritt Island facility and he stated that this facility will be private paid and will accept veteran benefits.

Chair Smith opened this item to public comment at 9:24pm and seeing no one approach the podium he closed this item to public comment at 9:25pm.

Pass

Motion made to Recommend Approval of the proposed rezoning of Oak Trails ALF Rezoning Application No. 5153 as it is consistent with the Comprehensive Plan and recommend approval to City Council to rezone from Suburban Estate (EST-1) to Public/Semipublic (PSP) zoning district by Board Member Albano and seconded by Board Member Nicholson

Approved - 5 - Board Member Charles Lemon, Board Member Suzanne Nicholson, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton

5 54 UTICA PATH - VARIANCE TO FRONT YARD SETBACK FOR A SINGLE-FAMILY RESIDENCE, APPLICATION # 5196

Mr. Ray Tyner, Deputy Chief Development Officer, introduced this item and Ms. Estelle Lens, Planner, AICP, who gave a presentation which is attached to this record.

Mr. CJ Kogos, INB Homes, addressed the PLDRB members and gave a presentation which is attached to this record.

Mr. Albano stated that he is a general contractor in town and further stated this project cannot get another inspection until you provide a foundation survey and therefore you can't go vertical without a foundation survey. Mr. Albano asked how the building got this far along. Mr. Kogos stated that they were stopped at

the roofing inspections, however, they were able to get the block and lintel inspections. Mr. Albano asked then of staff what the building department's policy on foundation surveys and vertical construction is, as it is his understanding there is a hold put on any lintel inspections until a foundation survey is provided. Mr. Tyner stated that in this case they meet the criteria and they continued at the risk of the developer. He further stated that the Right Of Way (ROW) at this location is not needed by the City, so another option if the PLDRB didn't approve this application is to vacate the portion of the ROW needed to make this property whole. Mr. Albano referenced a previous variance that the PLDRB heard last year, and he stated that there was another stipulation that dealt with unjust and/or a hardship and that this is not a hardship lot nor an anomaly lot, every lot that has a median in the middle (of the street) has this condition and there are 4 of these on the same block.

Vice Chair Shank stated that she concurs because she looked at 49 and 55 Utica Path and there are 4 other lots on the same street that have the same dilemma and of the 4 lots 2 were developed and they meet the setback code.

Discussion ensued about how this situation may have occurred and how the City may avoid this situation in the future. Mr. Albano mentioned that as general contractor we have liability insurance, and it is the onus of the general contractor to supervisor the job to make sure this doesn't happen. Mr. Tyner reminded the PLDRB members that the variance process exists to deal with mistakes that are made. He further clarified that the City's position is to recommend approval of a variance if the application meets all the criteria for a variance.

Mr. Albano asked if this is a spec. home and Mr. Kogos stated yes. Mr. Albano then stated that then Mr. Kogos could go after their surveyor, and they would be only out time. Mr. Kogos stated that they would prefer the variance solution as to suing the surveyor as this surveyor is their company's primary surveyor.

Ms. Nicholson stated that the backyard is significantly bigger and questioned why that wasn't noticed. Mr. Kogos agreed that it should have been caught however the lot behind this parcel is not developed so it wasn't as obvious in the field.

Chair Smith opened this item to public comment at 9:48pm and seeing no one approach the podium he closed this item to public comment at 9:49pm.

Ms. Nix reminded that the PLDRB members that City Council prefers motions in the affirmative, as it is clearer.

Mr. Albano made a statement to urge the City not to vacate the ROW. Mr. Tyner stated that staff did an analysis of the ROW and where not needed have vacated the ROW in the past. Mr. Tyner also stated that it would be City Council's decision.

Fail

Motion made to approve the variance to reduce the front yard setback by 9 feet, from 20 feet to 11 feet, for the front left corner of a residence, Application number 5196 by Board Member Albano and seconded by Board Member Hilton

Approved - 2 - Board Member Charles Lemon, Board Member Suzanne Nicholson

Denied - 4 - Chairman Clinton Smith, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton

6 1 PHOENIX LANE - VARIANCE TO STREET SIDE SETBACK FOR FENCE, APPLICATION # 5180

Mr. Ray Tyner, Deputy Chief Development Officer, introduced this item along with Ms. Estelle Lens, Planner, AICP who gave a presentation which is attached to this record.

Mr. Gerald Long addressed the PLDRB members and gave a presentation which is attached to this record.

Chair Smith asked what is the road side, side yard setback for Single Family Residential (SFR) 2 vs. Single Family Residential (SFR) 3. Ms. Lens stated SFR-2 is 15 ft. and SFR-3 is 20 ft.

Mr. Albano asked about the City's code for a fence on a corner lot. Ms. Lens stated that you can go to the property line except on corner lot facing right of way (street side setbacks).

Discussion ensued of the differences between SFR-2 vs. SFR-3 zoning minimums.

Chair Smith stated the easiest solution is to administratively rezone the subject property to SFR-2 and Mr. Tyner stated that rezoning a single-family property to meet variance criteria is not ok.

Mr. Albano suggest another solution for security, for example a fence to the window instead of extending a fence to the property line. Mr. Long stated that it wouldn't be aesthetically pleasing.

Vice Chair Shank asked about the neighbor's letter which mentions a dog and then stated that there are alternatives for security solutions.

Chair Smith opened this item to public comment at 10:18pm and seeing no one approach the podium he closed this item to public comment at 10:19pm.

Pass

Motion made to Deny the variance of 3.1 feet to allow a fence to be constructed on the street side 16.9 feet from the side property line, application number 5180 by Vice Chairman Shank and seconded by Board Member Nicholson

Approved - 6 - Chairman Clinton Smith, Board Member Charles Lemon, Board Member Suzanne Nicholson, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton

Board Discussion and Staff Issues

Mr. Tyner informed the PLDRB members that City Council is still going through the PLDRB member appointment process. Mr. Gabriel was reappointed during this week's City Council meeting and the other two open positions will be addressed during the October 18th City Council meeting.

Adjournment

Motion made that the meeting be adjourned by Vice Chair Shank and the motion was seconded by Ms. Nicholson. The meeting was adjourned at 10:20pm

*Respectfully Submitted by:
Irene Schaefer, Recording Secretary*

Pass

Motion made to approve by Vice Chairman Shank and seconded by Board Member Nicholson

Approved - 6 - Chairman Clinton Smith, Board Member Charles Lemon, Board Member Suzanne Nicholson, Vice Chairman Sandra Shank, Board Member James Albano, Board Member Hung Hilton