

CITY OF COCOA
PLANNING & ZONING BOARD MEETING
MEETING MINUTES
March 14, 2018

A meeting of the Planning & Zoning Board of the City of Cocoa was held on Wednesday, March 14, 2018 in the Council Chambers at 65 Stone Street, Cocoa, as publicly noticed.

OPENING MATTERS:

Chairman Mike Dobrin called the meeting to order at 6:06 P.M. The Board Secretary called the roll.

MEMBERS PRESENT:

Michael Dobrin	Chairman
Al Washington	Vice Chairman
Aleck Greenwood	Board Member
Jack Moore	Board Member
Jake Williams	Board Member
Lawrence Koss	Board Member
Sherry Ervin	Board Member
Marilyn Green	Alternate Member

MEMBERS ABSENT:

Russell Sengel	Board Member
Todd Anderson	Board Member

OTHERS PRESENT:

Cindy Thurman	Planning & Zoning Manager
Karen Hamilton	Community Services Director
Kristin Eick	Board Attorney
Jeri Blanco	Board Liaison
Monica Arsenault	Board Secretary

APPROVAL OF AGENDA & MINUTES:

1. Approval of Agenda: March 14, 2018.

Motion by Al Washington, seconded by Lawrence Koss, to approve the agenda of March 14, 2018. The vote on the motion carried unanimously.

2. Approval of Meeting Minutes: February 14, 2018.

Motion by Al Washington, seconded by Lawrence Koss, to approve the minutes of February 14, 2018 as written. The vote on the motion carried unanimously.

OLD BUSINESS:

- A. Tree Ordinance – Board Discussion
Other Ordinances at issue: fences, driveways.

Mr. Greenwood expressed that there were issues that needed to be addressed in regards to Oak trees being removed in the City. Mr. Greenwood made a reference to a sign posted in the Building Department. He stated that his issue with the chain link fence ordinance has been satisfied. Mr. Greenwood noted that he questioned why any of the building department inspectors do not attend the Code Board meetings, especially when the meetings discuss issues with chain link fences.

Mr. Greenwood stated that he felt the tree ordinance has always stayed intact but it was never enforced. He provided pictures to the Board members to show some of the oak trees that have been removed. He stated that none of the trees that were removed were rotted. He shared some examples of trees that had been removed and why. He shared a history of the tree ordinance and how it came about. He stated that he gave Cindy Thurman the contact information of an arborist through the Department of Agriculture and that she is willing to work for free. He noted that he would like, with the assistance of the Assistant City Attorney, to finalize verbage in regards to the tree ordinance and letting the public and Council know what the Board's intentions are.

Board member Koss observed that there were two trees removed during the widening of US 1. He talked about a Pilot program that Orange County is participating in. He offered to bring back more information in depth to the next meeting.

Board member Williams mentioned that there were some water oaks removed in Canaveral Groves. He noted that it was amazing how much water the trees can hold.

Board member Ervin mentioned several oak trees planted along SR 528. She noted that the road is scheduled to be four lanes by 2024/2025 and those oak trees will probably need to be moved.

Discussion was held between the Board members concerning the spreading of the roots of oak trees and the damage they can cause.

Board member Greenwood shared planning strategies that his arborist shared with him to help maintain the roots while they're young to keep them from spreading where they're not wanted.

Vice Chairman Washington mentioned an issue regarding a tree on his own property.

Ms. Thurman stated that she conducted research on the issue. She clarified that the Board is not creating a new ordinance, but rather reinforce a preexisting ordinance. She noted that this is more or less an issue with a lack of resources that the City has. There are three people that work for the City that help to manage all of the City's trees. She mentioned that it would cost the City hundreds of thousands of dollars to go out and identify each tree, its height, health, and type. She stressed that the Board needs to consider the long term plan for trees that need to be replanted or removed. She stated that she and the City's arborist agree that the right tree needs to be planted in the right location, and that when a tree is removed it should not necessarily be replaced with the same tree when it may not be the right location for it.

Board member Greenwood stated that his intentions are not for the City to spend a lot of money, but more to bring attention to oak trees that are being removed that should not be removed.

Ms. Eick stated that per the ordinance no tree on City owned property should be severely pruned or removed until it is brought before the Board with some exceptions. If a tree poses a threat to public safety than the tree can be removed by Public Works before being brought before the Board. She suggested that maybe the ordinance should include conditions need to be followed by City staff in regards to the removal of the trees.

Ms. Hamilton suggested adding information on the City's website as well.

Ms. Eick noted that the ordinance states that the Tree Board is responsible for maintaining an inventory and providing a report to Council annually. She stated that this has not been done in some time and the Board may want to consider reviewing that particular section of the ordinance and adding language that may make this inventory condition more feasible.

Board member Greenwood reiterated that he did not mean to make this a bigger issue than it already is. He is not supportive of spending additional City money on inventories and surveys. His intentions are to save the City money by encouraging staff to not make a poor decision to cut a tree down before securing a second opinion and bringing it before the Board.

Board member Koss asked if the Planning and Zoning board has a say in new developments in regards to planting new trees.

Ms. Thurman briefly reviewed some of the rules that the City upholds in regards to tree planting and replacing requirements.

Chairman Dobrin inquired who would report a pruning issue to Public Works. In response, Ms. Thurman stated that the issue can be reported to any member of City staff and they can relay the message to Public Works.

Ms. Thurman stated that in the future any tree reports will be added to the agenda. She noted that she would find out what Public Work's pruning schedule is and share it with the Board.

Ms. Hamilton suggested that Board let the process work the way it was intended and if it is not effective, than the Board can look at making amendments to the ordinance.

Board member Greenwood requested a copy of the ordinance and also a summary of what Ms. Eick suggested using as a guideline.

It was clarified that the Board would like a copy of the ordinance as written and a separate summary of suggestions that Ms. Eick mentioned at a previous meeting to consider.

A Motion was made by Jake Williams, seconded by Aleck Greenwood to have a copy of the ordinance as written provided at the next meeting along with a separate summary of suggestions that Ms. Eick mentioned at a previous meeting to consider.

Ms. Hamilton asked for clarification in regards to the next meeting. She asked if the Board would still like to meet even if there are no advertised items. In response, the Board agreed they would still like to meet, even if it is only for discussion.

Ms. Hamilton also asked how the Board would prefer receiving their agenda packets in the future.

Board member Greenwood mentioned the utilization of lime rock in driveways. He noted that he would like to take the ordinance into consideration and add specific language for clarification purposes. He stated that the language is not clear in regards to differentiating between commercial and residential.

Ms. Eick stated that a legal opinion has been provided. She mentioned there are a few things to consider. One of the issues is to clarify the language of the ordinance and whether it refers to commercial or residential properties.

Board member Williams noted that it was determined many years ago that people could park in their front yard as long as that person creates a driveway and does not park in the grass. He noted that an individual could even lay mulch down.

Ms. Hamilton suggested that at the next meeting a discussion be held in regards to what requires a permit and what doesn't.

Board member Koss inquired whether the City is opposed to gravel driveways. He also asked if a property owner is allowed to determine where they would like to enter their property and if they are allowed to drive over a standard sidewalk to access their property.

It was clarified that a copy of the off-street parking ordinance needs to be provided to the Board.

Ms. Hamilton asked in the future, if the Board would like staff to include a copy of the applicable code in regards to the particular issue at hand.

Discussion followed between the Board members.

Ms. Hamilton pointed out non-conforming issues.

NEW BUSINESS:

None

OTHER BUSINESS:

None

NEXT MEETING:

The Board members established that the next meeting would be held on April 11, 2018.

ADJOURNMENT:

Motion to adjourn by Lawrence Koss, seconded by Jake Williams.
There being no further business the meeting adjourned at 7:54 P.M.

Approved on this 17th day of JULY 2018.



Michael Dobrin, Chairman



Monica Arsenault, Board Secretary

GARGANESE, WEISS, D'AGRESTA & SALZMAN, P.A.

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Kristin N. Eick
Senior Attorney

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February 15, 2018

Via Email Only

Cynthia Thurman, Planning & Zoning Manager
City of Cocoa
1226 W. King Street
Cocoa, FL 32922

Re: Paved Parking Required on Residential Property

Dear Cynthia:

You have requested a legal opinion regarding Appendix A, Article XII, Sec. 3(g), which establishes minimum standards for the design of off-street parking areas and, specifically, whether this section generally requires paved parking on residential property. This Opinion is not intended to address the application of Sec. 3(g) to any particular piece of property.

Short Answer

Upon review of the ordinance as a whole in accordance with the rules of statutory construction, it is apparent that paved parking, *i.e.*, asphalt, concrete, or other surfacing approved by the city engineer, is required upon both residential and commercial properties.

Legal Authority and Explanation

Appendix A Zoning, Article XII Off-Street Parking and Loading Regulations, Section 3 Minimum Standards for the Design of Off-Street Parking Areas, Subsection (g) Paved Parking Required, provides as follows:

Paved parking required. All off-street parking, loading areas, maneuvering space and associated driveway aisles shall be paved with an asphalt, concrete or other surfacing approved by the city engineer, afford adequate drainage, and meet reasonably acceptable engineering specifications. All individual spaces shall be marked and designed, maintained and regulated in such a manner that no parking or maneuvering incidental to parking shall

be on any public street, sidewalk, or alley, and so that any vehicle may be parked and unparked without moving another. When approved by both the city engineer and community development director, paving may be reduced using the following conditions and determinants:

- a. Whether total paving would have a detrimental effect upon existing unpaved roads or water quality.
- b. Whether operations or activities (churches, equipment storage yards, etc.) are such that the use of certain portions of the parking and/or loading areas would only be used on an intermittent basis.
- c. Where paving has been reduced or waived, a stabilized surface acceptable to the city engineer and community development director shall be provided for the entire required parking area.
- d. Where allowed by section 1(d), requirements for off-street parking, of this article.

(Emphasis added).

Off-street parking is, in turn, defined by establishing the minimum dimensions of parking spaces:

Off-street parking. A minimum rectangular parking area measuring ten (10) feet by twenty (20) feet, exclusive of access drives and aisles. The length of a space can be reduced to eighteen (18) feet if the space abuts a grass landscape strip measuring at least five (5) feet wide or a sidewalk measuring at least six (6) feet wide. Parallel curb parking spaces shall measure a minimum of nine (9) feet by twenty-two (22) feet. Compact parking spaces shall measure a minimum eight and one-half (8½) by sixteen (16) feet. Compact parking spaces may comprise up to twenty-five percent (25%) of the total provided parking spaces.

Motorcycle parking may comprise up to five percent (5%) of the total required parking spaces. Motorcycle parking spaces shall measure a minimum of four (4) feet by nine (9) feet. An equivalency factor of one (1) automobile space to four (4) motorcycle spaces shall be utilized in calculating the total permitted motorcycle spaces. Motorcycle parking spaces may be situated in tandem. A tandem space shall mean a space where one (1) motorcycle is parked behind another. No more than two (2) motorcycle spaces shall be in tandem.

Art. XII, Sec. 1(c)(1). Further, "parking space, off street" is defined as "a minimum paved area used for the parking of a single vehicle, exclusive of access drives or aisles. Truck loading and unloading space shall not be included in such area."

While neither the definitions of "off-street parking" nor "parking space, off-street" explicitly refer to parking spaces used on residential property, the remainder of Article XII, when read as a whole, indicates that these terms include residential parking spaces, which must be paved in accordance with Art. XII, Sec. 3(g).

First, Section 1(a), which describes the intent of Article XII, states that the general intent of the article is to promote the public health, safety, welfare, economic order, aesthetics, and quality of life, but more specifically; . . . "to provide for the protection of residential areas from visual effects, noise and solar heat or excess stormwater runoff . . ." Thus, Article XII was intended to govern parking on residential properties. If there was any doubt about

this premise, Section 1(b), which describes the extent of Article XII's applicability, firmly establishes that the "design standards" set forth in the Article "shall apply to all new development and redevelopment within the City of Cocoa." The paved parking requirement is found in Section 3 of the Article, which is titled "Minimum standards for the design of off-street parking areas."

Furthermore, Section 1(d) lays out the requirements for "off-street parking" for a number of different land uses. It specifically provides that the "minimum off-street parking spaces with adequate provisions for ingress or egress" for "residential uses" are as follows:

- (38) *Residential uses.*
- a. Single-family: Two (2) spaces per dwelling unit.
 - b. Duplex: Two (2) spaces per dwelling unit.
 - c. Townhouse: Two (2) spaces per dwelling unit; for townhouse developments with shared or common parking - one and one-half (1½) spaces per dwelling unit.
 - d. Multi-family:
 - i. Efficiency unit - One (1) space per dwelling unit.
 - ii. One (1) bedroom unit - One and one-half (1½) spaces per dwelling unit.
 - iii. Two (2) or more bedroom unit - Two (2) spaces per dwelling unit.
 - e. Mixed-use buildings with a multi-family residential component: One and one-half (1½) spaces per dwelling unit plus the number of spaces required by this subsection (d) based on the non-residential use. The non-residential component of a mixed-use building may provide up to fifty percent (50%) of the required parking off-site. Off-site parking spaces shall be within five hundred (500) feet of the mixed-use building. On-street parking may be used in providing off-site parking spaces within the Central Business District Zoning District with approval of the community development director.
 - f. Multi-family in Cocoa Village Overlay: One (1) space per dwelling unit. Multi-family developments with twenty (20) units or more shall provide an additional ten percent (10%) parking spaces for guests.

This section explicitly states that residential uses must have a minimum number of "off-street parking spaces." Therefore, where the term "off-street parking" is used in Article XII, it refers to residential as well as commercial parking.

In addition, in numerous other subsections of Article XII, residential property is explicitly excluded from the applicable requirement. However, in the particular subsection at issue, Section 3(g), the Code provides that all off-street parking shall be paved. Where the legislative body has made such exclusions in certain subsections, but not in others, it may be presumed that this was intentional in the drafting of the ordinance. For example, in Section 3(c), the Code provides that parking spaces "for all dwellings shall be located on-site," but parking spaces "in all commercial districts" shall be located on-site except as provided in certain other sections. Section 3(d) also states required off-street parking areas for four or more vehicles serving uses other than single-family dwellings shall have individual spaces marked. And, in Section 3(f), the Code requires that each parking space,

with the exception of parking spaces for one- and two-family units and motorcycle tandem spaces, shall be accessible without driving over or through any other parking space. Had the legislative body intended to restrict paving to commercial properties only, it certainly could have done so and did with respect to other design standards.

Finally, at the Planning and Zoning meeting held on February 14, 2018, the Board briefly discussed Article XII and the issue of paving. Some members believed that a property maintenance manual or policy of some kind issued by the Building Official allowed gravel driveways, noting that many driveways in the City consist of gravel. While this could not be confirmed at the meeting, upon inquiry with the Building Official, no such manual or policy exists, aside from the adoption of the Property Maintenance Code of the City of Cocoa, found in Chapter 6, Article III of the City Code. Chapter 6 does not address the material that must be used on residential driveways.

Prompted by the discussion at the Board meeting, the legislative history of Article XII, Section 3 was further reviewed. The City Council amended Section 3(g) via Ordinance 12-2001, which is attached for reference, adopted on August 28, 2001. Significantly, the Ordinance removed the exclusion for paving that previously applied to single-family and two-family uses as follows:

(g) Paved parking required. ~~All parking areas and vehicular access to parking areas serving non-single family or two family uses~~ All off-street parking, loading areas, maneuvering space and associated driveway aisles shall be paved with an asphalt, concrete or other surfacing approved by the city engineer

This 2001 amendment further supports the interpretation that the City Council specifically intended to require paving of all off-street parking, including on residential property.

Conclusion

Given the stated intent of Article XII to protect residential areas, coupled with the statement that the design standards shall apply to all parking spaces and the decision of the legislative body (City Council) not to distinguish residential properties in Section 3(g) as it did in others, Section 3(g)'s paving requirement should be interpreted to apply to off-street parking on residential as well as commercial property.

While the City Code could certainly be clearer in some sections, and sections could be read differently in isolation and out of full context, we believe our interpretation is correct because it is consistent with the rules of statutory construction, which require that all parts of a statute must be read together in order to achieve a consistent whole. Every statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts. 48A Fla. Jur. 2d Statutes § 111.

If you have further questions after reading our opinion, please contact me to discuss.

ORDINANCE NO. 12-2001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA AMENDING THE CITY OF COCOA CODE OF ORDINANCES, APPENDIX A — ZONING, PROVIDING FOR THE AMENDMENT OF APPENDIX A, ARTICLE XII, SEC. 3. MINIMUM STANDARDS FOR THE DESIGN OF OFF-STREET PARKING AREAS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, several citizens and property owners in the City of Cocoa, City of Cocoa Staff, Board Members, Council Members, and developers have determined a need for a new set of Land Development Codes that will replace current zoning ordinances of the City of Cocoa Code; and,

WHEREAS, certain standards for the design of off-street parking areas are out-of-date and an amendment to the existing code is needed immediately, which will introduce innovative and flexible parking requirements that deal with overflow and unpaved parking areas; and,

WHEREAS, City Staff has prepared this amendment and the Planning and Zoning Board/ Land Planning Agency has reviewed this amendment and has found it consistent with the Goals, Objectives and Policies of the Comprehensive Plan and addresses the concerns of the City of Cocoa; and,

WHEREAS, on June 26, 2001, City Council directed Staff to forward this amendment to the Board of Adjustment for its review and recommendation to the City Council; and,

WHEREAS, on July 18, 2001, the Board of Adjustment reviewed and recommended approval of this amendment, finding that it addresses the concerns of the City of Cocoa; and,

WHEREAS, the City Council finds that the proposed amendment is consistent with the provisions of the City of Cocoa Comprehensive Plan; and,

WHEREAS, the City Council deems that the adoption of this Ordinance is in the best interests of the public health, safety, and welfare of the citizens of Cocoa.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. City of Cocoa Code Appendix A, Article XII, Sec. 3. Minimum standards for the design of off-street parking areas, is hereby amended as follows (underlined type indicates additions to the code and ~~strikeout~~ type indicates deletions to the Code):

- (g) Paved parking required. ~~All parking areas and vehicular access to parking areas serving non single family or two family uses~~ All off-street parking, loading areas, maneuvering space and associated driveway aisles shall be paved with an asphalt, concrete or other surfacing approved

by the city engineer, afford adequate drainage, and meet reasonably acceptable engineering specifications. All individual spaces shall be marked and designed, maintained and regulated in such a manner that no parking or maneuvering incidental to parking shall be on any public street, sidewalk, or alley, and so that any vehicle may be parked and unparked without moving another. When approved by both the City Engineer and Community Development Director, paving may be reduced using the following conditions and determinants:

- a. Whether total paving would have a detrimental effect upon existing unpaved roads or water quality.
- b. Whether operations or activities (churches, equipment storage yards, etc.) are such that the use of certain portions of the parking and/or loading areas would only be used on an intermittent basis.
- c. Where paving has been reduced or waived, a stabilized surface acceptable to the City Engineer and Community Development Director shall be provided for the entire required parking area.

- (k) Parking areas and drives shall be paved and have adequate drainage. Curbing shall be required along the perimeter of paved areas to protect from vehicular encroachment. When curbing is used as a wheel stop abutting a sidewalk, grassed, or landscaped area, the twenty-foot dimension of the parking space requirement may be reduced to eighteen-feet. Curbing shall be standard (not Miami type). When curb parking abuts a sidewalk, the sidewalk width shall be increased by two (2) feet to allow for vehicle overhang.

Section 2. Repeal of Prior Inconsistent Ordinances and Resolutions. All ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed to the extent of the conflict.

Section 3. Incorporation Into Code. This ordinance shall be incorporated into the Cocoa City Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

Section 4. Severability. Should any section or provision of this Ordinance, or any portion hereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part thereof to be declared invalid.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida in a regular meeting assembled on the 28 day of August, 2001.

Judy J. Parrish
Judy J. Parrish, Mayor

ATTEST:

Joan Clark
Joan Clark, City Clerk

First Reading: August 14, 2001

Second Reading: August 28, 2001

Effective Date: August 28, 2001