CITY OF COCOA
BOARD OF ADJUSTMENT
MEETING MINUTES
JANUARY 20, 2016

A regular meeting of the Board of Adjustment of the City of Cocoa was held on Wednesday, January 20, 2016 in the Council Chambers at 65 Stone Street, Cocoa, as publicly noticed.

I. OPENING MATTERS:

Chairman Rip Dyal called the meeting to order at 6:00 P.M. The Board Secretary called the roll.

MEMBERS PRESENT:

Herbert Dyal (Rip)	Chairman
Robert Frey	Vice-Chairman
Nancy Elliot	Board Member
Bruce Gilmore	Board Member
Connie Harvey	Board Member
Jane Jollay	Board Member

MENBERS ABSENT:

Matthew Ford	Board Member

OTHERS PRESENT:

Steven Belden	Community Services Director
Steven Biel	Senior Planner
Kim Kopp (via phone)	Board Attorney
Joy Lombardi	Board Secretary

II. APPROVAL OF AGENDA & MINUTES:

Approval of Agenda: January 20, 2016.

Chairman Dyal made a recommendation to amend the agenda to move the election to the end.

Motion by Frey, seconded by Mr. Dyal, to approve the agenda as amended. Vote on the motion carried unanimously.

Approval of Meeting Minutes: October 21, 2015.

Motion by Mr. Frey, seconded by Mr. Dyal, to approve minutes as written. Vote on the motion carried unanimously.

III. OLD BUSINESS:

None

IV. NEW BUSINESS:

A. PZ-15-00000006 – Special Exception (819 N. Fiske Blvd., Suite 807)

Consideration of a Special Exception request from Appendix A, Zoning, Article XI, Section 11(C)(8) to allow for a package store in the C-N (Neighborhood Commercial) Zoning District. The subject property is identified by the Brevard County Property Appraiser as Parcel ID 24-36-29-77-0000A.2-0000.00.

Senior Planner Steven Biel presented a project summary and exhibits for the Board's review. Mr. Biel stated that A&M Discount Beverage is leasing space from Bhawani, LLC and is currently selling beer and wine. Bhawani 2015, Inc. is requesting approval to expand the beer and wine sales to include liquor as well as expand into the adjacent unit (809 N. Fiske Blvd.). Mr. Biel testified that the criteria contained in Appendix A, Zoning, Article XVII, Section 2(A-K) have been met as indicated in the Staff report.

Senior Planner Steven Biel stated that Staff recommends approval of the Special Exception in accordance with Appendix A, Zoning, Article XI, Section 11(C)(8) of the City of Cocoa Code to allow for the expansion of an existing package store and the sale of liquor in the C-N (Neighborhood Commercial) Zoning District, with the following conditions:

1. The Special Exception shall not be effective until the applicant has secured all the permits and approvals necessary for any development related to the Special Exception. Such permits shall be obtained within six (6) months of the Board's approval.

2. If the use is extended, enlarged, or expanded, a Special Exception approval shall be required.

Steven Belden, Community Services Director, stated for clarification that the existing package store, if for the sale of beer and wine, could expand without the special exception; therefore, the special exception request is for the approval of the sale of liquor only. Mr. Belden further stated that the sale of liquor is permitted by the City Code in the C-N, Neighborhood Commercial, by special exception.

Attorney Kendal Moore, of the Law Firm Moore Evanson Baughan, PLC, testified that City Staff has provided a competent presentation regarding the item before the Board and reiterated that the request is a permitted use by special exception. Attorney Moore stated that the applicant has met all of the criteria required in A-K and would be happy to answer any additional questions from the Board.

Cassy Williams, Resident of Cocoa (800 N. Fiske Blvd.), testified that she has been a resident for 26 years and has seen many changes for the good; however, she is against the request because she believes that the addition of liquor would create more traffic. She further stated that there is already a problem in the neighborhood with drugs.

Bawanna Bostic, Resident of Cocoa (1050 Hickory Ln.), testified that she has been a resident for 30 years. She retired from the school system and is currently a pastor. She is against the request because there are already drugs being sold in that neighborhood and combined with hard liquor would create more problems in the community; especially for the children. She is asking for the Board to deny the request because the City has come a long way with many improvements and Fiske Blvd. needs our help to clean up. Ms. Bostic further stated that she is concerned because their homes are so close.

Discussion followed among the Board regarding the facts presented by staff and the testimony from the citizens.

Mr. Belden pointed out that the Board should review the criteria (A-K) to help make a determination. Specifically, criteria K to determine if the request will be reasonably compatible with the surrounding areas. This criteria is difficult to measure because there is a certain amount of interpretation. Mr. Belden stated that each Board member should consider the presentation made by staff; the applicant's presentation; and the opposing testimony from the residents and make a judgement call.

Bruce Gilmore stated that the impact on the neighborhood is critical; and it is his opinion and determination that it is not a good location because it is not compatible with the surrounding area.

Attorney Moore explained that the Code is specific on what is allow by special exception and the criteria to qualify for the special exception. If the applicant meets the criteria; they are legally entitled to a special exception and it is improper to hold activity unrelated to the application against the applicant.

Following discussion, it was determined that the intention of the owner is not for the expansion of the A & M but rather a new business in the adjacent unit.

Motion by Mr. Dyal, seconded by Ms. Elliot, to deny of the Special Exception based on the fact that it is not an expansion of A & M but rather a separate business and did not meet the criteria. Vote on the motion carried 5 to 1, with Mr. Frey against.

B. PZ-15-00800007 – Variance (1050 Olive Street)

Consideration of a variance request from Appendix A, Zoning, Article XI, Section 3(F) to allow for a 8-foot reduction to the required 25-foot front yard setback in the RU-1-7 (Single Family Residential) Zoning District in order to rebuild a porch (originally 4 feet by 13 feet) to 8 feet by 16 feet. The subject property is identified by the Brevard County Property Appraiser as Parcel ID 24-36-29-78-00000.0-0149.00.

Senior Planner Steven Biel presented a project summary and exhibits for the Board's review. Mr. Biel stated that the porch was removed in May of 2015, as it was in disrepair, and can be rebuilt in the same footprint without a variance. Mr. Biel testified that the criteria contained in Appendix A, Zoning, Article XVII, Section 3(A-F) have not been met as indicated in the Staff report.

Senior Planner Steven Biel stated that Staff recommends denial of the variance request from Appendix A, Zoning, Article XI, Section 3(F) of the City of Cocoa Code to allow for a 5-foot reduction to the required 8-foot side yard setback in the RU-1-7 (Single Family Residential) Zoning District in order to rebuild a porch to 8 feet by 16 feet. However; if the Board of Adjustment approves the variance request, the following conditions should be considered:

1. The variance is to allow for the applicant to construct a 8-foot (depth) by 16-foot (width) covered porch as shown on the survey prepared by David A. Block Surveying & Mapping (not signed & sealed), dated April 4, 2005 (Exhibit A).

2. A signed and sealed survey shall be submitted prior to building permit approval.

3. Approval of this variance does not waive any other setbacks and does not waive the required setbacks for any future structures or additions to the residence.

Steve Wagner, property owner, testified that the house was built in 1951 and he purchased the property in 2005. The house is non-conforming for several reasons including the fact that the front porch was constructed 4' into the setback. Mr. Wagner stated that he understands that he would be allowed to rebuild the porch in the original footprint; however, he would like to make it a little bigger so it is a comfortable area to sit. Mr. Wagner expressed that he believes this would be compatible to the area and submitted photos of other porches in the area for the Board to review. Mr. Wagner further stated that he intends to live there when the repairs are complete.

Motion by Mr. Frey, seconded by Ms. Harvey, to approve the Variance to allow for a 6-foot reduction to the front yard setback, with conditions as stated. Vote on the motion failed without a majority. (Voting yes/for: Mr. Frey, Ms. Elliot, Ms. Harvey) (Voting no/against: Mr. Dyal, Mr. Gilmore, Ms. Jollay)

Discussion followed.

Motion by Mr. Frey, seconded by Mr. Dyal, to accept Staff's recommendation and deny the Variance. Vote on the motion failed without a majority. (Voting yes/for: Mr. Dyal, Mr. Gilmore, Ms. Jollay) (Voting no/against: Mr. Frey, Ms. Elliot, Ms. Harvey)

Following discussion among the Board.

Motion by Mr. Frey, seconded by Ms. Elliot, to approve the Variance to allow for an 8-foot reduction to the front yard setback, with the conditions as stated. Vote on the motion carried with a majority. (Voting yes/for: Mr. Frey, Ms. Elliot, Mr. Gilmore, Ms. Harvey) (Voting no/against: Mr. Dyal, Ms. Jollay)

V. OTHER BUSINESS:

Election of Board Chair and Vice-Chair

Motion by Mr. Dyal, seconded by Ms. Jollay, to elect Mr. Frey as Chairman. Vote on the motion carried unanimously.

Motion by Mr. Frey, seconded by Ms. Elliot, to elect Mr. Dyal as Vice-Chairman. Vote on the motion carried unanimously.

VI. NEXT MEETING DATE:

The Board members established that the next meeting would be held on February 17, 2016.

VII. ADJOURNMENT:

There being no further business the meeting adjourned at 8:12 P.M.

Approved on this 20th day of April, 2016.

Rip Dyal, Chairman

Rachel Dunn for
Joy Lombardi, Board Secretary