



Town of Ponce Inlet

Planning Board

Regular Meeting Minutes

September 27, 2022

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
2 Chairman Cannon called the meeting to order at 5:30 p.m. in the Council Chambers, located at
3 4300 S. Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

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5 **2. ROLL CALL AND DETERMINATION OF QUORUM:**

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7 Board members present:

8 Mr. Mauldin, Seat #1
9 Mr. Kaszuba, Seat #2
10 Mr. White, Seat #3; Vice-Chairman
11 Mr. Cannon, Seat #4; Chairman
12 Mr. Carney, Seat #5
13 Mr. Oebbecke, Alternate #2

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15 A quorum was established with six members present; Dr. Iyampillai was absent.

16
17 Staff present:

18 Mr. Disher, Planning & Development Director
19 Ms. Hunt, Assistant Deputy Clerk
20 Mr. Mendenhall, Principal Planner
21 Attorney Shepard, Town Attorney

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23 **3. ADOPTION OF AGENDA:** Chairman Cannon asked if there were any changes; there
24 were none.

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26 Chairman Cannon moved to adopt the agenda as presented; seconded by Vice-Chairman White.
27 The motion PASSED, 5-0 consensus.

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29 **4. APPROVAL OF MINUTES:**

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31 **A. August 23, 2022 Regular meeting** - Chairman Cannon asked if there were any
32 changes. Vice-Chairman White stated on line 113, “south” should be changed to “north”; there
33 were no other changes requested.

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35 Chairman Cannon moved to approve the July 26, 2022 meeting minutes as modified; seconded by
36 Vice-Chairman White. The motion PASSED 5-0, consensus.

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38 **5. REPORT OF STAFF:**

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40 **A. Administrative Variance Applications** – Mr. Mendenhall stated there are no
41 Administrative Variances received; the EAR letter was approved by the Town Council at its
42 September 15th meeting for transmittal to the DEO and it has confirmed receipt of the letter.

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B. Other Reports & Updates – Mr. Disher provided an update on Hurricane Ian: all Town Offices will be closed at noon tomorrow (Wednesday) and remain closed until Friday morning at 8:00 a.m., at which time Town staff will begin damage assessment tasks; teams will be driving around Town documenting damages and can issue certain permits in the field for emergency repairs, depending on the storm damage, staff may be here on Saturday as well. The Marine Science Center informational meeting at the Community Center for Thursday evening has been cancelled due to the storm. At the last Town Council meeting, Volusia County staff provided a presentation on proposed improvements for the four-lane section of S. Atlantic Avenue, and it was suggested that County Staff schedule an open forum meeting to obtain resident input.

6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION: Mr. Kaszuba stated that he is a volunteer at the Lighthouse and has toured the Pacetti property; however, it will not affect any decision made tonight.

7. HEARING OF CASES:

- A. FDP #9-2022; Final Site Plan (proposed)
Pacetti Hotel Museum @ 4928 South Peninsula Drive
Owner(s): Ponce deLeon Inlet Lighthouse Association
Applicant(s): John Dillard, P.E., Zev Cohen and Associates, Inc.**

Mr. Mendenhall provided a presentation outlining the current conditions, proposed improvements, and staff's findings. He noted that the initial development plan was reviewed by staff and found to comply with the LUDC; the Cultural Services Board approved a Certificate of Appropriateness for the proposed exterior modifications and recommended approval of the landscape plan. Following this Board's review and consideration, the item will be scheduled for final consideration by the Town Council. He stated the site is developed with a historic residential structure, water tower, and garage, along with several small sheds. The Certificate of Appropriateness applies specifically to the Hotel/Museum, as it is the original structure. He noted there is significant vegetation and tree canopy on the property and a minimal amount is being proposed to be cleared to allow for parking and driveway access. Mr. Mendenhall stated the property is zoned P/I (Public/Institutional) with a matching future land use; a portion of the property is located within the Lighthouse Overlay District (LOD), which restricts architectural design and improvements that might impact the historic character and sight visibility of the Lighthouse, and it is listed on the National Register of Historic Places. He reviewed aerial photos and maps of the subject property and reviewed the proposed tree removal plan, noting that additional trees and vegetation are proposed to be planted to accent the buildings and driveway entrance. The applicant is proposing to plant more vegetation than the 1:1 ratio required and will maintain the perimeter buffer for screening from adjoining residential properties. The proposed modifications are necessary to make it accessible to the public and include the addition of external stairwells, (to meet Building Code and Fire Code regulations) porches, patios, ADA-compliant ramps, a ticket window, and a door. The goal is to restore the building to its 1930's design. He added that the proposed plan is consistent with the Comprehensive Plan as it has met all applicable criteria. The property is serviced by the Town's water system but will remain on the property's existing on-site septic system, as there is no sewer available to that location. Vice-Chairman White asked Mr. Mendenhall to explain the Lighthouse Overlay District; Mr. Mendenhall stated that the LOD includes all

90 properties located within 750 feet of the Lighthouse. Mr. Disher stated that if a portion of the
91 property is within the LOD, the regulations apply to the entire property. Vice-Chairman White
92 referenced the garage, water tower and sheds, and asked if those will be brought up to current
93 Code. Mr. Mendenhall stated the water tower will be open to the public and will be brought up to
94 current Code for public access, the remaining structures will be secured from the public. Vice-
95 Chairman White expressed concerns of increased traffic (estimated 35 cars per day) on Sailfish
96 Drive and asked how the current driveway will be used. Mr. Mendenhall stated it will be a one-
97 way entrance into the property and loop around to exit on Sailfish Drive approximately 40 feet
98 west of the entrance. Mr. Mendenhall noted that the existing driveway and parking spaces are shell,
99 and if there is grading needed, the property owner will maintain the entrance and exists at Sailfish
100 Drive. Vice-Chairman White asked how the proposed sidewalks would tie into the Town's
101 sidewalk project; Mr. Mendenhall stated that the proposed sidewalks are designed to move people
102 from one area to another on the property and are not tied into the Town's project. Vice-Chairman
103 White expressed concerns of the property remaining on septic rather than connecting to the sewer
104 system. Mr. Oebbecke asked if this property will be used for event rentals, or will it remain strictly
105 a museum; Mr. Mendenhall stated it is being approved as a museum, but the applicants may
106 provide event rentals through a special event permit.

107
108 John Dillard, Zev Cohen & Associates, stated that the second driveway on Sailfish was moved at
109 the Town's request; while grading, the connection points of the driveways where they meet Sailfish
110 will be maintained by the owners; new trusses, floor supports, internal structural supports, and a
111 sprinkler system will be installed; the windows will be restored to the 1930's construction period.
112 Vice-Chairman White inquired about the flood zone and expressed concerns of the septic system.
113 Mr. Dillard stated that the property is above base flood elevation (BFE) and has been there 130
114 years; the current septic system has been inspected and certified for use. Mr. Carney expressed
115 concerns of removing trees to install the second driveway. Mr. Dillard stated it is a safety issue
116 and is being done at the Town's request. Chairman Cannon asked how the windows will be
117 restored; Mr. Dillard stated they would be re-glazed. Ed Gunn, Executive Director, Ponce Inlet
118 Lighthouse Association, stated the Lighthouse attracts about 125,000 visitors annually, is open
119 365 days per year, and averages about 600 per day during peak season. He stated this project allows
120 them to expand the history of the area. Mr. Gunn stated it has been a pleasure working with staff
121 and the Boards on this project, and it has been a two-year painstaking process. Chairman Cannon
122 asked Mr. Dillard if he was comfortable with the proposed layout of the driveway configuration at
123 that intersection. Mr. Dillard stated a majority of the people will park at the lighthouse and walk
124 to this property; and is comfortable with the proposed layout. There was further discussion
125 regarding the pedestrian and vehicle traffic in this area. Mr. Dillard confirmed that his opinion is
126 that this is the safest configuration. Chairman Cannon asked if Mr. Dillard has had the septic
127 system inspected? Mr. Dillard stated it has been inspected by a certified septic company and
128 certified that it is ready to go. Mr. Mendenhall confirmed that the septic inspection report has been
129 received by staff and is certified for use. Chairman Cannon expressed concerns about the proximity
130 of the septic to the river, noting that additional use is coming with the opening of the museum. Mr.
131 Dillard reconfirmed it has been inspected and certified for use; if it fails, we will have to connect
132 to the sewer system; the City of Port Orange had no issues.

133
134 Chairman Cannon opened public comment: Salvatore Carollo, 4932 South Peninsula Drive – lives
135 adjacent to the property and expressed concerns with traffic not adhering to the 10 m.p.h. now and
136 is dangerous; he suggested additional patrols, a raised crosswalk, speed humps, or stop sign to

137 make it safer than it is now; he expressed concerns about the area being on septic systems,
138 including the businesses along that block – which poses an environmental disaster. He stated he is
139 open to discussions about making sewer available to his property and the others as well. Chairman
140 Cannon closed public comment.

141
142 Mr. Disher stated sewer is available to the properties from Hidden Treasures to the East, including
143 the Lighthouse. The sewer line does not follow the “curve of the road”; the Town is in the design
144 phase at this time since there is no money for construction. Mr. Carollo stated that he was not
145 aware that sewer was available to Hidden Treasures and stated his interest in connecting to the
146 system. Chairman Cannon suggested Mr. Carollo meet with town staff to discuss this matter as it
147 is not a straight path. Mr. Mendenhall stated to Mr. Carollo that he would meet with him to show
148 him the sewer maps.

149
150 Chairman Cannon moved to forward the proposed final site development plan for the Pacetti Hotel
151 Museum to the Town Council with the recommendation of approval after consideration of sewer
152 connection and traffic conditions; seconded by Vice-Chairman White. The motion PASSED 5-0,
153 with the following vote: Chairman Cannon – yes; Vice-Chairman White – yes; Mr. Mauldin – yes;
154 Mr. Kaszuba – yes; Mr. Carney - yes.

155
156 **B. MR #27-2021; Minor Replat @ 4724 South Peninsula Drive**
157 **Owner(s): Alex and Vic Spanos**
158 **Applicant(s): Jeffrey Sweet, Agent**
159 **Request: To split one lot into two separate lots**

160
161 Mr. Mendenhall stated the applicants are requesting to subdivide Lot 3 of the Colley subdivision
162 into two equally sized lots. The subdivision was created in 1990 and consisted of three lots; at the
163 time of approval, the access, drainage, and utilities within the subdivision were approved to be
164 privately maintained to serve those properties. As part of the original subdivision plat approval
165 process, the developer obtained a variance to deviate from certain subdivision code regulations
166 regarding legal and physical access and frontage on a public road, which allowed the subdivision
167 to utilize a private access easement to serve Lots 2 and 3 from South Peninsula Drive in lieu of
168 creating a standard street within a public right-of-way. He noted that since the subdivision was
169 originally platted, Lot 1 has been split into three lots, which were intended to support further
170 development of single-family residential units in that area although none were developed; while
171 Lots 2 and 3 remain in their original configuration. He noted that the current owners have prepared
172 an agreement for the maintenance of the access road and utilities. Mr. Mendenhall noted that the
173 properties are eligible for connection to the Town’s water and sewer system upon development;
174 and are required to maintain the 25-foot wetland buffer setback line along the western boundary;
175 and the subdivision is located in the R-1 zoning district. He stated that the application meets the
176 criteria of LUDC, section 6.6.7 for a minor replat to subdivide one lot into two lots; staff
177 recommends the Board find the proposed minor replat is consistent with the Comprehensive Plan
178 and the LUDC and to approve the minor replat located at 4724 S. Peninsula Drive.

179
180 Chairman Cannon opened public comment. Ashley Spanos, 100 Oceanway Drive – stated her
181 husband and his brother purchased the lots in 2021 so they could build houses next to each other;
182 the neighbors abutting this property were not accommodating and that is when the Spanos’
183 contacted an attorney, engineer, and surveyor. A unilateral agreement was prepared wherein the

184 Spanos' would assume maintenance of the roadway and easements and would be passed on with
185 the properties if ever sold. Mahyar Okhovatian, 4722 S. Peninsula Drive, owner of Lot #2 – stated
186 his legal counsel could not attend this evening due to the hurricane and rejects the Spanos' request;
187 he and his wife have been maintaining this property and driveway for more than 22 years by
188 removing trees, branches, trimming vegetation. His concerns are removal of the trees, access to
189 his property during construction, and the opportunity to review the agreement

190
191 Ms. Spanos stated that her attorney sent the agreement to the Okhovatians' attorney in April of
192 this year. Chairman Cannon asked if it was accurate that the Okhovatians were denied a split of
193 their own lot? Mr. Disher answered that the Okhovatians had received approval from the Town
194 Council to split their own lot into three, conditioned on the Okhovatians enter an agreement with
195 the then owner of Lot 3 to maintain the driveway and access easement. However, the owner of Lot
196 3 at the time refused to sign the agreement, after which the approval became invalid. There was a
197 discussion regarding the parties agreeing to a maintenance agreement, history of the subdivision,
198 and actions the board can take at the meeting. Chairman Cannon noted he was not supportive of
199 splitting the 50-foot right-of-way into two driveways, expressing concerns of creating unintended
200 consequences and the potential of up to seven lots if the existing lots are subdivided in the future.
201 Vice-Chairman White asked who actually owns the driveway and whose property is it on; Mr.
202 Mendenhall stated it is owned by Lot 3 but is required to be maintained by Lots 2 and 3 (including
203 3A and 3B if the minor replat is approved). Vice-Chairman White asked if the Board could make
204 a decision based on that. Attorney Shepard stated that the Board can only determine if the
205 applicants have met the criteria; if not, you must explain why they do not; and based on the staff
206 report, they meet all the applicable criteria. Mr. Mendenhall stated that flag lots are being created
207 if the lot split is approved and the easement is not considered a public street.

208
209 Mr. Mauldin stated an ancillary agreement has been proposed by the Spanos' for the owners of
210 Lot 3A and 3B, to relieve the owners of Lot 2 of maintenance responsibility for the driveway and
211 access; and asked if the Okhovatians' attorney seen this document? Ms. Spanos stated she had a
212 letter dated April 27, 2022 confirming that the agreement was sent by her attorney (Jeff Sweat) to
213 the Okhovatians' attorney (Glen Storch). Mr. Okhovatian stated he became aware of the Spanos'
214 request when he received the notification letter from the Town. Neither he nor his wife have spoken
215 with their attorney about this matter and that is why he is requesting a postponement until his
216 attorney can be present and address any legal issues; in addition, his deed provides full access to
217 the easement, and he is concerned with access to his property during any construction; and if the
218 new homes are elevated, there are flooding concerns; therefore, he remains opposed to the
219 application.

220
221 Mr. Kaszuba stated that the attorney for the Okhovatians is not present due to the impending
222 hurricane and wondered if this request was time sensitive, adding that he would like to hear from
223 Attorney Storch. Attorney Shepard stated that the applicants are present, the hearing was called
224 and properly noticed, it is the applicants' burden of proof to meet, the evidence has been presented,
225 staff indicated that it meets the criteria, and there has been no contradictory evidence presented.
226 He noted that this is a recommending body ... he corrected to state *this Board is the deciding body*
227 *for this type of application*, the applicant can request a postponement, and the Board must
228 remember that this is a Quasi-Judicial Hearing; if you were in an actual courtroom and a witness
229 did not show up to testify, for any reason, would the proceeding continue? – the answer is yes, it
230 would. If the applicant's attorney could not attend, they could request a continuance – no one else

231 can request that. Mr. Kaszuba stated, except that one party is asking for a continuance; Attorney
232 Shepard stated that is a “witness,” only the applicants can request a continuance, no one else. Mr.
233 Mendenhall stated the application has been in process since March 2021 and the reason is to
234 address many of these concerns. He also stated that access to all of the properties must be
235 maintained throughout any construction process.

236
237 Chairman Cannon re-opened public comment. Mr. Okhovatian stated a few months ago, a group
238 of tree service people arrived on a Sunday to remove trees and blocked his access to his property;
239 he notified the police. He stated that his application to split his lot was denied by Council and he
240 wants to get with his attorney to find out why he was not made aware of any of these conversations.
241 Ms. Spanos stated that she and the other applicants do not support any postponement; she
242 referenced the attachments verifying that their attorney had been in contact with the Okhovatians’
243 attorney. Chairman Cannon closed public comment.

244
245 Mr. Kaszuba stated since the Planning Board is the final arbitrator in this issue, we owe it to the
246 other party to extend a courtesy and get the full story.

247
248 Mr. Kaszuba moved to grant a continuance; Mr. Mauldin asked, “for how long?”; Chairman
249 Cannon asked if the Board could meet for a Special meeting in ten days? The motion died for lack
250 of a second.

251
252 Vice-Chairman White asked, if we do this, are we setting a precedent; we are here to decide based
253 on the facts and evidence presented during the meeting. Attorney Shepard replied that it does not
254 set any precedent, it is a Quasi-Judicial proceeding; what is it that Mr. Storch could say that would
255 change the evidence?

256
257 Mr. Mauldin noted that the application submitted meets the requirements and an agreement
258 between the lot owners regarding maintenance is not part of the Town’s concern. Chairman
259 Cannon referenced section 6 of the agreement and asked who the ‘Secured Party’ could be;
260 Attorney Shepard stated that generally speaking, it might be the language of a lender. Mr. Mauldin
261 noted that the Town would have to be notified per paragraph 19 of the same document.

262
263 Mr. Mauldin moved to approve the minor replat, MR #27-2021 as presented; Vice-Chairman
264 White seconded the motion. The motion PASSED with the following vote: Mr. Mauldin – yes, Mr.
265 Kaszuba – yes; Vice-Chairman White – yes; Chairman Canon – yes, but only because it is the law
266 and his belief that approval may create issues; Mr. Carney - yes.

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268 **8. BUSINESS ITEMS/PUBLIC HEARINGS:**

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270 **A. Tabled item:**

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272 **1. Motion to “Remove from the Table” – Chairman Cannon moved to**
273 **remove this item from the table; the motion was seconded by Mr. Kaszuba. The motion PASSED**
274 **5-0, voice vote.**

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276 **2. Ordinance 2022-XX, LUDC Amendment for Mobile Food Vendors and**
277 **Temporary Use Permits**

278
279 Chairman Cannon asked if this item could be continued due to the approaching hurricane (Ian).
280 Attorney Shepard stated that yes, but regardless of what the Town decides, on October 1st there
281 will be a vendor in Lighthouse Point Park. Council would like to have this item back as quickly as
282 possible and has already indicated it would not support any vendors in Lighthouse Point Park.
283 There was a brief discussion regarding the changes in the proposed ordinance. Attorney Shepard
284 noted that the Council would like to have this item on its October regular meeting agenda; a
285 discussion of deadline dates and noticing dates was held. Attorney Shepard suggested holding a
286 Special Meeting to make a decision and forward to Council; and the Board discussed availability
287 dates. Mr. Disher clarified that regarding Winterhaven Park, the beach approach is not the entire
288 park, but rather the area east of the parking lot where the restrooms are located. Mr. Disher further
289 remarked that the current zoning of the Winterhaven Park is still MF-2. This zoning district is not
290 proposed as a permitted zoning district for food trucks. Mr. Disher also stated that the Town is
291 providing a letter to the County Chair regarding the Town's intent to not allow food trucks in
292 Lighthouse Point Park. Vice-Chairman White expressed concern about alcohol sales at the beach
293 approach areas. Attorney Shepard clarified that alcohol sales would be in violation of the County's
294 own regulations. Mr. Kaszuba asked if the Town is notified whenever the County makes changes
295 to its regulations? Mr. Disher replied that the Town is not directly notified, and that Staff reviews
296 agendas but depending on how the item is worded or described, it can be challenging to determine
297 if it applies to the Town. None of the County Council agenda item titles or summaries for the beach
298 concession agreement mentioned anything about allowing vendors in the County's upland beach
299 parks.

300
301 Chairman Cannon opened public comment – hearing none, he closed public comment.

302
303 The Board requested staff provide a revised draft ordinance based on the Board's prior
304 discussions and to schedule a Special Meeting as soon as possible; 5-0, consensus.

305
306 **9. PUBLIC PARTICIPATION:** Chairman Cannon opened public participation - hearing
307 none, he closed public participation.

308
309 **10. BOARD DISCUSSION:** None.

310
311 **11. ADJOURNMENT:** The meeting was adjourned at 7:46 p.m.

312
313 Prepared and submitted by,

314
315 Peg Hunt

316 Peg Hunt
317 CMC/Assistant Deputy Clerk

318
319 Attachment(s): None.