

DRAFT MINUTES  
REGULAR MEETING – PLANNING BOARD  
July 28, 2016

Minutes for the Regular Planning Board Meeting for the City of Daytona Beach, Florida, held on Thursday, July 28, 2016 at 6:00 p.m. in the Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida.

Board Members Present:

Robert Hoitsma, Chair  
Tony Barhoo  
Pat Drago  
James Neal  
James Newman  
Cathy Washington

Board Members Absent:

Jeff Hurt

Staff Members Present:

Richard Walton, Planning Director  
Dennis Mrozek, Planning Manager  
Doug Gutierrez, Senior Planner  
Rose Askew, Planner  
Carrie Avallone, Assistant City Attorney  
Marianne Pulaski, Planning Technician

1. **Call to Order**

Mr. Hoitsma called the meeting to order at 6:00 p.m.

2. **Roll Call**

Ms. Drago called the roll and noted members present as stated above.

3. **Approval of the Minutes** - June 23, 2016

**Board Action:**

A motion was made by Ms. Washington, seconded by Mr. Barhoo to approve the minutes of the June 23, 2016 Planning Board Meeting as presented. The motion was approved unanimously (6-0).

4. **Special Use – 1920 Beach House, DEV2016-037**

**Staff Presentation:**

Doug Gutierrez, Senior Planner, stated the subject property is in the historic overlay district which permits the establishment of a bed and breakfast subject to meeting the following requirements in the Land Development Code. There are three areas of standards: one is the special use permit in section 3.4.g, bed and breakfast as a special use in a historic overlay district 4.9.d.6b and bed and breakfast in section 6.5.2b24a. I believe this is the first time we are going to apply this special use for a B&B in a historic overlay district so it could be a trial. The main underlying basis for a b&b to be submitted in a historic district is to promote special uses on historic properties to encourage preservation of such properties. And we have that in our Comprehensive Plan. The subject property is zoned SFR5 surrounded by SFR5 and the two structures on the property within the Seabreeze Local Historic District are both built in 1924 and both are contributing structures. The use designated is special use and the particular zoning district is a use that may be appropriate for the district but because of the nature, extent, and external factors require special consideration. Staff has reviewed the application and believes that the application satisfies the criteria established in the Land Development Code and recommends approval with the conditions listed in the staff report regarding making sure that all code and subsequent code violations are addressed; and that the handicap parking is displayed on the site plan. At the July 19<sup>th</sup> Historic Board meeting, the Historic Board unanimously approved the special use permit with the following conditions: insure compatibility with the surrounding neighborhood. That was an issue that was brought to their attention. They wanted to limit the number of guests per guest room. There are only 2 guest rooms in this particular bed and breakfast to 2 adults and 2 children per bedroom. They wanted to limit the number of vehicles per guest room either one automobile or truck or two motorcycles. Additionally as a historic board, they wanted any modifications that are made to the structure or ADA compliance come before the board for a Certificate of Appropriateness. Additionally they wanted to provide a 5 foot landscape buffer with 20% additional landscaping on the east side of the property mainly because they wanted to insure the neighbor is not impacted on the east side which was a consideration brought up at the meeting. And then the Historic Board wanted to repaint the current purple wall cap in a color that's appropriate and in accordance with the local Seabreeze Historic District, the same design guidelines for the Mediterranean revival. That is done as a minor COA and I will be working with the applicant on that. To represent the applicant is Colleen Miles and I'll let her take over.

**Applicant's Presentation:**

Colleen Miles, Land Development Resource Group, 140 S. Beach Street, Suite 400, Daytona Beach, on behalf of JoAnn King. I think you all are familiar with

the property and the previous issues that they had. They are currently in compliance. The Historic Board had some issues with aside from the cap some additional things. The landscaping is not at all a problem. The ADA compliance we had already discussed with the client so she knows she is going to have to come into compliance with that through the building permit whether it be requesting a waiver from the Federal government or instituting the requirement to make the front building ADA compliant. I'll answer any questions you may have.

Ms. Drago: I have a question and it may be for staff. I am not familiar with the history of the code enforcement issues.

Mr. Walton: I understand there is an open code violation right now.

Ms. Miles: No she is in compliance.

Mr. Walton: Then there is no pending code enforcement.

Ms. Miles: No sir, she's in compliance.

Ms. Drago: What was the nature of the problem.

Ms. Miles: When she bought the property she was renting it out and I'm sure everyone will speak to it, renting it out on short-term rental.

Ms. Drago: VRBO, type thing.

Ms. Miles: Correct, kind of not very neighborly like.

Ms. Drago: The reason I wanted to ask the question is and it really is a question for staff when we have the limitations for example I'm looking at 1 auto or 2 motorcycles and often times a guest is towing 2 motorcycles. I'm thinking of the ability to enforce the conditions that we put in. If we had Code Enforcement issues before, how do we enforce the conditions that we have. This is really more a question for staff. I hate to set up inherent problems for Code Enforcement.

Mr. Walton: I can tell you the more complicated, the more conditions, the harder it will be for Code Enforcement. It's not about actually getting a call from a neighbor saying they are not compliant but code enforcement will actually have to see the property. If there has been a problem in the past based on where it is, its impact on the neighborhood and that's something that you have to consider in terms of conditions. This is a special permit where you can apply reasonable conditions and the applicant makes it very clear how they will show they will be in compliance.

Ms. Drago: I guess the question I have is when I am looking at the number of guests per guest room and vehicles per guest room that's difficult to enforce.

Ms. Miles: One of the requirements for the b&b standards throughout the city not just the historic overlay is that you maintain a guest register that is able to be reviewed at all times. So that would be one mechanism that you would register your vehicle and tag number and who's there.

Ms. Drago: I understand. I just think that it's difficult sometimes to enforce and I guess I'm asking staff once again, this is a special use permit. Should we not grant it, what then happens, does it stay as single family residential. I just want to make sure I understand the implications of doing this.

Mr. Walton: Well, the code does permit this and you are certainly able to add beyond what the code requires as reasonable conditions for the piece of property and where it sits and how it affects the neighborhood. I will let Carrie speak or should you want to deny this. I think the biggest key is to what can be enforced. I have spoken with Code Enforcement and they're concerned with a whole bunch of rules with the limited number of code officers they have and enforcement.

Ms. Drago: I love bed and breakfasts; I love historic districts. Usually, when I visit a town I'll stay in a bed and breakfast or an inn. I'm only concerned about our ability from a staff standpoint to enforce it when we set this kind of conditions.

Ms. Avallone: Well, the conditions, you would be relying on code enforcement. Probably someone from Planning would have to tell the Code inspector hey these are the conditions. They would have to go out and observe the violation and write it up. Yes there is difficulty in that. Your second question about whether you should. You are voting on a recommendation to the city Commission so you have the option of recommending denial or recommending approval based on the Historic Board conditions. You could recommend approval based on maybe some other conditions that would make you feel more comfortable. You have a few options and it's the Board's discretion.

Ms. Drago: Quite frankly I wouldn't want to add any conditions. I'm only concerned about enforcing the ones that are here. Thank you.

Mr. Hoitsma: Are there any other questions of the applicant?

Mr. Hoitsma: I meant to ask you does the ordinance indicate that the person has to live in the house, that is the bed and breakfast.

Mr. Walton: As long as you specifically tell them the code requirement.

Mr. Gutierrez: The requirement is that the owner has to live on the premises. He would have to live in that house if there was just one house on there but the fact

that there are two structures there and they opted to live in the apartment-garage it is still on premises.

Mr. Hoitsma: Does premises mean the whole property.

Mr. Gutierrez: I can give you the definition. It does mean the whole property. "Premises – any building, lot or parcel of land or portion of land with an approved /unapproved including adjacent sidewalks and parking strips." So that pretty much covers any type of lot.

Mr. Hoitsma: Does anyone have any questions of staff about that answer. Can I hear from anyone in the audience who would like to speak in favor of this issue. Is there anyone who would like to speak against.

**Public Comments:**

Anita Gallentine, 836 N. Grandview, my home and actually my duplex is located three properties away from this particular property. I sent this email to staff this week and I think it's just easier to read it. I captured my thoughts on it. You probably already know most of the immediate neighbors of 507 Jessamine are not very happy with the recommendation of approval for the special use permit of Jo Ann King's small single family home to operate as a short-term rental in the neighborhood. In fact, I attended the Historic Board meeting last week and it was evident that the Board members did not want to recommend approval as it took 10 minutes for anyone to even make a motion. Mr. Trager kept saying that it had to be approved as it was a permitted use but no one clarified that that was not the case. The board then passed the motion but only after they listed several conditions. The bigger issue I want to address concerns the application of a b&b special use as it relates to a small single family home when the owners have moved into a converted garage. They call it a bungalow but believe me it is a converted garage. The King's past rental use for the home so far has been under repeated violations of code enforcement for over 6 months as they illegally rented it out many times on a short-term basis. I think our city needs to re-visit the b&b language in the Land Development Code. When that language was originally approved, it was to save large historic homes in designated historic neighborhoods from being destroyed or chopped into units. Not to apply to a small 2 to 3 bedroom home where the owners are not even living under the same roof. This special use permit at 507 Jessamine is beyond the original intent of the b&b special use overlay. The interpretation of how this language has been applied to this case could open the door for many other small homes to become short-term rentals. If history is a good lesson, then this property will be back before the Code Board once again as the owners have already shown they will not follow the rules or the laws and as we know compliance has to be monitored by someone. We're just not sure who. Unfortunately, their neighbors will be the ones who pay the price. I would like to request city staff review and make proposed changes to the b&b LDC language to include that b&b properties must have a provision

where the homeowner resides in the building that is being rented, not an accessory structure like a garage or a sidewalk. And that a b&b special use permit only applies to larger size estate properties like 5 or 6 bedrooms or 5 or 6 baths. Not small little houses. There has been little regard given to the immediate residential neighbors of this property and they are all single family long-term owners of the neighbors. There has been no regard to the owners of these properties by the owners of the b&b or the city.

Fred Hoffmann, I'm running for Mayor of the city of Daytona Beach, and I wasn't going to attend this meeting but this is more of a question or a comment about the b&b. At the previous meeting the emergency city commission meeting addressing the homeless issue and they're talking about putting people in temporary housing in homes. They didn't approve this and I'm not for it or against it, I'm in the motel business. But once they don't approve it can they still say well you know we'll rent that property out, the city will pay us and we'll take someone off the street. Would that be the same effect. This is just a question. You see where I'm going on this. They can't use it as a b&b but they could still rent it out you know as a dwelling for someone who is not going to be homeless anymore.

Mr. Walton: I think your question had to do with short-term rental. The only way it could be rented would be for 6 months and a day minimum. So they couldn't move in there for less than that b&b has a maximum of 10 days - 14 days.

Mary Anne Jackson Trumbull, a 50 year resident in the same home, I've been a resident for over 70 years in Daytona Beach. But in my present home which is around the corner at 925 N. Grandview, I've lived there 50 years. I'm actually here supporting what Ms. Gallentine has said. There were several of us that were concerned because there had been some problems with noise, with extra vehicles at this place and that's what we were concerned about. We did tour it. The owner was very nice and she had us over for a meeting like you're supposed to and served us really nice food. It was very nice. But I was amazed that someone would put a bed and breakfast in that small a residence because when Jim Camp came I met with Jim when he first came into the neighborhood and that is a big piece of property. You know there on Peninsula. And I was glad Ms. Drago brought up this point. I've always worried or have been concerned how you would enforce these laws. And with the person complaining or enforcing the criteria that is set up with the person a neighbor you know calling and if they have to call several times that is an imposition on the neighbor too. And then if they have to prove it does that mean that they're going to get on their cell phone and take pictures or what is that going to require. I am not for this and the fact that we always think about setting precedence and I know it would be each one on its own basis but I just feel the property is too small for that and I feel the parking and the problems that the neighbors have already encountered would have a negative effect on the neighborhood.

John Tunnesi, 625 N. Halifax, I live in the neighborhood and I belong to the neighborhood association. The Seabreeze Neighborhood Association. And what concerns me is I looked on this as an outgrowth. You know in the neighborhood there have been a number of short-term rentals and code violations over the past 6 months and I'm sure if you speak to code they'll give you a list of the short-term rentals. This happens to be one that in my estimation matured into a bed and breakfast because you can do a bed and breakfast which is a short term rental in a historic district. You can't do it outside of a historic district. So my only concern is every small house or any size house that wants to do short-term rentals will just put themselves through this bed and breakfast process. It is not a terrifically complicated process to do. And if somebody does meet the requirements which are difficult in some cases but we're going to get these situations all the time. You know the parking spaces that are available in this house. Actually there are only a few parking spaces. They pave over. They put gravel over a bunch of grass. Before that there were code violations for cars parked on the grass. There is a whole history. I wish we had the list of code things before it become a bed and breakfast application. But I just fear a number of other houses are going to do the same thing. And then if we also entertain the notion that living on the premises means living anywhere on the property we're going to have a number of garage structure that are suddenly going to become the main residence of the homeowner while the rest of the house is going to be a short term rental and then we're left with the neighbors. And this was a very difficult problem for the neighbors. I live a few blocks away but the directly abutting neighbors and all the neighbors on the same block can see the number of cars or motorcycles or other vehicles coming onto the property. And it does become an issue of the gentleman next door, Mr. White had to call a number of times. He experienced some difficulty with some of the guests that were insulting him. That's a purely personal thing. He was the one that had to go through complaints to code enforcement and getting that and again code enforcement, we have so few code enforcement officers. It's not as if they can come out on a Saturday afternoon at the time the cars are parked on the property. So who is the enforcer. Is the enforcer the neighbors, you take a picture. Does this become a will find case somebody violating. My only other item was on the handicapped accessible. If we now put a handicap accessible parking spot and there is also handicapped accessible ramps that have to be built into the house I think one of the provisions is that has to come back for another Certificate of Appropriateness. But based on the past history of code violations and not doing things properly I think it is a trust matter. I was at the Historic Preservation Board meeting. What was so interesting was that the meeting went on for an hour before the head of the board said do we have a motion. Nobody would make a motion and it was only after that that the meeting resumed and we talked about conditions. But I think it was this uneasiness about single family house, short term rentals, parking, public concerns, neighbor concerns, who polices this type of thing. I think that was the reason that there was such uneasiness at the Board. As I say it's not a matter of some particular piece not being met, some particular requirement, it's just a matter of a general uneasiness on how do you enforce. I think getting back to

what Anita said I think probably because the bed and breakfast exception for historic districts was meant to cover larger houses where bed and breakfasts would be appropriate. Cause I remember Jim Camp put his in. There was discussion about parking had to be hidden from view on the street and he had to put the parking in the back and special trees so you couldn't see his parking area. In this particular case the cars are parked 6 feet from the sidewalk behind a small retaining wall. That's it.

Mr. Hoitsma: Anyone else to speak against. Then I will close down public discussion. Board?

Mr. Walton: Staff has some information. In order to meet some of these conditions, parking, number of people, the only thing it says in this memo if you want to go beyond that, for instance, maybe a small piece of property like this, 2 adults and 2 children.

Ms. Drago: This says per guest room.

Mr. Walton: Right so that's what I'm saying potentially 8 people.

Mr. Gutierrez: I researched the code violations and I expected to see quite a bit. Actually, I only found case no. 2015-3061 operating as a short term rental. So the property owner was presented with an option to apply for the special use permit for b&b since the property did qualify by being a contributing structure in an overlay district. Code enforcement agreed that this would be a satisfactory solution and the case was closed based on the applicant processing the special use permit. I did not find anything in our Code trakit regarding all the other violations that I thought would be on the list so that's all I was able to find. Nothing else was processed regarding what was mentioned.

Mr. Walton: Parking proposed in the provisions.

Mr. Gutierrez: Well the parking goes all the way into the driveway and there is enough room for 3 cars side by side including one being wide enough to accommodate handicapped. Whether the ADA compliance to the structure as Colleen mentioned that she's going to apply for a waiver from Title II and Title III ADA compliance requirements, the Historic Board wanted documentation either that it was awarded or a COA.

Ms. Drago: I think historic structures can get a waiver, especially small businesses. I'm not enthusiastic about this one.

Mr. Hoitsma: Does the owner put her car in the garage or is the garage wholly an apartment.

Mr. Gutierrez: The garage is split with garage on one side and residential on the other side.

Mr. Hoitsma: So it is split.

Mr. Gutierrez: There is a garage for a single car which can accommodate the homeowners as one.

Mr. Hoitsma: Is that included in the 3 spots.

Mr. Gutierrez: No I believe that the space on the site plan shows that there is enough room for cars plus one in the garage.

Ms. Drago: I drove by this afternoon on my way here. There were three vehicles parked there then, so you can see three in the driveway without the b&b.

Mr. Hoitsma: Do you have any questions?

Mr. Newman: I just have a concern about reading this over there were some complaints from neighbors and aside from the code violations of not being licensed it seems to me that a lot of the neighborhood might object to what they see as a nuisance in their neighborhood. Noise is a big factor and I've had to deal with that in my neighborhood. In these complaints there is a page here a response that I assume is from the applicant that just kind of dismisses all of the complaints rather than addresses them and I would really like to see something more of good will from the applicant some way of guaranteeing that the property won't be a nuisance to the neighbors. I've rented short term properties in the past and I've had rental agreements that require certain requirements from the renters, particularly regarding noise especially late at night. The last one that I rented I did a rental agreement and stated that if you violate any of these things, these people are our neighbors, we know them, and if we get complaints from them, you're out. No refunds. And I would really feel a lot more comfortable with this if I saw a rental agreement that had something that addressed these very problems, but I don't see that here. I see a page kind of making excuses for basically dismissing the complaining. The page says there's only one person complaining but obviously from this Historic Preservation meeting there was more than one person around the neighborhood complaining about it. I really would have liked to have seen more good will from the applicant towards their neighbors. That's my comment.

Mr. Barhoo: I believe you can have noise and complaints in any neighborhood. I think if anybody can rent their property legally or illegally at any time and any place. It happens in various neighborhoods. I think there was a violation. The applicant did what it needed to do to get things in place so it does not violate city code. The neighbors are going to complaint whatever about lights. You put lights on your property, they don't like it they'll call and complain. You put a fence up

and they don't like it they'll call and complain. Folks are going to complain about anything and everything. You can't make everybody happy. The key is I agree. Who is going to monitor whether you have 1 car, 4 cars, 10 cars. And at any given time you can go by anybody's house and sometimes there's a death in the family, you have 20 cars parked outside. You have a gathering. Things happen and we are people. We have families and sometimes folks visit you. At the same time, I understand the owners and I understand what we are trying to do. We don't want to set a precedent. At the same time, I think there is good will on the applicant part to get a contract like you said. I like what you said that would assure that any complaint at any particular time then we will ask you to leave and no refund and so forth. I also think you could monitor it a lot better rather than having somebody coming in for 6 months or a year. These are gone within 10 to 14 days. I'm kind of mixed with it. I understand but also at the same time your property is your property. If you go through the right process to get these things in place to get it approved why should you not do it. That is the reasons you buy a property. I understand the definition and what the definition is and whether you live on a tree branch on the thing, you still are on the premises and that is defined by code. The fact of the matter is I think people do things for survival based on their need. We don't know the situation. We're not going to get into that. Whether it s 2 bedroom, 1 bedroom, 10 bedroom, 15 bedroom, according to our definition, it meets the standards and for me to look at it from a perspective I know what I feel but what is the right thing to do. So looking at it from the right perspective as long as they meet code and able to put that piece in there, I am fine with it.

Ms. Washington: In looking at this, when I first read it, looking at the dwelling itself and realizing where it's located I thought I would expect it to be if it was going to be a bed and breakfast that it was going to be more than 2 rooms. I'm not comfortable with it knowing where it is. And I understand Reverand Barhoo's version. I understand Mr. Newman's version but taking into consideration the neighbors and how hard they worked to maintain this area I think with the rule the way it is I would have to go against it. I'm just not pleased with this rule for this area.

Ms. Drago: I just feel when I looked at this and I did go by, it is beautifully kept. I think historic districts around the country have bed and breakfasts but I thought more like a Hodgkiss house than I would this small 2 bedroom one bath home. And I know even short term rentals around the state and around the country are having difficulties with the short term rentals and making sure that you keep a neighborhood feel and yet usually when people have a short term rental they keep up the property pretty nicely so it attractive. I'm going to vote against this because I have a concern when you have 2 adults and 2 children in a room and this is a small parcel. I said I went by today and it is not permitted for this and there are already 3 vehicles in the driveway. So I'm saying to myself that this has the potential to be a recurring problem. I don't have the answer but I don't feel this is an appropriate property for a b&b.

Mr. Hoitsma: I think there are some valid points being made. I think when you go down that street and you see those homes I don't think you'd like to see 3 or 4 or 5 or 6 of these all together and that could happen. I think as has been mentioned, there is a place for bed and breakfasts and we've got some places in town that are bed and breakfasts and they do a nice job. They're good enough in size so as not to be any restriction on the area that they are in. And a couple of them are very very nice. I think I agree. I think it is difficult to go against because the rules say something but it is a difficult call. Unless there is any discussion.

Mr. Neal: I don't have anything. When you look at it from an individual standpoint as long as you are in compliance with the rules and regulations you should be allowed to do what you feel is correct. Now not everything that is done in this lasts for a long period of time anyway. This is a temporary case where people will come in 10 to 14 days and sometimes there won't be more than 3 or 4 cars there but it's a consistent thing where it impedes the neighborhood as a whole where it just messes up things. I think the neighbors are strong enough to keep them in check anyway. But we are looking at it from the legal aspect. What's allowed. And from the looks of our program that we have set up in our planning, we do allow certain things, and it is permissible. So I just want to make a positive comment everyone tries but not everyone succeeds. So as individuals we have to look at it from personal standpoint and business wise if I had a family and I needed it there's no telling what I would do as long as it was legal.

**Board Motion:**

Ms. Washington: Being that all our motions should be made in the positive, I make a motion we approve Special Use- 1920 Beach House, DEV2016-037

Mr. Walton: Is that with the conditions of the Historic Board.

Mr. Hoitsma: With both the conditions of the Historic Board and staff

Ms. Washington: yes

Mr. Barhoo: Second

**Board Action:**

Ms. Drago: Ms. Drago – no; Ms. Washington – No; Mr. Hoitsma – no; Mr. Neal – yes; Mr. Barhoo – yes; Mr. Newman – no. The motion failed.

Ms. Miles: I appreciate the consideration. Have a wonderful evening.

5. **Other Business**

a. Downtown Redevelopment Board Report

Ms. Washington stated the Downtown Redevelopment Board met on July 12 and heard a presentation regarding the Sweetheart Trail. Ms. Washington stated there was a presentation regarding wall graphics for McKay's and discussion of Art in the Alley, which was approved.

b. Midtown Redevelopment Area Board Report

Mr. Barhoo stated the Midtown Redevelopment Area Board did not meet in July. Mr. Barhoo reminded the Board he will not be in attendance at the Planning Board meeting in August.

c. Beachside Redevelopment Area Board Report

Mr. Newman stated there were no scheduled items on the Beachside Redevelopment Board agenda; however, there was discussion on the role of the Redevelopment Board.

d. Public Comments

Robert Stolpmann, 503 E. International Speedway Blvd., stated he is following encouragement from Mayor Henry to become involved in City government and attend and speak at meetings. He expressed concern about ISB and stated there are opportunities to improve East ISB in order to have a gateway project. He stated some vacant properties can only be developed as a park due to the densities outlined in the Land Development Code. He stated ISB has been stifled.

e. Staff Comments

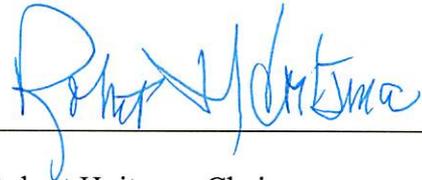
Mr. Walton stated staff is working on the item that was removed from the agenda and will work to bring it back to the Planning Board in the future.

f. Board Comments

Ms. Drago stated the League of Women Voters will be activating their web site with candidate information for the upcoming elections effective August 12, 2016.

**Adjournment**

The meeting adjourned at 7:20 p.m.



Robert Hoitsma, Chair

ATTEST:



Pat Drago  
Secretary