

CITY OF ST. PETE BEACH
BOARD OF ADJUSTMENT WORKSHOP MINUTES
January 25, 2023 1:00 P.M.

PRESENT: Sandie Lyman, Vice Chair
Michael Bomar, Member
Denise Chase, Member
Dan Small, Member

EXCUSED: Paul Skipper, Chair

STAFF PRESENT: Kristin Coman, Senior Planner
Brandon Berry, Senior Planner
Matthew McConnell, Assistant City Attorney
Ginny Bodkin, Deputy City Clerk

Vice Chair Lyman called the meeting to order at 1:00 PM.

Quasi-Judicial Procedure -

Assistant City Attorney Matthew McConnell explained that he called for this workshop at the last meeting to provide a refresher on quasi-judicial procedure and recent legislation.

Mr. McConnell gave a complete walk-through of the request for variance process and procedures as they come before the Board of Adjustment. The two parties to the application are the City and the Applicant. Unless the City Attorney's Office (or this Board) deems a surrounding or adjacent neighbor an adversely affected person; at that point they would get party status, but that has been rare with this Board.

Several months ago, the City Commission adopted procedures for public meetings; the City Attorney's Office is preparing the same for quasi-judicial hearings (this Board). He walked through the order in which the hearings should proceed; no part should be bypassed:

- The meeting is opened and roll call.
- The Clerk's Office swears in witnesses that are to provide testimony. Testimony must be under oath.
- Approval of Agenda/Minutes/Public comment on non agenda items.
- The sitting attorney will ask if there has been any ex parte communication on the part of the members for the cases to be heard. Ex parte communication is information that a Board member has determined outside of the meeting/Chambers – or outside of what the Applicant knows or what is being presented at the public hearing - i.e. emails from neighbors or experts or a site visit. There is nothing wrong with that, but the way to cure it is by announcing it prior to the item being heard.
- City staff presents the application; the purpose is to lay out an overview of the Applicant's request and what they have reviewed, and what criteria is required for the Board to approve the variance.
- The burden is then on the Applicant to prove to the Board that they have met the requirements for the variance.
- If attorney appears for an Applicant, they are allowed to present, have their own witnesses, have time for rebuttal, and cross-examine. All cross-examinations, questions and

communication are to go through the Board Chair; the Chair is essentially managing the meeting.

- Kristen (or the appointed staff member) is the City's expert, but nothing precludes the Applicant from having their own experts.
- After the Applicant presents, the public hearing portion of the meeting opens; there is no need to distinguish 'for' or 'against' – it is just public comment.
- Comment can limit to three minutes, but generally are given more time as decided by the Board.
- After Public comment is closed, the Applicant is given an opportunity to rebut anything that has been said prior to Board deliberation.
- Staff may have made suggestions of recommendations for conditions; the motions needs to be clear on what the conditions are.
- A motion, a second, and a vote are required.
- The Board is here to consider the evidence, make findings of facts, draw conclusions of law, impose conditions if applicable, then staff issues an order. Make it clear that you are basing the decision on the evidence.

Additional points:

- Due process is important – adequate notice is required, there is an opportunity to be heard, and the Board is fair and impartial, basing their decision on the evidence
- Sufficient time must be given to present – if Applicant needs 10 minutes, that should be appropriate, but– additional time can be allowed.
- Staff may present and suggest some conditions.
- The motion needs to be clear – approve specific with conditions. Spell it out.
- Motion/second/roll call vote.
- This Board has the right and ability to impose its own conditions in addition to or different from staff recommendations.
- On appeal, courts review 1- due process, 2 - was the law correctly applied (criteria has been met), 3 - Board's decision must be based on competent, substantial evidence. The Board must be fair and impartial.
- Call the attorney in advance if you think you need to be recused on an item.

Statute 166.033 -

Mr. McConnell explained that the State Statute changed about a year ago. He provided a handout which is in the meeting record. An approval, approval with conditions or denial of the application must include written findings supporting the municipality's decision.

After a motion to approve that does not pass, there **must** be a second motion to deny (by one of the people who voted no). **The Chair cannot second a motion. If no second, motion dies.** Example - Based on the evidence and staff findings presented, I deny because the Applicants have not met variance criteria.

The Application

- The Variance is for the property and related matters, not for Applicant's personal issues. Ms. Coman explained the types of variances; they are always outlined in the meeting packet.

- Discussed each application standing on its own and compatibility.

Member Bomar asked Mr. McConnell to distribute the recommended order of the meeting/hearing that he reviewed in writing to the members when it is completed.

Vice Chair Lyman asked that the Board be informed of the result of any cases that go to appeal; that would be helpful/educational.

Mr. McConnell encouraged one on one meetings if the members ever have questions; they can call or email.

Vice Chair Lyman adjourned the meeting at 1:51 PM.

These minutes were approved at the March 29, 2023 Board of Adjustment meeting.