

**TOWN OF LAUDERDALE-BY-THE SEA**  
**PLANNING AND ZONING BOARD**  
**REGULAR MEETING MINUTES**  
*Jarvis Hall – 4505 Ocean Drive*  
*Wednesday, February 19, 2014*  
*6:30 P.M.*

1. CALL TO ORDER

Chairman Alfred Odaker called the meeting to order at 6:30 P.M. Members present were David Channon, Bill Brady, Patrick Potts, and first alternate Eric Yankwitt. Patrick Murphy was absent. Also present were Town Attorney Kathy Mehaffey, Town Planner Linda Connors, and Clerk Idalia Gutierrez.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

3. APPROVAL OF MINUTES – Planning and Zoning Meeting of November 20, 2013.

Mr. Brady made a motion to approve the minutes of November 20, 2013 as presented. The motion was seconded by Mr. Potts. The motion carried 5-0.

4. PUBLIC COMMENTS - The Chair opened the meeting for public comments and closed public comments at this time as there were no speakers.

5. NEW BUSINESS

a. Non-Conforming Uses - Duplexes

Town Attorney Kathy Mehaffey announced for the record that Mr. Potts recused himself as he owns one of the duplexes that would be affected by the proposed ordinance. Town Planner Linda Connors announced that tonight's meeting was a workshop to discuss non-conforming uses and how they apply to duplexes. They would review tonight what has been done and seek input from the Board. She would then do more research and bring that back to the Board. She stated for the record the definition of a duplex. Focus tonight was to be on the one building on a single lot occupied by two single-family household units. She said that there have been some duplexes in Town where the lot and the building were subdivided and under two separate home ownerships on two separate lots. She described the issues if lots were subdivided (e.g., immediate violation of side setback, the unit may not be able to meet the minimum building size of its zoning district, the allowed density [10 units an acre] may be exceeded, the Town and the State do not address maintenance issues that could result from the separate ownership of a single building, there could be Building Code issues when permits need to be pulled to repair common areas, which were often not clearly defined, there might be conflicts between owners when common areas needed to be fixed, and the Town would not be able to provide a zoning compliance letter which could affect a potential property owner's ability to secure Title Insurance). She explained the focus for tonight's workshop was in the traditional zoning district for duplexes, RD-10. However, duplexes built in other zoning districts in Town still have to be researched.

In the RD-10 zoning district, net density was not to exceed 10 dwelling units an acre, minimum building size was at least 1,200 square feet for non-waterfront properties and 1,300 square feet for waterfront properties. Building setbacks of 7 ½ feet for the side and 10 feet rear and 25 feet front were required. In the RD-10 zoning district, they found twelve original lots subdivided into twenty-four units which now did not meet the definition of duplex. Of those 24 units, 8% did not meet minimum building size, 42% did not meet density requirements and 100% did not meet setback requirements. She explained that an ordinance was drafted to provide definitions for duplex unit, in existence, separate ownership, shared duplex boundary and split lot duplex property. They added language that granted legal non-conforming status to duplex dwellings on a single lot that did not meet the density requirements of the zoning district. It also provided language for legal non-conforming status for those properties that were subdivided prior to the adoption of this ordinance. For the RD-10 district, language was proposed that allowed a split lot duplex unit that was destroyed by up to 50% to be repaired and rebuilt as an attached duplex unit with the added requirement of architectural review to ensure the new construction was consistent with the form and style of the remaining duplex. It required duplex units on a split duplex lot that were damaged or destroyed greater than 50% to be redeveloped as a single family structure and reduced the setback for the shared duplex boundary to 3'. The reasons these suggestions were made were because it clearly provided legal non-conforming status for subdivided properties, it maintained the language and provisions of duplex as currently found in code, and it provided standards for future redevelopment of split duplex properties. It also defined all those terms that were not anticipated with a split duplex property. Continued research needed to be done in other zoning districts. The new research had to identify issues and determine if the proposed ordinance also equitably resolved those issues. If not, additional language would need to be drafted to address unique problems in each of the residential zoning districts, as necessary.

Town Planner Connors spoke about the letter sent out to all duplex property owners to let them know about last year's duplex meeting in October. She wanted to make owners aware of the issue, so they did not consider subdividing. She also sent a letter to them when the packet went out so they knew the language that was coming before the Planning and Zoning Board. She pointed out that she had to do the same for duplexes in other zoning districts which may have different issues. She needed to research this and bring it back to the Board. There were a number of options but three that she came up with were to separate and rebuild as a single family, to rebuild with a 0' side setback, and to re-unify the lot and build as a duplex per code. Town Planner Connors asked for comments from both the public and from the Board.

Patrick Potts, 4543 Poinciana Street, said that he reviewed the packet today. He thought about the owners who had these properties for a long time. If there was a destructive storm, the owners would have to tear down the duplex and build two smaller houses. This did not seem right to him. He stated that he lived in a townhouse which would be considered non-conforming. He and his neighbor, Don, would have to rebuild to a code that would destroy the value of the townhouse, if it were destroyed. He could not imagine having to build a skinny house with a 6' alley between him and his neighbor. His neighbor and he have a set of covenants that state how they manage the common walls, roofs, etc. If duplexes have a set of covenants describing how to rebuild, they should rebuild on the same footprint and meet the code. Mr. Potts answered Chairman Odaker's question that a double brick wall divided the two buildings but it has one common roof structure. He also answered that this construction was common for buildings built between 2004 and 2007. Mr. Yankwitt asked either the Town Attorney or the Town Planner if this applied to his condo townhome on Atlantic Shores. Town Planner Linda Connors said it did not apply. Town Planner Linda Connors said the issues that Mr. Potts

brought up were the issues that needed further research. She said that the two lots together for Mr. Potts and his neighbor are about sixty feet wide. That would be about thirty feet for each of them. Mr. Potts was correct. If someone had to rebuild, there was not much room to build and maintain the other aspects of the code. She explained that this was one of the reasons why we have to do further research in RM-25 and other zoning districts. Ms. Connors said we needed language in the code to address these issues. We want to be fair and equitable to those who have subdivided their property. Some owners came to the Town and were given permission to subdivide even though the code was not being met. It was the Town's responsibility to address these issues so that it did not occur in the future and the property owners with split duplexes know what would happen in the future. Whether a duplex was split or not should be recorded with Broward County. Town Planner Linda Connors answered Chairman Odaker's question that someone could still subdivide their duplex today. Chairman Odaker felt it was complicated. Mr. Brady stated it was not something to go forward into the future and should be prohibited.

Donald Lamontagne, 4541 Poinciana Street, neighbor of Patrick Potts, asked if architectural review was done on other homes. Town Planner Linda Connors said architectural review was required in the code for properties except duplexes and single family homes. In a duplex, this review would ensure some type of relationship between the architecture in a split building. Town Planner Linda Connors answered Mr. Potts' question that if both owners agreed on the architectural design, then it would be fine if the design was the same or at least the designs had a relationship with each other. Town Planner Linda Connors answered Chairman Odaker's question that 50% reflected the value to repair and replace. Mr. Brady asked what would happen when one unit was more than 50% destroyed and the other not. He was answered that when a non-conforming structure was more than 50% destroyed, we suggested language with flexibility to meet the code. That other half which was not destroyed would have to come into compliance when it either became more than 50% destroyed, demolished, or when being rebuilt. The Town has a provision in the code that stated except for density, setback and height, you could rebuild a non-conforming property. We have an issue with that because of the complexity of maintaining a building with extraneous issues. There has to be something in place for these types of building maintenance issues. Mr. Potts asked to submit his covenants to the Town Attorney. Town Attorney Kathy Mehaffey would talk about them after she read them. Concern was expressed that this new ordinance would impair and impede the value of the house by taking away buildable square footage. Mr. Channon liked Mr. Potts' use of a covenant between Mr. Potts and his neighbor. Town Planner Connors said that the ordinance would allow the owner of the property to get a letter from the Town stating they could sell their property. She explained that Mr. Potts' property sounds like it was built in a way that anticipated subdivision. This was not always the case, especially in duplexes that were older. Discussion ensued if duplexes were fire rated. Mr. Channon was glad that this was a workshop as there were so many issues.

Town Planner Connors requested to talk about the definitions in the ordinance starting on line 50. She asked the Board if they wanted to go through the ordinance at this workshop or read it at home and get back to her with questions. Town Attorney Kathy Mehaffey felt that public discussions were encouraged and there would be opportunities later on for a Board Member to contact Town Planner Connors. Chairman Odaker was answered by the Town Planner that the State did not have jurisdiction on this issue. He asked how the townhomes down the street were built. Town Planner Connors answered that the Town did not have any record of a covenant. She has not researched if they were in single or dual ownership. If single ownership, there was no issue. The issue arises when there was dual ownership. Mr. Channon suggested creating a land condo. Town Planner Connors said it was too complicated and expensive to

come up with alternate ways to own the unit. Mr. Potts talked about the five bullet items on page 3 in the letter the Town sent out. The only problem was when the damage to a unit was more than 50%. He felt that the code should have conditions regarding rebuilding a unit that was damaged more than 50% and nothing else would be needed. Chairman Odaker wanted to know about the insurer and Mr. Potts said it was a fee simple townhome. His plot line went right through the middle of the building. He has covenants that were created when the property was built. He felt that the Town could not legislate two owners getting along. Mr. Lamontagne answered Ms. Connors that he has been Mr. Potts' neighbor since June 2005. Mr. Lamontagne said that across from him there was a neighbor who owned half of a duplex and now bought the other half. He would not be happy to have to build one half, if it was damaged more than 50%. Ms. Connors said that if you own both sides, then the ownership would be put back together through the ordinance and the lot would not be subdivided. Town Attorney Kathy Mehaffey said that the way the code was written now based on RD-10, did not grant legal non-conforming status to those individual units owned by the same person. Where there was single ownership, they have to be maintained in that single ownership unless they create a different legal entity for maintaining whether through a condo, land condo or some type of mechanism. With this, there needed to be some type of guarantee either of longevity or it runs to the benefit of the Town. This would give the Town the ability to make sure the legal unity stays in place. Mr. Potts said it must be simpler than what was proposed otherwise it would cost the owner too much in legal fees and code compliance. He said the objective should be to have these homes maintained, look nice, and be taken care of by two agreeable owners.

Town Planner Linda Connors summarized some of tonight's suggestions. One was to eliminate the setback requirements if the property was destroyed and there is an agreement. The covenant would have to be shown during permitting. Continue to allow subdivision of property, if a covenant was in place. Require a covenant to state how the property was to be maintained. Town Attorney Kathy Mehaffey questioned if an agreement was not required, what would one owner rebuild. Also, without an agreement, construction would be on a zero lot line. Mr. Yankwitt was concerned that an owner would not be able to build the way he wanted to without an agreement in place. Chairman Odaker was concerned about one unit being destroyed due to a fire. Mr. Potts suggested making homes non-compliant now, if they did not have a covenant. He felt that the Town should be able to furnish stocked covenants to owners who want to come into compliance. Mr. Channon agreed with this approach. Town Planner Linda Connors said that if two owners sign a covenant agreeable to the Town Attorney's requirements, then it would be a legal non-conforming status. There would not be a setback requirement for rebuilding. Ms. Connors suggested that a signed covenant would allow the owner to rebuild to their footprint. For those who cannot get a covenant signed by both owners, then the rebuild would require the setback and become a single family home. Mr. Brady thought this might resolve a big portion of the problem for the majority of agreeable owners and future owners down the line. Mr. Channon agreed. Mr. Brady felt that the Town cannot make neighbors agreeable and get along. He also stated that he would not want to perpetuate this manner of ownership into the future. Mr. Channon said the problems were probably not anticipated and understood the Town Planner's concerns but he was not advocating one way or the other. Town Planner Linda Connors asked the Board if they wanted to require an inspection to include that the building met life safety requirements (e.g., fire wall). Mr. Yankwitt was hesitant to create a code that would stop a private owner from being able to sell his home. Mr. Potts spoke about buffer zones between subdivisions of commercial, multifamily, and residential. Town Planner Linda Connors said there was a lot to consider. Chairman Odaker said to contact Ms. Connors with any suggestions. Town Planner Linda Connors said she could meet with the Board Members individually or would be happy to converse by e-mail but to remember the Sunshine Law when

e-mailing. She said there would be further research brought back to the next meeting, once it was prepared. Chairman Odaker wanted to know if other municipalities experienced this and Town Planner Linda Connors spoke about Lighthouse Point. Town Attorney Kathy Mehaffey said that Lauderdale-By-The-Sea has non-conforming code provisions that exist now. These properties are illegal non-conforming now. This ordinance is trying to create a situation that legalizes existing situations in a manner that preserves the integrity of the neighborhood and the structures recognizing the difficulties that exist. This would also preserve the needs of the Town and bring the structures into a greater degree of compliance. Mr. Brady said this was a work in progress. Mr. Brady suggested to regroup, do more research, and have another workshop before the final version of the ordinance. Mr. Yankwitt agreed. Chairman Odaker was surprised more people did not show up tonight.

Town Planner Linda Connors stated that we have an application for a site plan that staff has been working on for the 216 Commercial Boulevard parking lot. If we get a final submittal of the revised site plan, she would like to entertain having a meeting before March 11, 2014. She suggested March 5, 2014 which was before the election. She reminded those members who wanted to remain on the Planning and Zoning Board (P&Z) to resubmit their Board Applications and information. The second meeting after the election, the new Commission would make appointments to P&Z, Board of Adjustment, and other Town Boards. Ms. Connors polled the members present and all were available for a March 5, 2014 meeting.

6. OLD BUSINESS

7. UPDATES/BOARD MEMBER COMMENTS

- Mr. Yankwitt said that on Saturday there would be a Health Fair in Jarvis Hall from 9:00AM – 1:00PM.
- Mr. Yankwitt said that on Sunday there would be a Farmer's Market across the street.
- Mr. Yankwitt said that also on Sunday would be Dancing Down At The Square.
- Mr. Yankwitt reminded everyone about the election and to remember to vote.
- Mr. Yankwitt said that the Property Owners Association and the League of Women Voters were both doing a Meet The Candidate Night. He did not remember the dates so he advised to look on the Town's website.

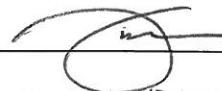
8. ADJOURNMENT

Without objection, the meeting was adjourned at 8:09 P.M.

ATTEST:



Town Planner Linda Connors



Chairman:

Date Accepted:

DAVID C. HANCOCK  
4/23/14