

**MINUTES ARE NOT VERBATIM**

**BOARD OF ADJUSTMENT  
MEETING MINUTES  
May 10, 2017**

The regular meeting of the Okaloosa County Board of Adjustment was held Wednesday, May 10, 2017 at 1:30 p.m., in the Okaloosa County Administration Building, 1<sup>st</sup> Floor Commissioners Chambers, 1250 Eglin Parkway N., Shalimar, Florida.

Board Members in attendance were Scott Kearney, Pat Byrne, Fred Schor and Bob Ambrose. Payne Walker was not present. Growth Management Staff in attendance were Elliot Kampert, Growth Management Director; and Teresa Mullins, Administrative Assistant II. Assistant County Attorney Kerry Parsons was also present.

**A. CALL TO ORDER**

Vice-Chairman Scott Kearney called the meeting to order and read the opening statement into the record.

**B. ROLL CALL**

Ms. Teresa Mullins conducted roll call.

**C. APPROVAL OF MINUTES FOR: July 13, 2016**

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

**D. ANNOUNCEMENTS**

None

**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.

**H. DISCLOSURES**

None given.

**I. OLD BUSINESS**

None

**J. NEW BUSINESS**

1. **411330-BOA-2017**, a request for a Special Exception, as submitted by Randall Hilburn of Westerra Development, Inc. on behalf of Zeb and Sarah Watts, pursuant to Okaloosa County Land Development Code, Ordinance 91-1, as amended, Sections 2.03.04.3, 2.03.05.2 and 11.02.09.2 to allow an additional four (4) residents (10 residents total) at a community residential home. The property is currently zoned **Residential 1 District (R-1) and Mixed Use District (MU)** and the future land use map designation is **Low Density Residential (LDR) and Mixed Use (MU)**. A general location of the property is 2301 West James Lee Boulevard (Highway 90), Crestview, Florida. The property contains 6.4 acres more or less.  
District 1

Mr. Kampert, Growth Management Director, informed the Board that the applicant is requesting a Special Exception to allow for an additional 4 residents in a Community Residential Home setting on a home site of 6.4 acres. Mr. Kampert stated that the applicants are currently remodeling the existing single family home. Mr. Kampert further stated that Community Residential Homes consisting of 5 or fewer unrelated residents must be considered the same as a single family dwelling both per County Code and State Statute. Mr. Kampert informed the Board that the property in question has split zoning and is zoned as Mixed Use District (MU) on the Southern half of the property (which abuts Highway 90). Mr. Kampert further informed the Board that the single family home, which is currently being remodeled, sits completely on the Northern half of the property which is zoned Residential 1 District (R1). Mr. Kampert informed the Board that, as stated within the application packet and transmittal letters provided by the applicant's authorized agent, the proposed home for elderly persons will be licensed by the Florida Department of Elder Affairs (FDoE); however, the neither the FDoE nor any other agency will serve as the home's sponsor, nor will any agencies be sending residents to the home. Mr. Kampert stated that the home will be used as a residence only, with no medical care, physical therapy, mental health care or any other such services. Mr. Kampert further stated that staff will not reside at the property, but will, instead, work in 8 hour shifts providing assistance with simple daily tasks. Mr. Kampert stated that, per the applicant's representative, the home will look like a single family detached home similar to those that surround the property. Mr. Kampert further stated that the applicant's representative is of the opinion that that there will not be any negative impacts to traffic as the access to the site will continue to be the driveway currently in use. Mr. Kampert stated that the applicants, through their representative, have stated that, if the Special Exception is approved, they will build a 1,326 square foot addition to their existing single family home to provide enough space for a 10 resident Community Residential Home. Mr. Kampert noted that the request for a Special Exception is allowed in the Land Development Code which also states that the granting of that Special Exception, as well as any conditions thereto is within the powers and duties of the Board of Adjustment. Mr. Kampert informed the Board that staff have received no opposition to this requested special exception; however, there was public opposition from surrounding property owners when the applicants presented

a request to rezone the residential portion of the property to Mixed Use to allow a similar use which would have involved the construction of several small cottages for elderly housing as well as using the existing single family home. Mr. Kampert stated that the applicants withdrew that application, and have opted, instead, for this request for special exception for only the existing single family home. Mr. Kampert further stated that staff has no objection to the granting of this Special Exception.

Assistant County Attorney Kerry Parsons asked, for the record in terms of disclosure, if any of the Board members present have visited the site.

Mr. Robert Ambrose stated that he did visit the site.

Attorney Parsons asked the Board if they had been party to any communications with anyone other than staff regarding this issue.

All of the Board members all responded that they had not had any such communications other than with staff.

Vice-Chairman Kearney invited the applicant's representative, Mr. Hilburn to address the Board.

Mr. Randall Hilburn of Westerra Development, Inc. addressed the Board, stating that Mr. Kampert was correct, the applicants did apply for a re-zoning to change the residential portion of the property to match the mixed use designation on the Southern half. Mr. Hilburn further stated that due to difficulty with that process, the applicants decided to seek approval for this Special Exception and just add an addition to the existing house which would allow 10 total residents.

Mr. Pat Byrne asked Mr. Hilburn how much distance would exist from the modified Single Family home to the nearest neighboring property.

Mr. Hilburn stated that he did not have the exact measurements with him, however he stated that it would be about 300 feet to the property line.

Mr. Kampert stated that, having used the proposed site plan to measure, it would be approximately 160-180 feet to the property line and agreed that there would be an additional setback on the neighboring property. Mr. Kampert approached the podium to show the Board an enlarged copy of the site plan provided in the staff report.

Mr. Byrne asked staff if the landscaping proposed by the applicants would apply to those property lines that are adjacent to the neighboring residential properties.

Mr. Kampert again used the enlarged site plan to show the Board where the applicants had proposed to add a landscape buffer on the portion that is zoned R-1.

Mr. Bob Ambrose asked noted that adding the extra space would likely require that sprinkler systems and ADA compliant bathroom would be provided.

Mr. Hilburn stated that the applicants have already made the bathrooms ADA compliant and fire sprinklers have already been installed in the existing house, noting that these will be included as part of the new addition as well.

Mr. Fred Schor asked for the total square footage of the home once the addition has been added that an extremely large home might be an anomaly in the area.

Mr. Hilburn did not have that information available.

Attorney Parsons researched via the Property Appraiser's website and found the heated portion of existing home to be 3,192 square feet.

Mr. Kampert stated that, given the proposed 1,326 square foot addition, the total square footage would be approximately 4,518 square feet.

There being no further questions for Mr. Hilburn, Vice-Chairman Kearney invited those opposing this request to address the Board.

Ms. Charlotte Kinser addressed the Board stating that she and several other homeowners in the area have some concerns about this proposed addition. Ms. Kinser stated that her biggest concern involves the ingress/egress to the property and the dangerous issues that causes for traffic in and out of the subdivision. Ms. Kinser relayed to the Board a near accident she experienced with someone who was turning into the subject property without signaling. Ms. Kinser noted that the entrance to that property is on Lee Farms Road just directly north of where Lee Farms road joins Highway 90.

Vice-Chairman Kearney asked Ms. Kinser if her traffic concerns have been caused by the use of the property as a Community Residential Home.

Ms. Kinser stated that the situation has existed since she moved into her home 2 years ago; however, she is concerned that it will get worse with all of the traffic this project will bring.

Mr. Dave Girman, an adjacent property owner, addressed the Board, noting first, that the address of the subject property as it appears on the agenda is incorrect and should be correctly listed as 2301 West James Lee Boulevard. Mr. Girman stated that he wants to know exactly what the usage of the property is going to be, as he has looked on the internet and has found that this address has been used to advertise an Assisted Living facility advertisement website even though this Special Exemption is being sought for a Community Residential Home. Mr. Girman further stated that he believes that there are different legal requirements for an Assisted Living facility and a Community Residential Home as Assisted Living facilities require greater oversight. Mr. Girman stated that he agrees with Ms. Kinser regarding the traffic issues with ingress and egress and noted that he believes that the house, once the addition is added, will be much closer than 160-180 feet from his property line. Mr. Girman further stated that he wants to know if this is truly a Community Residential Home or an Assisted Living Facility, if there are any future plans for seeking further Special Exceptions, and what impact this proposal will have on surrounding property values. Mr. Girman noted that he purchased his property in 2006 and its value is less now than when he purchased it and he believes that approving this Special Exception will have further detrimental effect on the value of his property.

Mr. Ambrose asked Mr. Girman if he has discussed his concern with Mr. Hilburn.

Mr. Girman stated that he left a message on Mr. Hilburn's voicemail but never received a return phone call.

Mr. Ambrose asked Mr. Girman if he was aware of any of the residents currently living in the home, as this request is just for an increase of 4 residents.

Mr. Girman stated that he doesn't know how to answer the question as he has not spoken to anyone he has seen walking on the property.

Mr. Josh Plank addressed the Board, briefly stating that he is also an adjacent property owner and shares Mr. Girman's concerns.

Vice-Chairman recalled Mr. Hilburn to answer any of the question and concerns posed by the opponents as well as the Board.

Mr. Hilburn stated that the single family residence on this property existed prior to the creation of the Lee Farms Subdivision, and the developers of the Lee Farms Subdivision made concessions to those homeowners allowing them access off of the main road into Lee Farms. Mr. Hilburn, further stated that traffic into and out of the property will not significantly increase.

Mr. Ambrose asked if there were residents currently living in the home.

Mr. Hilburn stated that there are 4 residents currently, but they are allowed 6 and are asking for 4 additional to make the total 10 residents.

Mr. Ambrose stated that he understands the concerns about traffic and asked if there was another entrance into and out of the subdivision.

Mr. Hilburn stated that there are no other ingress/egress locations for that subdivision. Mr. Hilburn further stated that the residents don't drive so the only traffic would be staff entering and leaving, or perhaps family members visiting.

Vice-Chairman Kearney asked Mr. Hilburn to explain the differences between an Assisted Living Facility and a Community Residential Home.

Mr. Hilburn stated there are many differences, the biggest being how they are licensed by the State as well as the type of facility. Mr. Hilburn further stated that Community Residential Homes are governed by a certain section of the Florida Administrative Code.

Mr. Zeb Watts, Applicant, addressed the Board stating that Community Residential Homes and Assisted Living Facilities are licensed by the Agency for Healthcare Administration (AHCA) and are treated by AHCA as being the same thing. Mr. Watts further stated that none of the residents drive. Mr. Watts informed the Board that the residents are "little grannies" who have difficulty with daily life skills. Mr. Watts stated that there is one staff member present per shift, so the traffic in and out is limited to every eight hours as staff members change shifts. Mr. Watts further stated that they are asking to add 4 bedrooms for "grannies with dementia" to sleep in. Mr. Watts further

stated that on the same acreage he could choose to build 21 homes which would produce a lot more traffic.

Vice-Chairman Kearney asked staff for confirmation regarding the applicant's statements about AHCA.

Mr. Kampert stated that staff is not qualified to discuss how AHCA handles Community Residential Homes as opposed to Assisted Living Facilities, noting that research would have to be done.

Mr. Byrne asked Mr. Kampert what could be done with the property in the event that the owners decided to tear down the existing house and do something else with the property.

Mr. Kampert stated that the front half of the property is zoned Mixed Use, and because it is on Highway 90, which is a major arterial road, it would be allowed all of the uses from C-3 (a general commercial zoning district) to Residential, including single family homes and mobile homes on single lots. Mr. Kampert further stated that the Residential portion of the property would be limited to residential uses only.

Mr. Ambrose asked staff if the home would be allowed with no variance or special exception if it was located in the Mixed Use portion of the property.

Mr. Kampert stated that, if the home was located in the Mixed Use portion of the property, then there would be no need for a Special Exception as the use would be allowed.

Ms. Kinser stated that if commercial was added, the commercial would have to be accessed from Highway 90, which is not the case with the home as it is now being used. Ms. Kinser further stated that she wonders how the Ingress/Egress that exists was allowed when there was Mixed-Use property that they could have used.

Mr. Ambrose stated that the County regulation would dictate what could happen however none of that can be dealt with at this meeting.

Ms. Kinser stated that the increase in traffic since the opening of this home has been an issue for several of the residents.

Mr. Girman addressed the Board, asking if there are really dementia patients on the property as that is definitely a concern. Mr. Girman stated that he would like to know what the staff's qualifications are if they're dealing with dementia patients. Mr. Girman stated that he still doesn't have an answer about the website that is promoting this address as an Assisted Living Facility. Mr. Girman stated that he would like to know the ages of the current residents in the home as well to make sure that 1 staff member caring for them is both qualified and sufficient to care for them. Mr. Girman further stated that he would be interested in knowing the tax status given that there would be rental income from renting the rooms. Mr. Girman thanked the Board for their time.

Attorney Parsons reminded the Board that for a Special Exception, they should be looking at whether or not the granting of this Special Exception is in harmony with the

Land Development Code. Attorney Parsons stated that usage issues are within the jurisdiction of the Code Enforcement Department.

Vice-Chairman Kearney closed the evidentiary portion of the hearing and opened Board discussion.

Mr. Ambrose noted that he understands everyone's concerns; however, given the 60 homes in the subdivision, it is very likely that there are dementia patients living in some of those homes already. Mr. Ambrose stated that the legalities of Community Homes versus Assisted Living, staffing, etc., are not something that is within this Board's jurisdiction. Mr. Ambrose further stated that he understands the concerns regarding the ingress and egress to the subdivision; however, he doesn't see that traffic from the property will increase and impact that situation greatly. Mr. Ambrose noted that the subdivision residents will not be impacted by commercial development of the Mixed-Use portion at this time, and further there are probably several homes in the area that have 10 residents as it is. Mr. Ambrose stated that the road into the subject site existed before Lee Farms Subdivision and Lee Farms just tacked on to the original driveway when the subdivision was developed.

Vice-Chairman Kearney noted that he understands the residents' concerns; however, the driveway existed long before the subdivision was created and any concerns about the traffic, ingress and egress should be dealt with by Public Works and/or the Florida Department of Transportation. Vice-Chairman Kearney further stated that his concern had to do with Community Home versus Assisted Living Facility; however, that is handled by the State and is not under the jurisdiction of this Board. Vice-Chairman Kearney stated that so long as the project meets the required setbacks then the Board has no action to take. Vice-Chairman Kearney further stated that the Board cannot discriminate regarding the type of patients served by this Residential Home. Vice-Chairman Kearney noted that the Board also has no jurisdiction over property values.

Mr. Byrne stated that the issue he finds most compelling is the fact that this applicant could basically duplicate the Lee Farms Subdivision which would put neighbors much closer and affect traffic, ingress and egress in a far greater fashion. Mr. Byrne stated that he believes that the neighbors will have less of an issue with the Community Residential Home than they would with adding even more homes and cars. Mr. Byrne noted that he understand the privacy can be an issue and suggested a privacy fence or landscape buffer might help with the privacy issue.

Attorney Parsons asked Mr. Byrne if he wanted the privacy fence to match those used on surrounding properties.

Vice-Chairman Kearney noted that he believes that there is a privacy fence already in place and asked staff about the landscape buffer.

Mr. Kampert stated that landscape buffers are not required for residential properties; however there are 4 levels of landscape buffers ranging from a level 1, an 8 foot depth of plantings including trees to a level 4, which can include a privacy fence, a 30 foot depth of plantings including trees, berms, etc.

Vice-Chairman Kearney asked the applicant if there was already privacy fencing in place surrounding the property.

Mr. Watts stated that there is already privacy fence around the property except around the retention pond that is owned by the State, which has a hog wire fence.

A brief discussion ensued.

Motion to approve the Special Exception subject to the installation of the lowest level of landscape buffer as required by staff to be in place within a year to accomplish privacy on those boundaries that adjoin single family residences made by Pat Byrne; Second by Fred Schor; 3 yeas, 1 nay, Scott Kearney.

A brief discussion ensued.

## **K. OTHER BUSINESS**

### **1. Election of Officers for 2017**

A brief discussion ensued because of the absence of one member.

Motion to table the election of officers to the next meeting made by Fred Schor; second by Bob Ambrose; approved unanimously.

- 2. The next regular meeting** of the Board of Adjustment is scheduled to be held on June 14, 2017 at 1:30 p.m., **at the Okaloosa County Administrative Complex, 1250 Eglin Parkway N, first floor Commissioner's Chambers, Shalimar, Florida.**

## **L. ADJOURNMENT**

Motion to adjourn made by Bob Ambrose; second by Fred Schor; approved unanimously.

Prepared by   
Teresa A. Mullins, Recording Secretary  
5.12.2017