

## MINUTES

**CITY OF INDIAN ROCKS BEACH  
REGULAR CITY COMMISSION MEETING  
TUESDAY, SEPTEMBER 12, 2023- 6:00 PM  
1507 BAY PALM BOULEVARD INDIAN ROCKS BEACH, FL 33785  
(MEETING CAN BE VIEWED AT WWW.INDIAN-ROCKS-BEACH.COM)**

Mayor-Commissioner Kennedy called the meeting to order at 6:02 p.m., followed by the Pledge of Allegiance and a moment of silence.

**MEMBERS PRESENT:** Mayor-Commissioner Joanne Kennedy, Vice-Mayor Commissioner Jude Bond, Commissioner Joe McCall, Commissioner Denise Houseberg, and Commissioner Lan Vaughan.

**OTHERS PRESENT:** City Attorney Randy Mora, City Manager Gregg Mims and City Clerk Lorin A. Kornijtschuk.

For continuity, items are listed in agenda order, although not necessarily discussed in that order.

**1 A. REPORT OF** Pinellas County Sheriff's Office.  
A PCSO representative reviewed the monthly report.

**1 B. REPORT OF** Pinellas Suncoast Fire & District.  
Fire Chief Jeffrey Davidson reviewed the fire district's monthly report.

**1 C. PRESENTATION** Florida League of Cities.  
Scott Dudley from the Florida League of Cities did a presentation on Local Voices United.

### **2. PUBLIC COMMENTS.**

John Phanstiel, 448 Harbor Drive South, thanked the Florida League of Cities and Scott Dudley for the presentation. He asked the City Commission to reconsider hiring a lobbyist regarding short-term vacation rentals and requested a referendum be placed on the ballot regarding short-term vacation rentals.

Phil Wrobel, 112 13<sup>th</sup> Avenue, thanked the city for acting so fast in installing steps at the 12<sup>th</sup> Avenue beach access. He is aware that the city has received lawsuits regarding short-term vacation rentals and inquired about how much money did the city have to fund the lawsuits and where is the additional money going to come from.

Scott Shapiro, 2032 20<sup>th</sup> Avenue Parkway- stated people came together during the hurricane disaster. There were missed opportunities on the beach renourishment project. He asked that some kind of lift gate be installed on the storm drains to prevent back flow into the streets. He also asked the City Commission to bring back citizen advisory boards.

Robert Johnson, 1206 Beach Trail, stated the City needs to have a plan to capture the sand that is out there right now. He brought in a copy of the City Beach Management Plan that was put together by an advisory board in 2004.

Jerry Newton, 438 Harbor Drive North, requested a referendum be put on the ballot regarding short term vacation rentals.

Doug Valery, 207 10<sup>th</sup> Avenue, thanked the City Commission on the short-term rental ordinance and liked the idea of placing a referendum regarding short term vacation rentals on the ballot.

House Representative Kimberly Berfield introduced herself.

### **3 A. REPORT OF the City Attorney.**

City Attorney Mora stated there are currently seven filed lawsuits against the city challenging the validity of the short-term vacation ordinance. The city is being represented by the insurance carrier and he is collaborating closely with them at their request.

Commissioner Vaughn asked the City Attorney his opinion regarding citizens request to place a referendum regarding short-term vacation rentals on the ballot.

City Attorney Mora replied he would suggest against the referendum for a few legal issues.

There are a number of statutory doctrines prohibiting this. Doing so would not only likely be a legal nullity, but also likely invite additional legal challenges with direct exposure to attorneys' fees, in a posture where the City is unlikely to prevail. Further, a referendum process is not used for surveying the community, but instead to amend the charter of a community, implement a new tax, or implement some other rule or regulation.

**Fla. Stat. 163.3167 (8) - Ref: Senate Bill 718 (2023)**

**Fla. Stat 509.032 (7) (b) Duties**

**Fla. Stat. 57.112 - Attorney fees and costs and damages; arbitrary, unreasonable, or expressly preempted local ordinances.**

**Senate Bill 250 (2023)**

### **3 B. REPORT OF the City Manager.**

City Manager Mims read the Code Enforcement Report for August 2023.

City Manager Mims reported 121 tons of hurricane debris was removed by the city. Out of 28 beach accesses 10 are currently closed, the city is working to finalize an estimate with a preapproved contractor to get those repaired. Pinellas County is working on an emergency beach renourishment program paid for by Pinellas County. During the preparation for the hurricane, staff gave out about 4,500 sandbags.

Commissioner Vaughan stated that a citizen asked through an email that the commission make a resolution to protect the sea oats and keep people from walking on them.

City Manager Mims replied there is a state law that has language in place not to damage the area along the beach such as sea oats.

City Manager Mims thanked everyone in City Hall for their efforts in the preparation for the hurricane.

**3 C. REPORT OF the City Commission.**

Commissioner McCall provided an update on the IRB Homeowners Association.

Commissioner Houseberg thanked the city for the amazingly quick cleanup.

Mayor-Commissioner Kennedy reported there will be a Women's Tea on November 11<sup>th</sup> at the Church of Isles from 1:00 p.m. until 3:00 p.m. She thanked the City staff and the City Manager for all the work done during the hurricane.

Commissioner Vaughan thanked the City Staff, City Manager and the residents for their action after the hurricane.

Commissioner Vaughan provided an update on Action 2000.

Vice-Mayor-Commissioner Bond agreed with resident Robert Johnsons comments on having a long-term strategy to maintain the beach on a regular basis.

**4. ADDITIONS/DELETIONS.** None.

**5. CONSENT AGENDA.**

**5 A. APPROVAL of the August 8, 2023, Regular City Commission Meeting Minutes.**

**5 B. CONFIRMING ACTION** taken during the September 6, 2023, Special City Commission Meeting.

**5 C. RESOLUTION NO. 2023-07.** A resolution of the City Commission of the City of Indian Rocks Beach, Florida, calling for a general election for the purpose of electing, at large, qualified candidates to fill the vacancies of the Mayor-Commissioner Seat and two City Commissioner Seats for two-year terms; establishing a candidate qualifying period; authorizing the City Manager to enter into a contract with the Pinellas County Supervisor of Elections; establishing a polling place for the March 19, 2024 Election; authorizing the Pinellas County Supervisor of Elections to verify candidate petition cards and facilitate the election process.

**5 D. APPROVAL OF** the FY 2023-24 Law Enforcement Contract with the Pinellas County Sheriff's Office.

**5 E. AUTHORIZING** the City manager to sign a one-year agreement to renew property/casualty/workers compensation & flood insurance with the Public Risk Management (PRM) Group Health Trust for FY 2023-24.

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

**MOTION** was made by Commissioner Vaughan and seconded by Vice-Mayor-Commissioner Bond to approve the Consent Agenda, consisting of Agenda item nos. 5 A through 5 E. **Motion to approve carried unanimously.**

**6. PUBLIC HEARING.**

**6 A. BOA CASE NO. 2023-07-2116 1<sup>st</sup> Street-** Considering a variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for the installation of a pool for property

located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida.  
Parcel#:01-30-14-42030-049-0100.

[Beginning of Staff Report]

**SUBJECT: BOA CASE NO. 2023-07-2116 1<sup>st</sup> Street-** Considering a variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for the installation of a pool for property located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida. Parcel#:01-30-14-42030-049-0100.

**OWNER** Greenhouse Real Estate  
**LOCATION of PROPERTY:** 2116 1<sup>st</sup> Street  
**ZONING:** RM-2 – Medium Density Multifamily Residential

Direction	Existing Use	Zoning Category
North	Residential	RM-2
East	Residential	RM-1
South	Residential	RM-2
West	Office	P-1

**BACKGROUND:**

The applicant is requested to install a pool in the side yard of the duplex and encroach 3 ft into the 7 ft side yard setback.

The duplex faces 21<sup>st</sup> Avenue but the 25 ft front yard setback is shown from 1<sup>st</sup> Street and measures 31.5 ft from the property line. A pool cannot be located in the 25 feet front yard setback and a pool cannot fit into the remaining 6 feet in front of the duplex.

**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 original home was built in 1940 and a duplex was added in 1987 and maintains the 25 ft front yard setback on 1<sup>st</sup> Street.*

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; and

*This is the minimum variance to allow the owner to install the pool.*

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.*

**NOTICE:** A public notice was mailed by first class mail to property owners within 150 feet in any direction of the subject property and posted on subject property on July 31, 2023, (Sec. 2-149 of the Code of Ordinances.)

**LEGAL NOTICE:** A legal notice was published in the July 26, 2023-Edition, of the St. Pete Times Section of the Tampa Bay Times. For a public hearing that has been scheduled for August 15, 2023, for BOA Case No. 2023-07.

**CORRESPONDENCE:** Two letters of approval and one letter of objection (sent twice).

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

**MOTION:**

I move to recommend to the City Commission APPROVAL/DENIAL of BOA CASE NO 2023-07 2116 1<sup>st</sup> Street -Variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for

the installation of a pool for property located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida.

[End of Staff Report]

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 Member if any of them had conducted a site visit for the limited purpose of evaluating the application before them, with all members responding negatively.

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

City Manager Mims presented the Agenda Item, BOA Case No. 2023-07- 2116 1<sup>st</sup> Street.

Joseph Cirafici, 2116 1<sup>st</sup> Street, stated that his property consists of 2 structures, one is on piers and directly to the west is a small cottage on grade. The city acknowledges that the front of the house is on 1<sup>st</sup> Street and both homes face 22<sup>nd</sup> Avenue. This means that what is considered the back yard is considered a side yard by the city code. The space behind the cottage is the only space to be used for privacy. No adjacent neighbors object.

Mayor- Commissioner Kennedy read the one objection letter and asked the applicant if he could respond. He rents the cottage out but has never received a violation notice or complaints.

**MOTION** was made by Commissioner Vaughan and seconded by Commissioner McCall to **deny** BOA CASE No. 2023-07- 2116 1<sup>st</sup> Street- Variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for the installation of a pool for property located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida.

**Motion to deny carried unanimously.**

7. **OTHER LEGISLATIVE MATTERS. None.**
8. **WORK SESSION ITEMS. None.**
9. **OTHER BUSINESS. None.**
10. **ADJOURNMENT.**

**Motion** was made by Commissioner Houseberg and seconded by Commissioner McCall to adjourn at 8:20 p.m. Unanimous approval by acclamation.

Lorin A. Kornijtschuk, City Clerk