The regular meeting of the Okaloosa County Board of Adjustment was held Wednesday, July 13, 2016 at 1:30 p.m., in the Okaloosa County Administration Building, 1st Floor Commissioners Chambers, 1250 Eglin Parkway N., Shalimar, Florida.

Board Members in attendance were Scott Kearney, Payne Walker, Fred Schor and Bob Ambrose. Board Member Pat Byrne joined the meeting in progress. Growth Management Staff in attendance were Terry Jernigan, Planning Manager; and Teresa Mullins, Administrative Assistant II. Assistant County Attorney Kerry Parsons was also present.

A. CALL TO ORDER

Chairman Scott Kearney called the meeting to order.

B. ROLL CALL

Ms. Teresa Mullins conducted roll call.

C. APPROVAL OF MINUTES FOR: December 9, 2015

Motion to approve the minutes as written made by Bob Ambrose; Second by Fred Schor; approved unanimously.

D. ANNOUNCEMENTS

Chairman Kearney welcomed new Board Member, Fred Schor, to the Board.

Mr. Terry Jernigan informed the Board that copies of the staff reports are now being posted to the County Website to provide better access prior to meetings for Board Members and for the public.

E. ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA

None

F. ACCEPTANCE OF THE AGENDA

Motion to accept the agenda as written made by Bob Ambrose; Second by Pat Byrne; approved unanimously.

G. OATH TAKING

Ms. Mullins administered the oath to those persons wanting to speak on an agenda item.

Board Member Pat Byrne joined the meeting in progress

H. DISCLOSURES
I. OLD BUSINESS

None

J. NEW BUSINESS

1. 401695-BOA-2016, a request for a variance, as submitted by Michael and Ashley Shelton, from Okaloosa County Land Development Code, Ordinance 91-1, as amended, Section 2.03.06 R-1 Bulk Regulations: from the minimum 10’ side building setback requirement to 5’ for both side setbacks. The property is currently zoned Residential 1 District (R-1) and the future land use map designation is Low Density Residential (LDR). A general location of the property is 2346 Twin Bay View, Fort Walton Beach, Florida. The property contains .46 acres more or less.

Mr. Jernigan informed the Board that this request seeks for a variance from the 10 foot side setback requirement to 5 feet for both side setbacks. Mr. Jernigan further stated that the subject parcel is not part of a recorded subdivision and has an irregular shape, being long and narrow. Mr. Jernigan stated that Mr. & Mrs. Shelton intend to demolish the house currently existing on the property and replace it with a new home. Mr. Jernigan further stated that the existing house is closer to the side lot lines extending farther into the side setbacks than the relief that Mr. & Mrs. Shelton are requesting. Mr. Jernigan stated that the proposed new house is similar to size and nature as those in adjacent and other nearby properties. Mr. Jernigan further stated that staff has gone through all of the suggested findings as required by the Land Development Code (LDC) and, unless other evidence is presented to the contrary, staff has no objection to the granting of this variance request.

Mr. Michael Shelton addressed the Board stating that he was present to answer any questions the Board has regarding the variance request. Mr. Shelton further stated that they are trying to build a house that is similar in nature to the surrounding properties in what is a nice waterfront area. Mr. Shelton stated that the existing house was built in the 1970’s and is a typical fishing camp style structure. Mr. Shelton further stated that when the existing structure was built, it was built within 1.9 feet of the property line, so the variance requested is much less.

There was no opposition or other public comment.

Chairman Kearney noted that this property is within his district and disclosed that he visited the site. Chairman Kearney further stated that the neighborhood is full of very nice homes, and the applicants request would replace the existing home with one more in keeping with the neighborhood. Chairman Kearney stated that he spoke with Commissioner Boyles regarding the situation and that Commissioner Boyles supports the Board and staff in this decision.
Motion to approve the variance as based on staff’s recommendation made by Payne Walker; Second by Pat Byrne; approved unanimously.

2. 401874-BOA-2016, a request for a variance, as submitted by Rick Cramer on behalf of the Forty-Four Development, LLC, from Okaloosa County Land Development Code, Ordinance 91-1, as amended, Section 6.05.00 Landscaping; requesting the allowance of two (2) Sabal Palm trees or one (1) Pindo Palm tree to satisfy canopy tree landscape requirements, and larger four (4) inch caliper Red Oak trees to count for two (2) canopy trees. The property is currently zoned Mixed Use District (MU) and the future land use map designation is Mixed Use (MU). A general location of the property is 4495 Furling Lane, Destin, Florida. The property contains 2.45 acres more or less.

District 5

Mr. Jemigan restated the applicants request for the Board, stating that they are trying to mimic the landscaping that exists across the street from and to the east of the subject property. Mr. Jemigan stated that the Land Development Code landscaping for parking lots requires 1 canopy tree, either single or multi-stemmed, of a species which will reach a height of at least 35 feet for every 15 parking spaces. Mr. Jemigan further stated that the landscaping code requires that those canopy trees must be at least 8 feet in height and have a diameter of 2 inches at the time of planting. Mr. Jernigan stated that landscaping regulations dictate that a minimum of 9 canopy trees must be planted and the applicant is requesting to substitute either two (2) Sabal Palm trees or Pindo Palm tree for each of the required canopy trees in the parking lot as well as one (1) larger four (4) inch caliper Red Oak trees to replace the required canopy trees at a ratio of 1 for 2 in the buffer. Mr. Jemigan reminded the Board that there are certain things that the Board must and shall find per Section 11.02.09.3 in order to approve any variance request and provided staff’s suggested findings:

a. That 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;

Applicant’s response: None.

Staff Finding: Staff agrees with the applicant that there are no special conditions and circumstances peculiar to the site that would justify the requested variance.

b. That the special condition and circumstances do not result from the actions of the applicant;

Applicant’s response: They do not.

Staff Finding: There are no special conditions and circumstances associated with this request.

c. That granting the variance requested will no confer on the applicant any special privilege that is denied by the Land Development Code to other lands, buildings or structure in the same zoning district;

BOA Summary 7.13.2016
Applicant’s response: It will not.

Staff Finding: Other developments in the vicinity have complied with the landscaping regulations without any apparent hardship.

d. That literal interpretation of the provisions of the Land Development Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant;

Applicant’s response: Other surrounding properties have used this same plant selection

Staff Finding: Other developments in the vicinity have included palm trees as part of their landscaping plan as a preference not as a substitution of for required plantings. The Board has approved other similar variances that were all located on Okaloosa Island fronting the Gulf of Mexico. The Variance request for this applicant, City Market Bayside, is located in Destin fronting U.S. Highway 98.

e. That the variance granted is the minimum variance that will make possible the reasonable use of land, building or structure;

Applicant’s response: N/A

Staff Finding: The applicant has not shown that there will be a hardship associated with complying with the landscaping regulations.

f. That the granting of the variance will be in harmony with the general intent and purpose of the Land Development Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

Applicant’s response: It will be in harmony with the general intent of the LDC.

Staff Finding: Section 11.02.09 (3) of the Okaloosa County Land Development Code (LDC), Ordinance 91-1 as amended, states in pertinent part, that the Board may grant “...variances from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provision of the ordinance will result in unnecessary and undue hardship.” The applicant has stated in the application that there are no special conditions and circumstances peculiar to the property that would create an undue hardship, nor has the applicant identified any hardship that would arise from literal compliance with the landscaping regulations; therefore, the request would depart from the intent of the Land Development Code to provide canopy trees as required.

Mr. Jernigan informed the Board that based on the findings presented, and unless any other evidence is presented to the contrary, staff objects to the granting of this variance.

Mr. Jernigan stated that no public comment or opposition has been received to date.

Bob Ambrose asked if staff had the actual distance from the property to the gulf.
Mr. Jernigan stated that he believed the distance was about a half mile based on the maps provided but did not know the exact distance.

Pat Byrne asked if the experts who spoke to the Board regarding the micro environment that affected the variance requests on Okaloosa Island had ever sent the study that documented their assertion which they had promised to provide to staff.

Mr. Jernigan stated that, to the best of his knowledge that information has not been provided to staff.

Mr. Byrne suggested that staff should reach out to try to obtain that information as it could be helpful to the Board in dealing with requests like the one currently being heard as well as those which are in close proximity to the Gulf of Mexico.

Chairman Kearney explained that it was suggested to the Board at that time that a change be made to the Land Development Code, and staff explained that changes to the Code required factual research and studies showing that such changes are justified. Chairman Kearney noted that any changes to the Land Development could only be approved by the Board of County Commissioners, not this Board.

Mr. Jernigan noted that the variance requests on Okaloosa Island are difference in that they are in very close proximity to the Gulf of Mexico as opposed to being a half mile or more away. Mr. Jernigan further noted that the landscaping requirements have not been a problem for any of the other developers who had to comply with them, and the required plant materials have thrived. Mr. Jernigan stated that it would be good to get a copy of the micro environment study for staff.

Mr. Byrne asked staff if the applicants are trying to reduce the amount of required planting or just substitute planting material.

Mr. Jernigan stated that the applicant is asking for a substitution; however, it might be in the Board’s interest to ask the applicant exactly what he wants to plant in place of the 9 required canopy trees. Mr. Jernigan stated that there are other projects in the same vicinity who have used palm trees, but those palm trees were planted in addition to the required landscaping as opposed to being a substitution for the required landscaping.

Chairman Kearney invited the applicant to address the Board.

Mr. Rick Cramer introduced himself to the Board, stating that he was unaware of staff’s position regarding this request until he heard Mr. Jernigan’s statement during this meeting. Mr. Cramer stated that the intent behind this request is to mirror the landscaping that exists at the City Market Beachside which is directly across the street from the subject property, City Market Bayside. Mr. Cramer further stated that the City Market Beachside is located within the City of Destin, and their landscaping requirements do allow the use of palm trees in this area. Mr. Cramer stated that he has exceeded the number of plantings required, just not the type of plantings. Mr. Cramer further stated that his landscape architect is also present to answer any questions the Board may have. Mr. Cramer stated that, regarding the red maples in the rear buffer, increasing the circumference and number was intended to increase the effectiveness of
the buffer for those living behind this business. Mr. Cramer further stated that when the plants were put in, they thought they were being sensitive to those surrounding them. Mr. Cramer stated that the property adjacent to them has no canopy trees at all on their site, instead it only has palms. Mr. Cramer further stated that they were mimicking that property to the east when they did their landscaping. Mr. Cramer stated that the property adjacent to the west does have some oak trees on their boundary. Mr. Cramer further stated that when they put the landscaping in they felt that they were meeting the spirit of the requirements as well as meeting the spirit of the surrounding properties. Mr. Cramer stated that palm trees are easier to maintain in what is very sandy soil. Mr. Cramer further stated that he believes that they are less than two thousand (2,000) feet from the Gulf of Mexico. Mr. Cramer stated that he hopes the Board looks favorably upon this request, noting that he is amenable to discussion if staff wants some extra enhancement if this request is approved. Mr. Cramer further stated that he believes that the planting materials selected will complement what already exists in that area.

Mr. Fred Schor asked Mr. Cramer to describe a Pindo Palm to the Board.

Mr. Cramer stated that a Pindo Palm is a larger palm with a large canopy; however, it doesn’t grow to be extremely tall.

Mr. Byrne asked the landscape architect if it would cost the developer more money for the various plants if the variance is approved as opposed to the cost of meeting the landscaping requirements of the Land Development Code.

Ms. Callie Barker stated that the cost of the palms in the parking area, the cost is about the same as the cost of meeting the canopy tree requirement; however, regarding the red oaks in the buffer, the proposed trees are twice as large in circumference as opposed to what is required by the Land Development Code.

Mr. Ambrose stated that all of the previous similar variances approved by the Board have been out on Okaloosa Island, and asked staff if any other such variances have been granted historically in the Destin area surrounding this site.

Mr. Jernigan stated that he was not aware of any such variances that have been granted in the past in the unincorporated Destin area.

Mr. Cramer stated that he was not aware of any; however, he reminded the Board that the adjacent property to the east has landscaping similar to that which he is requesting. Mr. Cramer stated that at some point that type of landscaping was approved by staff.

Mr. Payne Walker noted that the landscaping could have been replaced at a later time and no one complained to Code Enforcement.

Mr. Jernigan stated that he will ask staff to locate the planning file for the adjacent property as the approved landscaping plan would be in that file.
Mr. Cramer stated that they did plant some crepe myrtles in the front as required and canopy trees in the back buffer, so they haven’t completely gone away from the requirements.

Mr. Payne Walker noted that Mr. Cramer would have an increased cost of roughly two thousand dollars ($2,000.00) if he is required to meet the landscaping requirements and also plants the palm trees they want. Mr. Walker further stated that the palm trees will not reach the same height as a canopy tree would.

Ms. Barker noted that the Pindo palms are very slow growing but they have a very large canopy spread.

Chairman Kearney stated that the issue before the Board is whether you meet the requirements of the Ordinance currently in place.

Mr. Cramer stated that his company is a significant property holder in Okaloosa County and they’re only trying to replicate the landscaping that exists already in the area for the benefit of their tenants so that the feel is cohesive. Mr. Cramer further stated that they want customers to feel that the City Market areas on either side of Highway 98 are both part of the same development. Mr. Cramer stated that they weren’t trying to get around the requirements of the Land Development Code. Mr. Cramer further stated that had they gone strictly by the requirements of the Land Development Code the landscaping would have been approximate thirty thousand dollars ($30,000.00) cheaper.

Mr. Byrne asked Mr. Cramer how much of the landscaping has already been installed.

Mr. Cramer stated that all of the landscaping is done and in place.

Mr. Walker asked if Mr. Cramer meant that all of the landscaping required by the Land Development Code has been done.

Mr. Cramer stated that all the planting has been done per the variance that is being requested; however, if this Board requires otherwise, that is what will be done.

Mr. Jernigan asked Mr. Cramer how it was that they planted all this material when they had a Development Order with an approved landscaping plan to follow.

Mr. Cramer stated they took a calculated risk in choosing to plant what they wanted instead of following the approved landscaping plan.

Board’s Attorney Kerry Parsons reminded the Board, for the record, that in making their decision, regardless of the landscaping on surrounding properties, they must take into consideration all the factors under Section 11.02.09.3 and whether those requirements are met based on the current Land Development Code.

There was no opposition present or any other public comment.

Mr. Byrne stated that this property is within his district, and in this area, the landscaping that was installed is consistent with the landscaping that lines Highway 98 in that area. Mr. Byrne further stated that the Land Development Code was written for the whole County from the North end to the South without taking into consideration the
Mr. Byrne stated that while this isn’t an issue with plant mortality as it was in past cases, this issue of visual compatibility with the planting styles in the Destin area does have merit.

Motion to approve made by Pat Byrne; Second by Fred Schor, voted called for by Chairman Kearney;

Mr. Ambrose asked the Chairman to allow for more discussion.

Attorney Parsons cautioned the Board that when a vote is called on a motion, a vote must be taken, and if it is the will of the Board to reconsider that motion then a motion to reconsider is required.

Motion to reconsider the motion to approve made by Bob Ambrose; Second by Payne Walker; approved unanimously.

Mr. Ambrose stated that, while he understands the issue with the aesthetics of the Highway 98 corridor in Destin, he is concerned with going against established code. Mr. Ambrose further stated that the other cases similar to this one were directly adjacent to the Gulf of Mexico, unlike this issue and he is concerned that approving this request will open Pandora’s Box and allow anyone who so chooses to ignore the code. Mr. Ambrose stated that he has additional concern at the message the Board will send to developers, given that this applicant planted what he wanted and then asked for forgiveness later. Mr. Ambrose further stated that the cost to the applicant shouldn’t be relevant and he is very concerned about setting precedent with this request.

Mr. Byrne stated that he wished he had known that they have already planted the palm trees and are now asking for forgiveness; however, his opinion that the landscaping with the palm trees is better suited to the area hasn’t changed given that the landscaping code as it is written is really only applicable to ninety percent (90%) of the County.

Attorney Parsons cautioned the Board, stating that the Board of Adjustment must follow the Land Development Code as it exists as only the Board of County Commissioners has the right and responsibility to amend or change the code. Attorney Parsons further stated that the Board can approve this variance if the Board can find that there is substantial evidence that this variance request meets the requirements as listed in Section 11.02.09.3. Attorney Parsons stated that if the Board make a decision based on just the aesthetics of this property’s landscaping fitting in with the surrounding properties she must caution the Board against using that as their only determining factor in approving this request as it would leave the Board open to a lawsuit, if not from the applicant, then from County staff. Attorney Parsons reminded the Board that she is present as attorney to the Board, and County staff would have the right to ask their own counsel to take this to court if approval is given without following the process as given in the Land Development Code.

Mr. Ambrose stated that before Highway 98 was moved, it used to run along with 30A, and he could see where granting the variance would be applicable if Highway 98 still ran as close to the Gulf as 30A does; however, now that Highway 98 is so far from the shoreline he is not sure that approving such a variance request is warranted.
Attorney Parsons stated that the Board has a whole series of factors that they must look to in Section 11.02.09.3 in order to render a decision, such as special circumstances or hardship. Attorney Parsons recommended to the Board that any motion the Board makes should be based on that language in the code which would support such a motion.

Chairman Kearney stated that he was bothered by the fact that the applicant planted what he wanted and is seeking approval after the fact; however, as a developer himself, he understands that that may not have been aware that staff wouldn’t approve the change or that a hearing such as this would be required.

Mr. Walker stated that part of the issue is that staff never received any of the promised information from Orange Beach regarding micro-environments. Mr. Walker further stated that he believes that the whole Board is probably in agreement that palm trees may be more appropriate in the Destin corridor; however, that making the decision to change the code is up to the Board of County Commissioners. Mr. Walker asked staff and counsel how the Board of Adjustment make the Board of County Commissioners aware that this issue needs to be reevaluated.

Attorney Parsons stated that, while the members of the Board of Adjustment could meet with each County Commissioner individually, it might be better to leave the issue with staff as most Land Development Code changes begin with staff who draft changes and then present those proposed changes first to the Planning Commission and then to the Board of County Commissioners for final approval.

Mr. Walker stated that it seems that the County would want to mimic the City of Destin’s Code in that corridor as it seems that the City is more in touch with the aesthetics in that area.

Ms. Barker stated that the Land Development Code doesn’t mention palm trees at all in the landscaping section, so they don’t count towards anything including tree credits.

Mr. Cramer stated that they were trying to show what can be done as opposed to what should be done per the code. Mr. Cramer further stated that they understood the risk they were taking; therefore, the variance they are requesting is not a requirement, but they’d like to have it. Mr. Cramer stated that he understands that they have until the first tenant wants to move in to correct the issue if the variance is not approved.

Mr. Jernigan stated that, as the Development Order is not yet approved, they will not receive a Development Order until the landscaping meets the current requirements.

Chairman Kearney brought the motion back for a vote.

Motion to approve made by Pat Byrne; Second by Fred Schor; 3 ayes, 2 nays (Bob Ambrose and Payne Walker)

Mr. Schor stated that he believes the code needs to be changed.

Mr. Byrne asked to discuss the landscaping issue.
Chairman Kearney stated that staff is still waiting to get the report from Orange Beach; however, he believes that issue deals more with what sort of plants will thrive in close proximity to the Gulf of Mexico. Chairman Kearney further stated that something needs to be done as these tree issues keep coming back before this Board. Chairman Kearney stated that he believes it would be beneficial for staff to revisit the landscaping code and update it.

Mr. Jernigan stated that staff’s objection was based on the fact that in staff’s opinion and by the applicant’s own admission, there was no hardship in this case. Mr. Jernigan further stated he has no objection to and believes that staff should take a look at the City of Destin’s landscaping requirements and try to create a more homogeneous look in the Destin corridor. Mr. Jernigan stated that a motion from the Board would provide more impetus for staff to look at making such changes.

Motion that staff via the County Commissioners be directed to relook at this whole landscaping scheme on Okaloosa Island, in Destin, along our beaches and along Choctawhatchee Bay and basically report back to Growth Management so that we can put these things behind us made by Bob Ambrose; Second by Payne Walker; approved unanimously.

A brief discussion ensued.

K. OTHER BUSINESS

1. Election of Officers for 2016

   Nomination of Payne Walker to serve as Chairman made by Pat Byrne; nomination seconded by Bob Ambrose. Mr. Walker accepted the nomination and was elected unanimously.

   A brief discussion ensued.

   Nomination of Scott Kearney to serve as Vice-Chairman made by Payne Walker; nomination seconded by Bob Ambrose. Mr. Kearney accepted the nomination and was elected unanimously.

   A brief discussion ensued.

2. Term Renewals: Bob Ambrose, Payne Walker, Scott Kearney, Pat Byrne

   Mr. Jernigan stated that there are 4 Board members whose terms will expire and asked each if they were willing to serve another 3 year term.

   1. Bob Ambrose

   Mr. Ambrose agreed to serve another 3 year term on the Board.

   2. Payne Walker

   Mr. Walker agreed to serve another 3 year term on the Board.

   3. Scott Kearney
Mr. Kearney agreed to serve another 3 year term on the Board.

4. Pat Byrne

Mr. Byrne agreed to serve another 3 year term on the Board.

Mr. Ambrose asked counsel if a newly elected incoming Commissioner could replace them even though they’ve agreed to serve another 3 year term.

Attorney Parsons stated that they could be replaced once their term is up but not in the middle of a term, which means that the current Board members are locked in for 3 more years.

A brief discussion ensued.

3. The next regular meeting of the Board of Adjustment is scheduled to be held on August 10, 2016 at 1:30 p.m., at the Okaloosa County Administrative Complex, 1250 Eglin Parkway N, first floor Commissioner’s Chambers, Shalimar, Florida.

L. ADJOURNMENT

There being no other business before the Board,

Chairman Kearney declared the meeting adjourned.

Prepared by Teresa A. Mullins, Recording Secretary