

**MINUTES — FEBRUARY 8, 2022
CITY OF INDIAN ROCKS BEACH
REGULAR CITY COMMISSION MEETING**

The Indian Rocks Beach Regular City Commission Meeting was held on **TUESDAY, FEBRUARY 8, 2022**, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

Mayor-Commissioner Kennedy called the meeting to order at 5:00 p.m., followed by the Pledge of Allegiance and a moment of silence.

PRESENT: Mayor-Commissioner Joanne Moston Kennedy, Vice Mayor-Commissioner Joe McCall, Commissioner Philip J. Hanna, Commissioner Edward G. Hoofnagle, Commissioner Denise Houseberg, and City Manager Brently Gregg Mims.

OTHERS PRESENT: City Attorney Randy D. Mora, City Clerk Deanne B. O'Reilly, MMC, Planning Consultant Hetty C. Harmon, ACIP.

(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)

1A. REPORT OF Pinellas County Sheriff's Office.

The Pinellas County Sheriff's Office submitted a written crime analysis report for the month of December 2021 and January 2022.

1B. REPORT OF Pinellas Suncoast Fire & Rescue District.

For January 2022, the PSFRD had 60 calls for emergency responses to Indian Rocks Beach. Ten were fire-related, and 50 were EMS calls. The average response times were five minutes and fifteen seconds. However, due to COVID isolations, quite a few calls were delayed, which lowered the average.

The PSFRD is looking to move their station further north into Indian Rocks Beach to provide a better response time in the area with all three fire stations.

2. PUBLIC COMMENTS.

Kelli Farrington, 541-20th Avenue, stated she had just finished construction on her home and received her impact fees for development, recreation, and mobility. She stated that for building a bigger house and improving her property value, she is fined for that through development impact fees. She said she is already paying more in property taxes by building a bigger home, so she feels that is a double-whammy for trying to stay in Indian

Rocks Beach. The second impact fee is recreation. Just because a person builds a bigger home, it is assumed they are putting more stress on the City parks, beach, and recreational facilities, which is an unfair presumption. She moved from 410 Harbor Drive South to 541-20th Avenue and has lived in the City for 17 years. Her family has not grown, so her family is not stressing the City in any way by increasing traffic to the parks, beaches, or using more of the recreational facilities, which she pays taxes for already, and the same goes for mobility impact fees. From her understanding, the mobility impact fee goes to the presumption that because people build a bigger home, they negatively impact the transportation system and the road wear and tear. She reiterated that her same argument is that she moved one finger over, and her taxes already go to that, and she is not negatively impacting the City any further with that.

However, Ms. Farrington stated her larger frustration with those fees lies in the fact that if anybody is impacting the City negatively in recreation and mobility, the Airbnbs seem to be unaddressed.

Ms. Farrington stated that when she lived on Harbor Drive South, some of the Airbnbs had 20 cars in front of the rentals on a nightly basis, which negatively impacts mobility, transportation, road wear and tear. She further stated that the occupants of these Airbnbs do not treat the City parks or the beach like the residents do. They leave their trash behind and do not respect the City's property.

Ms. Farrington stated that for someone who loves the City and chose not to move out, like most of her neighbors are doing, because of these Airbnbs, she decided to stay here and improve her property. Still, at the same time, she feels these impact fees are addressed to the wrong people.

Ms. Farrington stated that Airbnbs should pay impact fees yearly instead of residents who want to stay here and improve their property and the City.

3A. REPORTS OF the City Attorney.

City Attorney Mora provided a progress report on the following bills:

- HB6033, Preemption of the Regulation of Vacation Rentals.
- SB512/HB325, Vacation Rentals.
- SB280, Local Ordinances.
- SB620, Business Damages Against Local Government.

3B. REPORTS OF the City Manager.

City Manager Mims provided the following report:

Code Enforcement January Stats:

- 55 Parking citations (does not include the PCSO citations)
- 3 notice of violation letters issues.
- 2004 Gulf Boulevard. The garage has been demolished per City Commission Resolution No. 2021-08. The property owner will be billed for all costs incurred for the demolition, and if not paid, staff will lien the property according to the City Code, which requires City Commission approval.

Other Updates:

- Reviewed the December 2021 Year-to-Date Financial Results.
- The Campalong Baseball Field backstop fencing will be installed beginning in July. The City will shut down the baseball field for approximately a month while this work is being done.
- The Brown Park Tennis Courts/Pickle Ball Court Resurfacing Project will begin after Easter.
- The Bay Boulevard Reconstruction Project. All curb work has been completed. Starting February 14, 2022, Bay Boulevard will be milled and paved from 18th Avenue to 22nd Avenue.
- Damaged occurred on Beach Trail during the construction of a multi-unit condo between 23rd and 24th Avenues. The contractor paid the City \$8,500 to remill and repave that section of Beach Trail.

Purchase Orders Issued:

- Brown Park Basketball Court Reconstruction Project.
- Code Enforcement Polaris.
- Replacement of one Public Works Pickup Truck.
- Replacement of one Solid Waste Packer/Garbage Truck.

City Hall Telephone System.

The FY2022 Budget allocates \$15,000 to purchase or lease a new telephone system for City Hall. Staff has entered into an agreement with Spectrum Business to install a new telephone system. The system will be leased rather than purchased and will include the next-generation VoIP phones and new fiberoptic lines.

City Manager Mims stated the FY2022 Budget allocates \$15,000 in the Central Services Budget, and the total up-front cost for the new telephone system is \$900. Therefore, he would like to request a consensus by the City Commission to allocate the remaining balance to digitize and index the building permit microfiche and other documents on microfiche. This would allow easy electronic access and retrieval by staff and the public.

GULF BOULEVARD UNDERGROUNDING UTILITIES PROJECT

City Manager Mims stated he spoke with the Governor's Office concerning to complete the Gulf Boulevard Undergrounding Utilities Project. The Pinellas County Penny for Pinellas

Funds would complete Phase II of the Project from 5th Avenue to approximately the County Park (17th Avenue). He would provide the Governor's Office with a summary of the remainder of the project, which would be 17th Avenue to 28th Avenue with a cost of approximately \$8 Million.

PARKING IN THE NARROWS BUSINESS DISTRICT

City Manager Mims stated a business district business owner had a discussion with the Governor about possible State available funds for additional parking or parking facility in the Narrows Business District. He had spoken with each City Commission individually on this subject. There seems to be some positive feedback from the City Commission about at least the possibility of the City asking for money for a project like that. He will need to schedule a work session so the City Commission can publicly discuss the pros and cons of having additional parking facilities/garage within the Narrows Business District.

Sign Ordinance

City Manager Mims stated that staff had restarted the process to advance a new sign ordinance through the Planning and Zoning Board and ultimately to the City Commission. The amendments primarily address the various court rulings concerning free speech. The updated ordinance will not allow taller or bigger signs than the City's current ordinance.

Solar Project — Educational Effort

The City installed solar panels in 2020 at City Hall and the Indian Rocks Beach Museum. In an effort to promote this capital improvement project, the City will install a decorated solar panel — "*Did You Know Information*" — at the entrance of City Hall. Due to the location of the installed solar panels, most residents and visitors do not know that the City is generating power from solar panels. This display would highlight this achievement and promote the use of solar energy.

Government Finance Officers Association — Certificate of Achievement for Excellence in Financial Reporting

City Manager Mims reported that the Certificate of Achievement for Excellence in Financial Reporting was presented to the City for Fiscal Year Ended September 30, 2020.

Impact Fee Ordinances

City Manager Mims stated that the impact fee ordinance has existed for a long time. The impact fee ordinances are worded very clearly as to when they are to be imposed. The impact fees are applied to people based on the adopted ordinance to improve a property.

City Manager Mims stated the City Commission could set up a work session to discuss impact fees if they so desire.

Short-Term Vacation Rental

City Manager Mims stated that if the City Commission attempted to adopt an ordinance to charge annual impact fees on short-term vacation rentals, the City would find itself in some legal issues. He stated that is the very reason why the Florida Legislature continues to try to take away the cities' authorities to regulate short-term vacation rentals.

3C. REPORTS OF THE City Commission.

COMMISSIONER HOOFNAGLE:

- He stated that Saturday, February 26, 2022, is the Beach Art Center's Boots & Brushes Gala, their main fundraiser for the year. He said tickets are limited.
- *Sign Ordinance.* He stated his concern with the number of whereas clauses are they confuse the reader to the point where when the person reaches the logic of the sign ordinance, the person is numb to what the ordinance is saying. In the draft, it had 25-foot pole signs. When reviewing the sign ordinances, please do not let there be animated signs, inflated flappers, and all those kinds of really annoying signs, which should not pollute the City's aesthetic environment. At the same time, think about how to accommodate the need of the City's small businesses for things like sandwich boards and other temporary signs, which are up to help promote their business survivals.
- *Impact Fees/Short-term Vacation Rentals.* He stated the City government could do whatever the City Charter allows it to do unless the States tell the City it cannot do it. The State has advised the City that it cannot regulate short-term vacation rentals. The Florida Legislative has taken away the City's authority to regulate short-term vacation rentals, something called preemption. Several years ago, the State severely limited the City Commission's ability to do anything to single out and try to control short-term rentals. It does not mean the City likes them; it does not mean that the City thinks they are great. It means that the City Commission is powerless to do anything about it. The City has been spending a lot of lobbying time trying to go back to Tallahassee and explain how that hamstring the City as a governmental body. But, to be honest, a lot of governmental bodies have overtaken Tallahassee, and they have made it cemented. Every year, Tallahassee tries to further restrict local government's authority to regulate short-term rentals, including the grandfather clause. Short-term rentals have been a threat to the City; it has resulted in a significant change in the character of the City, and it is something that the City will be fighting for, for a long time.

VICE MAYOR-COMMISSIONER McCALL:

- Announced the HOA Mix & Mingle on Thursday, February 17, 2022, from 6:00 p.m. to 8:00 p.m., at Anecdote, with food being supplied by Pajano's.

COMMISSIONER HANNA:

- Thanked Kelli Farrington for her comments on impact fees and stated he supports a work session on impact fees.

MAYOR-COMMISSIONER KENNEDY:

- Announced Winterfest on the Rocks on Saturday, February 19, 2022, from 10:00 a.m. to 4:00 p.m., at Calvary Episcopal Church.
- *Short-term vacation rentals:*
 - She urged IRB residents to call their State Senators and Representatives regarding short-term vacation rentals. She stated that she would contact each Pinellas County Legislative Delegation member about short-term vacation rentals and their effects on the community.
 - The City Commission had sent letters to the committees and the Pinellas County Legislative Delegation on SB280 and SB620.
 - She and other local elected officials went to Tallahassee two years ago to fight a short-term vacation rental bill that she did not think they had a chance to stop. However, their trip was well worth it because they stopped that bill from being passed by the Florida Legislature.
 - The City cannot do regulated occupancy, duration, or frequency for short-term vacation rentals.
 - All vacation rentals must have a sign in the front yard with the name and telephone number of the person responsible for the property. The City can regulate parking, garbage, and noise as stated in the City Code. Residents should contact the City or call the sheriff's office if the City Code is being violated by vacation rentals or any other property owner.

City Attorney Mora spoke on the challenges of enforcement of occupancy restrictions, and the legal challenges about occupancy restrictions for short-term vacation rentals.

FLORIDA STATUTES — ANONYMOUS COMPLAINTS. City Attorney Mora stated there had been a change in Florida Statutes where local governments can no longer accept anonymous code enforcement complaints. If a person makes their voice heard to the Mayor, and she, in turn, tells the person that they will need to go to the manager, she is not avoiding helping the person. The Mayor is subject to her own statutory limitations. This is a new Florida law.

4. ADDITIONS/DELETIONS. None.

5. CONSENT AGENDA:

- A. APPROVAL OF the December 14, 2021 Regular City Commission Meeting Minutes.**
- B. APPROVAL OF the January 11, 2022 Regular City Commission Meeting Minutes.**
- C. RESOLUTION NO. 2022-01, A Resolution of the City Commission of the City of Indian Rocks Beach, Florida, announcing the results of the March 15, 2022 Municipal General Election providing for the re-election of Mayor-Commissioner Joanne “Cookie” Moston Kennedy, election of**

Commissioner Jude Bond, and re-election of Joseph D. McCall, each to be seated for two year terms, and providing for an effective date for the commencement of their respective elected terms.

- D. RENEWING an agreement with Trask Daigneault LLP, for city attorney services, for an additional three years and increases in the monthly retainer, hourly services outside of the retainer, and paralegal services.

City Attorney Mora read the Consent Agenda, consisting of Agenda Item Nos. 5A through 5D, by title only.

MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HANNA, TO APPROVE THE CONSENT AGENDA, CONSISTING OF AGENDA ITEM NOS. 5A THROUGH 5D, AS SUBMITTED. UNANIMOUS APPROVAL BY ACCLAMATION.

6A. BOA CASE NO. 2022-01 — 1701 GULF BOULEVARD

Considering a variance request from Section 110-241, of the Code of Ordinances, to allow for three (3) 15 foot diameter cantilever umbrellas and three (3) 12 inch by 12 inch permanent in-ground concrete umbrella bases in the front yard setback, for the property located at 1701 Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as Indian Beach Re-Revised, Block 65, Lots 3 and 4. Parcel #: 01-30-14-42030-065-0030.

Beginning of Staff Report]

SUBJECT: BOA CASE NO. 2022-01 — A variance request from Section 110-241 of the Code of Ordinances to allow for three (3) 15 foot diameter cantilever umbrellas and three (3) 12 inches by inches permanent umbrella bases in the front yard setback, for property located at 1701 Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as Lots 3 and 4, Block 65, Re-Revised Map of Indian Beach Subdivision recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County. Property ID # 01-30-14-42030-065-0030.

OWNER: Guppy’s on the Beach, LLC
PROPERTY LOCATION: 1701 Gulf Boulevard
ZONING: Business

Direction	Existing Use	Zoning Category
North	Commercial	B
East	Residential	RM-2
South	Commercial	B
West	Beach Parking	R/OS

BACKGROUND:

The applicant is requesting a variance to install three 15' x 15' umbrellas on permanently installed bases in the front yard setback to provide shade over the outdoor seating area. Installing the umbrellas would leave an approximate 4-foot front yard setback.

Sec. 2-152. Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. *There are no special conditions or circumstances peculiar to the land.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would confer special privileges to the applicant.*
- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to install the umbrellas.*
- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152, of the Code of Ordinances, staff recommends denial of the request.

BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION: The Board of Adjustments and Appeals recommended approval to the City Commission by a vote of 5 to 0.

NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 24, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: Letter of support received from Erwin and Lucy Scheuringer, 1713 Gulf Boulevard.

LEGAL ADVERTISEMENT: A legal notice was published in the January 26, 2022-edition, of the St. Pete Time Section of the Tampa Bay Times, for public hearing that has been scheduled on February 8, 2022, for BOA Case No. 2022-01.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 6A, BOA Case No. 2022-01, 1701 Gulf Boulevard.

City Attorney Mora inquired of the City Commission Members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the City Commission Members if any of them had conducted a site visit for the limited purpose of evaluating the application, with all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated that the applicant, Guppy's On The Beach Restaurant, is requesting a variance from Section 110-241 of the Code of Ordinances to allow three 15-foot diameter cantilever umbrellas with permanent bases in the front yard setback. The restaurant is located at 1701 Gulf Boulevard.

Planning Consultant Harmon provided a PowerPoint Presentation showing aerial views of the property, a drawing of the three proposed umbrella base locations, the proposed umbrella design, and photographs looking east, north, and south of the existing outside patio area.

Planning Consultant Harmon stated that the City Code prohibits permanent structures within the front yard setback except for fences and walls. The applicant has advised that the umbrellas can be removed from the bases and taken down. However, the umbrellas

weigh over 100 pounds. She stated staff felt that Guppy's would not remove the umbrellas nightly.

Planning Consultant Harmon stated staff recommended denial since it violates the front yard setback that no structures shall be erected above the 3-foot wall or 4-foot picket fence. The Board of Adjustments and Appeals recommended approval by a vote of 5 to 0.

Commissioner Hoofnagle stated no variance was required for the wall.

Planning Consultant Harmon responded affirmatively and stated the wall is 3 feet tall and meets the City Code.

Mayor-Commissioner Kennedy stated that as far as a hurricane or a bad storm, these umbrellas would stay in the ground or be removed.

City Manager Mims stated that would be a question for the applicant.

Michael Bebell, 1701 Gulf Boulevard, applicant's representative, stated the umbrellas are approximately 90 pounds each, and they would be removed during a hurricane and moved to a more secure location. These umbrellas can withstand 155 mph winds.

Scott Bebell, 1701 Gulf Boulevard, applicant's representative, stated these umbrellas nightly would be folded and strapped down. He reiterated that the umbrellas would be removed from the bases and put away during bad storms and hurricanes.

Scott Bebell stated they thought hard and long about this process, and they want to beautify their business and the community. The proposed umbrellas look very nice. The umbrellas that they have are outdated. He stated during 20 mph winds or brisk wind, those umbrellas blow and become a safety concern.

Mayor-Commissioner Kennedy opened the public hearing. Hearing and/or seeing no one wishing to speak, the public hearing was closed.

Commissioner Hanna stated the City Code requires that there be a hardship and asked what the hardship is?

Scott Bebell stated the hardship on Guppy's behalf is that they are better-built umbrellas. The umbrellas would withstand higher winds, and they are safer.

MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HOUSEBERG, TO GRANT BOA CASE NO. 2202-01, A VARIANCE FROM SECTION 110-241 OF THE CODE OF ORDINANCES TO ALLOW FOR THREE (3) 15 FOOT DIAMETER CANTILEVER UMBRELLAS AND THREE (3) 12 INCH BY 12 INCH

PERMANENT IN-GROUND CONCRETE UMBRELLA BASES IN THE FRONT YARD SETBACK, FOR THE PROPERTY LOCATED AT 1701 GULF BOULEVARD, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS INDIAN BEACH RE-REVISED, BLOCK 65, LOTS 3 AND 4. PARCEL #: 01-30-14-42030-065-0030.

Commissioner Hoofnagle stated that when Pinellas County widened Gulf Boulevard, property was taken by eminent domain that made the property sizes smaller, which put the retaining walls right at the pedestrian walkways that abut the boulevard.

ROLL CALL VOTE:

AYES: McCALL, HOUSEBERG, HOOFNAGLE, KENNEDY

NAYS: HANNA

MOTION TO APPROVE CARRIED BY A VOTE OF 4 TO 1.

[City Manager Mims left the meeting @ 6:03 p.m.]

6B. BOA CASE NO. 2022-02 — 436-20TH AVENUE

Considering a variance request from Section 110-131(1)(f)(2)(ii) of the Code of Ordinances to encroach 3 feet into the required 10-foot rear yard setback, resulting in a total rear yard setback of 7 feet, to allow a 7-foot by 15-foot addition to the existing kitchen, for the property located at 436-20th Avenue, Indian Rocks Beach, Florida, and legally described as that portion of Lot 2, Eighteenth Addition to Re-Revised Map of Indian Beach.

[Beginning of Staff Report]

SUBJECT — BOA CASE NO. 2022-02: A variance request from Section 110-131 (1)(f)(2)(ii) of the Code of Ordinances to encroach 3 feet into the required 10-foot rear yard setback, resulting in a total rear yard setback of 7 feet, to allow for an addition to the property located at 436-20th Avenue Indian Rocks Beach, Florida, and legally described as that portion of Lot 2, Eighteenth Addition to Re-Revised Map of Indian Beach, according to the Plat thereof, recorded in Plat Book 38, Page 12, Public Records of Pinellas County, Florida, described as follows: From the point of beginning at the most southerly corner of said Lot 2, run North 76°45'33" East, 75 feet along the South boundary of said Lot 2; thence North 12°24'47" West 64.75 feet; thence North 47°11'30" West 12 feet; thence South 68°08'46" West, 71 feet; thence South 14°04'37" East, 64.05 feet to the point of beginning. Property ID # 06-30-15-42354-000-0021

OWNER:	John K. & Kimberly P. Emmons
PROPERTY LOCATION	436-20 th Avenue
ZONING:	Single Family Residential

Direction	Existing Use	Zoning Category
North	Residential	S
East	Residential	S
South	Residential	S
West	Residential	S

BACKGROUND:

The applicant is requesting a variance to build a 7-foot by 15-foot addition to the rear of the house that would encroach 3 feet into the required 10-foot rear yard setback. The house was built in 1956 and the owners want to expand the kitchen, which is located at the rear of the house.

Sec. 2-152. Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. *The lot square footage is less than the surrounding lots.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would confer special privileges to the applicant.*
- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to construct the kitchen addition as desired.*

- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152 of the Code of Ordinances, staff recommends denial of the request.

BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION: The Board of Adjustments and Appeals recommended denial to the City Commission by a vote of 3 to 2.

PUBLIC NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 24, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: Letters of support received from Joseph C. Hatch, Jr., 428-20th Avenue, David Allen, 440-20th Avenue, Frank S. Pecoraro Sr. and Penny Pecoraro, 444-20th Avenue, 2007-20th Avenue Parkway, and Anthony Elliott, 2005-20th Avenue Parkway.

LEGAL ADVERTISEMENT: A legal notice was published in the January 26, 2022-edition, of the St. Pete Time Section of the Tampa Bay Times, for public hearing that has been scheduled on February 8, 2022, for BOA Case No. 2022-02.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 6B, BOA Case No. 2022-02, 436-20th Avenue.

City Attorney Mora inquired of the City Commission Members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the City Commission Members if any of them had conducted a site visit for the limited purpose of evaluating the application, with all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the subject property is located at 436-20th Avenue and is surrounded by three separate lots. The applicant would like to expand the kitchen 7 feet by 15 feet. The kitchen is located on the backside of the residence, causing the addition

to encroach 3 feet into the required 10-foot rear yard setback. She stated there is room on the right side to expand on the residence. However, the applicant would like to expand on the existing kitchen located in the back of the home.

Planning Consultant Harmon stated the City did receive letters of support from all four abutting neighbors and other surrounding neighbors.

Planning Consultant Harmon provided a PowerPoint Presentation showing aerial views of the property, the proposed addition location, and a photograph looking north at the residence.

Planning Consultant Harmon stated staff recommended denial because there are other options on the property.

Planning Consultant Harmon stated the Board of Adjustments and Appeals recommended denial by a vote of 3 to 2.

The applicant, John Kevin Emmons, Sr., 436- 20th Avenue, stated he purchased the home in 2016. He is a proud owner in Indian Rocks Beach. During that time, he has replaced the HVAC unit, the roof, the windows, upgraded to a 200 amp service, and put in a new front yard fence. He stated he would be a full-time resident here in September 2022 or shortly after.

Mr. Emmons stated he intends to build onto a 10 feet by 15 feet kitchen. He wanted to mention to the City Commission that he is not planning to sell or flip this property.

Mr. Emmons stated there is additional land on the right side of his home, as mentioned by the Planning Consultant.

Mr. Emmons stated based on the diagonal proportion of the backyard and the position of the home on the left side of the property, it has created a hardship to be compliant with the rear setback. Being compliant with the FEMA 50% Rule has created a hardship and a financial restriction to his building options for this project.

Mr. Emmons stated his home is approximately 800 square feet, and he would basically be renovating his whole house if he moved the existing kitchen to the other side of this home where his bedrooms are now, which would also be a hardship for him.

Mr. Emmons stated his goal is to make his home contextually consistent with those in Indian Rocks Beach, and his goal was to enhance his home and the neighborhood.

Vice Mayor-Commissioner McCall asked where the kitchen was located?

Mr. Emmons stated the kitchen is located on the left side, which is the smaller side of the house, and he would like to expand onto the existing kitchen.

Vice Mayor-Commissioner McCall stated that is where all the existing plumbing is located, with Mr. Emmons responding in the affirmative.

The applicant, Kimberly Emmons, 436-20th Avenue, stated the home only has one bathroom with a tub, a sink, and a toilet. If they flipped the kitchen to the back bedroom, construction would affect their only bathroom.

Rick Myrick, NuRoom Corporation, 2140 Sunnydale Boulevard, Clearwater, the contractor, spoke on the house's layout, the position of the house on the lot, the lot size and shape, and the FEMA 50% Rule.

Mayor-Commissioner Kennedy opened the public hearing.

Jenny Elliott, representing the owners of 2005-20th Avenue Parkway, stated they support the variance, and the owners have also submitted a letter of support.

City Attorney Mora asked what her relationship is to the property owners, with Ms. Elliott responding their mother.

Norma Lohkamp, 429-20th Avenue, who owns the property at 435-20th Avenue, spoke in support of the variance. She stated the Emmons' had done a beautiful job in maintaining that home and upgrading the home.

MOTION MADE BY COMMISSIONER HANNA, SECONDED BY VICE MAYOR-COMMISSIONER McCALL, TO GRANT BOA CASE NO. 2022-02. A VARIANCE FROM SECTION 110-131(1)(f)(2)(ii) OF THE CODE OF ORDINANCES TO ENCROACH 3 FEET INTO THE REQUIRED 10-FOOT REAR YARD SETBACK, RESULTING IN A TOTAL REAR YARD SETBACK OF 7 FEET, TO ALLOW FOR AN ADDITION TO THE PROPERTY LOCATED AT 436-20TH AVENUE INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS THAT PORTION OF LOT 2, EIGHTEENTH ADDITION TO RE-REVISED MAP OF INDIAN BEACH, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 38, PAGE 12, PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE POINT OF BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 2, RUN NORTH 76°45'33" EAST, 75 FEET ALONG THE SOUTH BOUNDARY OF SAID LOT 2; THENCE NORTH 12°24'47" WEST 64.75 FEET; THENCE NORTH 47°11'30" WEST 12 FEET; THENCE SOUTH 68°08'46" WEST, 71 FEET; THENCE SOUTH 14°04'37" EAST, 64.0.5 FEET TO THE POINT OF BEGINNING. PROPERTY ID # 06-30-15-42354-000-0021

Vice Mayor-Commissioner McCall stated the hardship is the diagonal shape of the lot and the position of the home on the lot.

ROLL CALL VOTE:

AYES: HOUSEBERG, HOOFNAGLE, McCALL, HANNA, KENNEDY

NAYS: NONE

MOTION TO APPROVE CARRIED UNANIMOUSLY.

6C. BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD

Considering a variance request from Section 110-344(3)(f)(3)(i) of the Code of Ordinances to encroach 2 feet into the south 7-foot 6-inch side yard setback and 5 feet into the north 7-foot 6-inch side yard setback, resulting in a south side yard setback of 5 feet 6 inches and a north side yard setback of 2 feet 6 inches, to allow for the installation of a swimming pool, for the property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legal described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.

[Beginning of Staff Report]

SUBJECT — BOA CASE NO. 2022-05: A variance request from Section 110-344(3)(f)(3)(i) to encroach 2 feet into the south 7-foot 6-inch side yard setback and 5 feet into the north 7-foot 6-inch side yard setback, resulting in a north side yard setback of 2 feet 6 inches and a south side yard setback of 5 feet 6 inches, for the installation of a swimming pool, for property located at 799 East Gulf Boulevard, Indian Rocks Beach, Florida, and legally described as a portion of Lot 25, La Hacienda Replat, according to the plat thereof recorded in Plat Book 39, Pages 1 and 2, Public Records of Pinellas County, Florida, formerly La Hacienda Subdivision recorded in Plat Book 36, Pages 73 and 74.

OWNER: Rory Burton
PROPERTY LOCATION: 799 E Gulf Boulevard
ZONING: RM-2- Medium Density Residential

Direction	Existing Use	Zoning Category
North	Residential	RM-2
East	Intracoastal	N/A
South	Residential	RM-2
West	Residential	RM-2

BACKGROUND:

The applicant is requesting a variance for the north and south side setbacks for the installation of a swimming pool. They are requesting the pool encroach 2 feet into the south 7-foot 6 inch side yard setback and 5 feet into the north 7-foot 6 inch side yard setback.

Sec. 2-152 Variances.

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. *The duplex was built in 2005 and the lot was illegally subdivided in 2005 causing the lots to be non-conforming limiting the width of the lot.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant did not create any special conditions or circumstances.*
- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district. *Granting the variance would confer special privileges to the applicant.*
- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant. *The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*
- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building. *This is the minimum variance to allow the owner to construct the pool as proposed.*
- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare. *Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

STAFF RECOMMENDATION: Based on the variance review criteria of Section 2-152 of the Code of Ordinances, staff recommends denial of the request.

BOARD OF ADJUSTMENTS AND APPEALS. The Board of Adjustments and Appeals recommended denial to the City Commission by a vote of 5 to 0.

PUBLIC NOTICE: A 15-day notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on January 23, 2022, pursuant to Section 2-149, of the Code of Ordinances.

CORRESPONDENCE RECEIVED: No correspondence was received.

LEGAL ADVERTISEMENT: A legal notice was published in the January 26, 2022-edition, of the St. Pete Time Section of the Tampa Bay Times, for public hearing that has been scheduled on February 8, 2022, for BOA Case No. 2022-05.

[End of Staff Report]

City Attorney Mora read by title only Agenda Item No. 6C, BOA Case No. 2022-03, 799 East Gulf Boulevard.

City Attorney Mora inquired of the City Commission Members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively.

City Attorney Mora inquired of the City Commission Members if any of them had conducted a site visit for the limited purpose of evaluating the application, with all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the subject property is located at 799 East Gulf Boulevard and was built as a duplex. The duplex was split down the center with a party wall agreement. The lots were illegally subdivided in 2003. A letter from the previous planning and zoning director stated the lots could not be subdivided. Both lots are 32 feet wide and are adjoined by a party wall agreement.

Commissioner Hoofnagle asked if there was a variance to subdivide the lot, with Planning Consultant responding no.

Planning Consultant Harmon stated several lots on Beach Trail have also been illegally subdivided.

Planning Consultant Harmon stated that the Planning Directors in Pinellas County have worked with the Pinellas County Property Appraiser's Office concerning creating

nonconforming lots. Now, the Pinellas County Property Appraiser Office does contact the municipality about any lot splits.

Planning Consultant Harmon stated the south side unit wants to put in a pool. Originally, the applicant requested variances to encroach 5-foot, 6 inches into the north side setback and 2-foot, 6 inches into the south side setback.

Planning Consultant Harmon provided a PowerPoint Presentation of a redesigned swimming pool that encroaches 5 feet into the north side yard setback.

Planning Consultant Harmon stated the applicant submitted a new drawing last week reducing the size of the pool to encroach 5 feet into the north side setback, which is the other side of the duplex.

Planning Consultant Harmon stated a letter of support was received from Andrew M. Quinn, 801 East Gulf Boulevard, who owns the other side of the duplex, and a letter of opposition from Karl Balducci, 805 East Gulf Boulevard.

Planning Consultant Harmon stated staff recommends denial because the applicant could meet all required setbacks. The Board of Adjustments and Appeals recommended denial by a vote of 5 to 0.

Megan Stinebergen, 799 East Gulf Boulevard, stated they would like to put a pool in the backyard, and their neighbor Mr. Quinn has written a letter of support. Mr. Quinn owns the lefthand side of the duplex.

Mayor-Commissioner Kennedy asked if Ms. Stinebergen lives on the property.

Ms. Stinebergen stated she lives there part-time but lives in Wisconsin full-time. She said that they come here once every five weeks.

Commissioner Hoofnagle asked Ms. Stinebergen if she is requesting a variance on just one side now because the application is for two variances: the north and the south side yard setbacks.

Wess Ripley, the applicant's representative, 2340 126th Drive E, Parrish, stated they had redesigned the pool to eliminate the south side yard variance and only need a variance to encroach 5 feet into the north side yard setback (the shared property line). He stated according to the documents that were drafted up when this property was subdivided, it stated that the property owner would be able to build-up to the lot line and made no mention of setback requirements.

Commissioner Hoofnagle asked if that document had been submitted into the record, with Mr. Ripley responding that he provided a copy to the Planning Consultant.

Planning Consultant Harmon stated she might have that document, but the City did not approve it. It was a civil document between the two properties and is not something for the City to review.

Mayor-Commissioner Kennedy opened the public hearing. Hearing and/or seeing no one wishing to speak, the public hearing was closed.

COMMISSIONER HOOFNAGLE MADE A MOTION TO DENY BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD. MOTION FAILED FOR LACK OF A SECOND.

MOTION MADE BY COMMISSIONER HOUSEBERG, SECONDED BY VICE MAYOR-COMMISSIONER McCALL TO APPROVE BOA CASE NO. 2022-05 — 799 EAST GULF BOULEVARD.

Vice Mayor-Commissioner McCall stated some things that went on with this property that created a hardship unbeknownst to the property owners. There is a common wall agreement between the two units and stated the applicant did redesign the pool so that it only affects the other side of the duplex, from which the City received a letter of approval from.

Commissioner Hoofnagle stated he fails to see the hardship that necessitates the swimming pool that encroaches upon the setbacks. He believes the pool could be made smaller.

City Clerk O'Reilly stated Commissioner Houseberg needs to be more specific on her motion since the applicant had submitted a redesign of the swimming pool eliminating the south side yard setback.

[The City Commission recessed at 6:33 p.m.]

[The City Commission re-adjourned at 6:35 p.m.]

Planning Consultant Harmon stated the variance request would be 5 feet into the north 8-foot side yard setback, leaving a 3-foot north side yard setback.

Planning Consultant Harmon explained the total side yard setback is 15 feet with a minimum of 7 feet on either side. The applicant has 7 feet on one side, so the other side has to be 8-foot.

City Attorney Mora stated for clarity in the record when was the amended proposal submitted to the City, with Planning Consultant Harmon responding Friday, February 4th.

Commissioner Hoofnagle asked, as a point of procedure, has that amended variance request gone to the Board of Adjustments and Appeals.

City Clerk O'Reilly responded negatively. She stated the legal advertisement, and the 15-day notice to surrounding property owners had the original variance request information.

Commissioner Hoofnagle stated that this needs to go back to the Board of Adjustments and Appeals as a point of order. In his opinion, he does not believe this has been sufficiently documented.

City Attorney Mora asked if the pool proposal in the PowerPoint Presentation presented to the City Commission is configured entirely differently than what was submitted to the Board of Adjustments and Appeals.

Planning Consultant Harmon responded affirmatively. She stated that both designs were included within the agenda packet. However, the PowerPoint Presentation provided to the City Commission showed the revised pool proposal.

City Attorney Mora stated it is his understanding that the Board of Adjustments and Appeals considered one proposal. After that Board of Adjustments and Appeals Meeting, the applicant materially changed the relief sought and changed the configuration materially, which was presented to the City Commission through the PowerPoint Presentation this evening.

Planning Consultant Harmon stated that was correct.

Commissioner Hoofnagle stated the City Commission did not amend this application. The applicant amended the proposal.

City Attorney Mora stated the City Commission is not directing the relief change.

City Attorney Mora stated usually the applicant withdraws their application. However, the applicant is working with the City, and the City appreciates that. However, he stated that the City does have a process that it must adhere to.

City Attorney Mora stated his advice is this matter should be tabled until such time that the Board of Adjustments and Appeals can first consider the same application, the same relief request that the City Commission is considering.

Commissioner Hanna confirmed that the matter would have to be re-advertised and re-noticed with the correct variance information, with City Attorney Mora responding affirmatively.

Mr. Ripley stated after the Board of Adjustments and Appeals Meeting, he had discussions with Planning Consultant Harmon, and they agreed that if the south side setback encroachment could be eliminated and only work with the shared side, they could have a better chance of having the variance granted.

City Attorney Mora stated he understands that the applicant is reducing the original variance requested, and the City is not faulting the applicant for that.

City Attorney Mora stated the City needs to make sure that a series of administrative boxes had been checked. In doing that, the applicant may have very well increased his client's chances of gaining the relief requested that may be the case, but just not tonight. In doing that, the applicant has changed what his client had originally requested.

City Attorney Mora explained that variance applications are first submitted to the Board of Adjustments and Appeals for recommendations and then to the City Commission for final decision. The Board of Adjustments and Appeals never considered the applicant's revised relief.

City Attorney Mora stated the City has a procedure to adhere to, which has not been adhered to here, and that is what the City Commission is trying to resolve this evening.

City Attorney Mora stated his advice to the City Commission is ultimately their decision on how they wish to proceed. This is not here on the ordinary procedure as dictated by Section 2-149 of the Code of Ordinances for variances.

City Attorney Mora stated the point of order would have to be resolved first, which is the application is not here on the proper procedure.

Mayor-Commissioner Kennedy asked what is the will of the City Commission? Would the City Commission like to table this BOA Case and refer it back to the Board of Adjustments and Appeals, or how would the City Commission like to proceed?

Commissioner Houseberg stated she would like to proceed.

Commissioner Hanna stated he would like to do whatever is procedurally correct.

Commissioner Hoofnagle stated he does not object to proceeding but would like to ensure that the language is consistent and appropriate. He is confused at having written requests and being told at a meeting verbally that it is something different and then trying to

engineer this new variance orally. He finds it prone to error, and he does not think it is appropriate.

Vice Mayor-Commissioner McCall stated the redesign is a material change, and the City Code needs to be followed. Therefore, the application needs to be resubmitted to the Board of Adjustments and Appeals for their recommendation.

City Attorney Mora asked how this BOA Case was advertised.

City Clerk O'Reilly responded that it was advertised as submitted originally.

City Attorney Mora stated it was advertised for a relief different than the relief sought this evening. He would suggest to the City Commission that this is an added procedural defect in putting adjacent property owners and the public at large on notice of the relief sought tonight, which relief is voluntarily modified in advance of the hearing, so that is another issue to consider.

Mayor-Commissioner Kennedy said because of the legalities, the City Commission will be tabling this agenda item and referring it back to the Board of Adjustments and Appeals.

City Attorney Mora stated, for the record, that the City Commission did not deny any relief requested this evening.

Commissioner Hoofnagle stated BOA Case No. 2022-05 has been tabled without prejudice, which means no judgment has been applied to the merits of the case. It has just been procedurally delayed.

FOR THE RECORD: BOA CASE 2202-05 HAS BEEN TABLED AND REFERRED BACK TO THE BOARD OF ADJUSTMENTS AND APPEALS BECAUSE OF THE NEWLY SUBMITTED PLAN MATERIALLY CHANGING THE RELIEF SOUGHT.

7. **OTHER LEGISLATIVE MATTERS:** None.
8. **WORK SESSION ITEMS [DISCUSSION ONLY]:** None.
9. **OTHER BUSINESS.**

Mayor-Commissioner Kennedy stated she would like to schedule a work session on what constitutes a hardship or information on what constitutes a hardship as everyone has a different idea of what a hardship is.

City Attorney Mora stated his firm provided a memo to the City Commission that explains the variance process and what a hardship is and what is not, what is a hardship that an

applicant has created versus one that they have not created, or at least what the law has concluded on those issues. This memo is still handed out to all new members of the Board of Adjustments and Appeals. He is happy to re-circulate that memo to the City Commission. However, he is very leery about having a public session discussing legal conclusions that the City Commission is in no position to change.

Commissioner Hoofnagle stated it would be useful to re-circulate the memorandum and maybe even a summary cheat sheet created, so that the City Commission could reflect upon them at the time, especially when the City Commission is forced to make a decision.

10. ADJOURNMENT.

MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HOUSEBERG, TO ADJOURN THE MEETING AT 6:55 P.M. UNANIMOUS APPROVAL BY ACCLAMATION.

March 8, 2022
Date Approved

/DOR