

**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
REGULAR MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, October 23, 2018
6:30 PM**

1. CALL TO ORDER, MAYOR CHRIS VINCENT

Mayor Vincent called the meeting to order at 6:40 p.m. Also, present were Vice Mayor Elliot Sokolow, Commissioner Edmund Malkoon, Commissioner Alfred "Buz" Oldaker, Commissioner Randy Strauss, Town Manager Bud Bentley, Deputy Town Manager Tony Bryan, Assistant Town Manager Sharon Ragoonan, Town Attorney Susan L. Trevarthen, Development Services Director Linda Connors, Special Projects Coordinator Debbie Hime, Senior Code Compliance Inspector Bethany Banyas, Public Information Officer Steve d'Oliveira, and Town Clerk Tedra Allen.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Pastor Larry Trotter gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Commissioner Oldaker requested that Resolution 2018-36 be added as Item 16a. Mayor Vincent asked that Ordinance 2018-26 be pulled from tonight's Agenda and deferred until the November 13, 2018 meeting.

5. PRESENTATIONS

None.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment.

Kayla Bello, student, expressed concern with plastic pollution in the ocean, and requested that the Town consider a ban on plastic straws.

Vincent Bolocofsky, resident, asked that the Town adopt a Resolution opposing offshore drilling and seismic blasting, as well as a ban on plastic straws.

Danielle Del Sordo, resident, also requested that the Town consider a Resolution opposing offshore drilling and seismic blasting. She also asked that the Town consider an Ordinance banning plastic straws and provide a water refill fountain.

Sandra Naylor, resident, explained that she had paid the license fee for her short-term rental property in July 2018, but was later informed by Town Staff that she needed to change the calendar by which her property is licensed. She requested that the Town honor her short-term rental permit through its renewal date.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

7. PUBLIC SAFETY DISCUSSION

a. BSO September 2018 Report (Captain Thomas Palmer)

Captain Tom Palmer of the Broward Sheriff's Office (BSO) advised that two separate robbery incidents occurred during October in neighborhoods north of Commercial Boulevard. While there are no suspects at present, multiple robberies have continued to occur throughout Broward County. There have been no additional incidents and BSO is monitoring the issue. Captain Palmer encouraged residents to be vigilant and contact BSO at 764-HELP in a timely manner if they see suspicious activity.

Vice Mayor Sokolow made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

b. AMR September 2018 Report (Chief Brooke Liddle)

Commissioner Oldaker made a motion, seconded by Vice Mayor Sokolow, to approve. Motion carried 5-0.

8. TOWN MANAGER REPORT

a. Chamber Quarterly Report (Eva Marissa, Chamber of Commerce)

Commissioner Malkoon asked if there is a reason for the recent increase in queries regarding Town activities. Eva Marissa, representing the Lauderdale-By-The-Sea Chamber of Commerce, replied that the increase is likely due to improved reporting of phone calls, walk-ins, and emails. She anticipated a successful tourist season.

b. Town Manager Report (Bud Bentley, Town Manager)

Public Information Officer Steve d'Oliveira reported two upcoming events: on October 24, 2018, from 7-8:30 p.m., the Community Center will hold an October Dance that is free and open to the public. On the weekend of November 2-4, the Community Center will hold its semi-annual Sea Shorts festival, featuring seven short plays.

9. TOWN ATTORNEY REPORT

None.

10. APPROVAL OF MINUTES

- a. September 26, 2018 2nd Public Budget Hearing Minutes (Tedra Allen, Town Clerk)
- b. September 26, 2018 Town Commission Meeting Minutes (Tedra Allen, Town Clerk)
- c. October 9, 2018 Town Commission Meeting Minutes (Tedra Allen, Town Clerk)

Vice Mayor Sokolow made a motion, seconded by Commissioner Oldaker, to approve. Motion carried 5-0.

11. CONSENT AGENDA

- a. Award of Contract to Conceptual Communications (Debbie Hime, Special Projects Coordinator)
- b. Hardship Parking Permits (Sharon Ragoonan, Assistant Town Manager)

c. Cancellation of the 2nd Town Commission Meeting in November and December (Tedra Allen, Town Clerk)

Town Manager Bud Bentley clarified that Agenda Item 11c refers to the November 22 and December 25, 2018 meetings.

Vice Mayor Sokolow made a motion, seconded by Commissioner Oldaker, to approve 11a, b, and c. Motion carried 5-0.

12. OLD BUSINESS

a. Lots 60 ft. or Less (Mayor Vincent)

Mayor Vincent advised that this Item addresses the prohibition of short-term tenancy units on lots less than 60 ft. in width located west of Bougainvillea Drive and south of Pine Avenue in the RM-25 zoning district. He recalled that at the July 24, 2018, meeting, property owners, residents, and their representatives shared their thoughts regarding a 2000 Code regulation prohibiting short-term tenancy on these properties. The Ordinance does not apply to or affect any other zoning districts in the Town.

At this time Mayor Vincent opened public comment.

Drew Melville, representing the property owner of 4550 Poinciana Street, pointed out that the RM-25 district allows hotels by right, while single-family zoning districts are regulated more comprehensively. He noted that both Airbnb and Code Enforcement regulate the property owners who provide short-term rental units in the RM-25 district, and requested that the prohibition against these units be deleted.

Josh Kunkel, representing the owner of two town home properties, stated that his client sought to rent these properties annually, but did not produce sufficient income until she rented them to short-term tenants. He provided a letter from his client and requested that the zoning of these units be changed.

Don Schreiber, resident, advised that he lives next door to a property where long-term tenants created more issues than short-term tenants. He is the owner of a short-term rental property that he planned to rent on a weekly basis. Mr. Schreiber felt the issue should be viewed from a community development standpoint. He provided a letter from a Town resident in support of short-term rentals.

Bradley Kady, resident, asked that the Town consider changing the prohibition on record, which affects 115 lots less than 60 ft. in width in the subject RM-25 zoning district. He pointed out that Airbnb and HomeAway have multiple listings within the subject area, and visitors renting these properties contribute to the Town's economy.

Stephen Silverstein, resident, stated that Airbnb collects taxes on behalf of Broward County and disperses these funds to Broward municipalities, including Lauderdale-By-The-Sea. He felt the regulation disregards the potential impact of these tax dollars as well as licensing fees, and the short-term rental units are helping rather than harming the Town's economy.

Ron Piersante, resident, opposed any change to the regulation of short-term rentals, as he felt it would create problems for the Town. He pointed out that taxing authorities will not divulge which vacation rental properties are charging the 6% sales tax and 6% tourist development tax. He felt vacation rentals not charging these taxes had an advantage over hotels.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

Mayor Vincent stated that he felt it was appropriate for the Town's Planning and Zoning Board to evaluate the West Bougainvillea Drive prohibition, which appears to have originally been adopted as a redevelopment incentive for small lots. Staff has indicated that some of these lots were subdivided after the 2000 prohibition and vacation rental licenses were approved for these properties.

Mayor Vincent continued that vacation rental and short-term rental uses have evolved significantly since the prohibition was originally passed in 2000. Properties across the street from the Bougainvillea properties continue to be available for transient rental use, as are other properties west of the prohibited area, which are not zoned RM-25.

For these reasons, the Commission may decide not to continue the West Bougainvillea prohibition due to its narrow applicability, as well as the fact that it does not seem to have encouraged significant redevelopment. Mayor Vincent also noted, however, that the Commission has heard from residents who experienced significant distress as neighbors of improperly managed vacation rentals.

The Town Attorney has assured the Commission that the West Bougainvillea prohibition can be modified without abandoning the Town's vacation rental regulations and short-

term rental regulations in Code Section 30-327 as they apply to all other properties. Due to the actions of the State Legislature, however, the Town is limited in its ability to place new regulations on the length of stay for these properties. The regulatory alternatives that may be considered outside existing short-term rental regulations are as follows:

- Retain the current West Bougainvillea prohibition
- Repeal the West Bougainvillea prohibition and allow the existing Section 30-327 Vacation Rental and Short-Term Rental Regulations to apply to the Bougainvillea properties by operation of the law

Commissioner Oldaker recalled that when this issue first arose in April 2018, the State Legislature was still in session, and there was a possibility that regulations addressing vacation rentals might be changed. At the time, he had recommended the Town wait and see what would happen at the state level. He concluded that he was in favor of the Mayor's recommendation that the Planning and Zoning Board consider this issue.

Vice Mayor Sokolow asked if the repeal of the West Bougainvillea prohibition would mean affected properties were subject to the seven-day minimum short-term rental. Town Attorney Susan Trevarthen explained that this depends upon the type of unit on the property: if it is a single-family unit, town home, or subdivided duplex, the unit would fall into the category governed by Section 30-327, which requires a seven-day minimum stay. If the property has a duplex, triplex, or quadruplex, repeal of the prohibition would mean those properties are subject to short-term rental regulations, which do not necessitate a seven-day minimum stay.

Town Attorney Trevarthen continued that the reason for this distinction is that the original regulation was adopted prior to the 2011 preemption by the Florida Legislature. This adoption limited applicability to single-family, town home, and subdivided duplex units. After the preemption, which prohibited the Town's ability to require a minimum stay, the Town determined that it would be helpful to establish business regulations, such as the requirements of a vacation rental agent, disclosures, and other rules, to apply also to duplexes, triplexes, and quadruplexes.

A third category exists for West Bougainvillea properties of less than 60 ft. in width with five or more units: these are currently covered by the prohibition, but would have unlimited rights to a hotel or hospitality use in the absence of short-term rental regulations.

Commissioner Malkoon asked if the Commission might see a breakdown of properties in the area showing which would be affected by potential repeal of the prohibition.

Development Services Director Linda Connors confirmed that it is possible to provide the requested property survey.

Mayor Vincent reiterated that the Commission is taking no action that will affect existing vacation rental properties, but only properties that may be experiencing inequities due to the West Bougainvillea prohibition. The Commissioners agreed by consensus to forward this issue to the Planning and Zoning Board for further recommendations.

b. Text Message / Social Media Archival for Town Public Records / Commissioner Cell Phones (Tony Bryan, Deputy Town Manager)

Deputy Town Manager Tony Bryan recalled that this Item was discussed at a prior meeting and is being brought back for reconsideration by the Commission. The ongoing annual cost of the proposed program to oversee text message and social media archival and Commissioner cell phone use is less than \$5000 annually, with a one-time set-up fee of \$500. If the Commissioners elect for archival, they will have the option of doing so on their personal mobile phones, or allowing the Town Manager to purchase Town-owned cell phones for himself and the Commissioners.

The Commissioners discussed the proposal, with Deputy Town Manager Bryan clarifying that they would change their current cell phone numbers to a virtual phone number on their personal phones through use of the One Talk mobile app. The app will not archive or record telephone calls, but will provide a second phone number, which requires the opening of the app for use to make or receive calls or texts.

Once the One Talk app captures a text message, an additional app allows Town Staff to search and retrieve the message. This would be limited to members of Town Staff who are designated to respond to public records requests.

Mayor Vincent expressed concern with the proposal, as the Town is not aware of other local municipalities who use the app, nor have there been public records requests for text messages in recent years. It was clarified that in at least one case, a municipality has been sued because they could not fully respond to a public records request.

Vice Mayor Sokolow pointed out that when Commissioners receive texts from Town Staff, they are required to maintain a record of this communication. Town Attorney Trevarthen further clarified that this is only the case when messages are not transitory but provide dialogue. Commissioner Oldaker noted that there may be some overlap between personal and Town business discussions via text.

Town Manager Bentley explained that this Item addresses not only possible liability, but how the Town complies with state law. The intent is to provide Commissioners and Staff with tools they can use for this compliance. If the Town is required to produce public records and cannot, they would be required to pay 100% of any applicable attorneys' fees and would be found in violation of public records law. Texts not sent through the app would not be archived.

Commissioner Malkoon requested clarification of the social media aspect of the proposal. Deputy Town Manager Bryan replied that posts made on municipal social media accounts are also public records: the deletion of a post could become an issue if it cannot be reproduced.

It was determined that Deputy Town Manager Bryan would seek additional data from vendors regarding municipalities that have adopted the proposed system.

13. NEW BUSINESS

a. Town Regulation on Election Day (Vice Mayor Sokolow)

Vice Mayor Sokolow explained that he would like the Town to develop a lottery system for tent positions at Town Hall and at local churches within approved parameters. Tents could be erected at close of business on the day before Election Day. These regulations may also clarify rules on where signs may be placed on the tents or in the parking lot.

Town Attorney Trevarthen advised that it would be sufficient for the Town to declare it would not enforce applicable portions of Code during the brief time frame of Election Day. It was determined that Staff would work toward determining this procedure and would inform the Commission if a formal Resolution or Ordinance was necessary before the next election cycle.

14. COMMISSIONER COMMENTS

Commissioner Oldaker requested that all present keep the residents of Mexico Beach and other cities affected by Hurricane Michael in their thoughts. He also encouraged all residents to vote in the upcoming election.

Commissioner Malkoon reminded all present that Boo-By-The-Sea is scheduled for Saturday, October 27, 2018 in the business plazas on Commercial Boulevard. He

encouraged the Commissioners to arrive 30 minutes prior to the next scheduled meeting in order to participate in photo opportunities for the newly certified butterfly garden habitat in front of Town Hall.

Mayor Vincent also addressed those affected by Hurricane Michael, suggesting that the Town make a charitable donation to assist the city of Mexico Beach. This will be discussed further with Staff prior to the next Commission meeting.

15. ORDINANCES

a. Ordinances 1st Reading

None.

b. Ordinances 2nd Reading

- i. Ordinance 2018-26 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30, UNIFIED LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES, AMENDING SECTION 30-137, “NONCONFORMING USES AND STRUCTURES,” TO REVISE REGULATIONS APPLICABLE TO NONCONFORMING STRUCTURES AND PARKING, AND PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE (Linda Connors, Development Services Director)**

This Item was deferred until the November 13, 2018 Commission meeting.

- ii. Ordinance 2018-27 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING CHAPTER 30, UNIFIED LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES, MOVING ACCESSORY ROOFTOP USE REGULATIONS FROM SUBDIVISION I, “RM-25 DISTRICT REGULATIONS,” TO SUBDIVISION Q, “SUPPLEMENTAL REGULATIONS,” AND AMENDING SAID ROOFTOP USE REGULATIONS TO PROHIBIT ROOFTOP ACTIVITIES IN CERTAIN AREAS AND REVISING REGULATIONS APPLICABLE TO SUCH ACTIVITIES IN THE RM-25 DISTRICT, B-1 DISTRICT,**

**AND B-1A DISTRICT; AND PROVIDING FOR CODIFICATION,
SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE (Linda
Connors, Development Services Director)**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Development Services Director Connors advised that the Town's current rooftop regulations are limited to uses in the RM-25 zoning district. These uses prohibit permanent structures. At the October 9, 2018 meeting, Staff presented an Ordinance that would allow some permanent structures, such as canopies or awnings, and maintain the allowance of a 30 sq. ft. kitchen. The new Ordinance would also allow rooftop uses in the RM-25 district west of A1A and prohibit these uses in all other zoning districts, except for B-1 and B-1A, which allow for mixed-use residential properties to have rooftop uses.

At the October 9 meeting, Vice Mayor Sokolow had requested clarification of the Ordinance on first reading, as the Town recently passed an Ordinance to expand rooftop uses in RM-25 zoning districts. Ordinance 2018-27 limits the expansion of these uses. There was also discussion of whether or not hot tubs should be allowed as rooftop uses. Staff reviewed minutes of previous meetings and determined that permanent structures, including pools and hot tubs, were prohibited by an earlier Ordinance.

Vice Mayor Sokolow commented that this issue was first addressed in 2015 in relation to a specific property. Development Services Director Connors advised that the Commission had asked Staff to look into the allowance of permanent shade structures in the RM-25 district, as well as whether or not mixed-use properties in the B-1 and B-1A districts should allow these uses. The Planning and Zoning Board had expanded their review of this issue and suggested that rooftop uses be limited in the RM-25 district west of A1A.

Mayor Vincent observed that he did not take issue with allowing hot tubs as rooftop uses if the Building Department determines it is structurally sound and permits its installation. He asked if this use could still be limited from occurring in new construction west of A1A.

Town Attorney Trevarthen asked if the Mayor and Vice Mayor objected only to the fact that the area west of A1A was being treated differently than east of A1A. Both confirmed that they objected to this specification as well as to the prohibition of hot tubs. Town Attorney Trevarthen continued that it would be possible to make the following revisions to the proposed Ordinance:

- Strike "east of A1A" from line 96 of the proposed Ordinance

- Add a new Subsection C, "Hot Tubs," at line 120
- Delete Subsection D, which prohibits hot tubs, at line 133

Town Attorney Trevarthen also asked if the Commissioners objected to line 149, which prohibits rooftop uses in zoning districts other than RM-25, B-1, or B-1A. It was determined that this prohibition was acceptable.

Vice Chair Sokolow made a motion, seconded by Commissioner Oldaker, to adopt the Ordinance on second reading with the changes just discussed. Motion carried 5-0.

16. RESOLUTIONS – PUBLIC COMMENTS

- a. Resolution 2018-36 – A RESOLUTION CONCERNING AMENDMENT 2 TO THE FLORIDA CONSTITUTION, WHICH, IF ADOPTED, WOULD AMEND THE STATE CONSTITUTION TO PERMANENTLY LIMIT PROPERTY TAX ASSESSMENT INCREASES ON SPECIFIED NON-HOMESTEAD REAL PROPERTY, EXCEPT FOR SCHOOL DISTRICT TAXES, TO 10 PERCENT EACH YEAR; PROVIDING FOR AN EFFECTIVE DATE (Commissioner Oldaker)**

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Oldaker explained that his intent was to spread public awareness of Amendment 2, which will be on the upcoming November 6 ballot. Should the Amendment fail to pass, owners of non-homesteaded properties would be subject to significant property tax increases. Because property assessments are currently rising, taxes would increase for owners of commercial properties, and in the case of rental properties, these costs would be passed on to tenants.

Vice Mayor Sokolow and Mayor Vincent both noted that they are in favor of the Amendment, although the Resolution itself is non-positional.

Commissioner Oldaker made a motion, seconded by Vice Mayor Sokolow, to approve. Motion carried 5-0.

17. QUASI JUDICIAL PUBLIC HEARINGS

Town Attorney Trevarthen explained the procedures for the hearing of quasi-judicial items, and the Commissioners disclosed any ex parte communications on the Item. Individuals wishing to speak on the Item were sworn in at this time.

a. Conditional Use – Waiver of the Requirements of Article VIII, “Sign Regulations,” of Chapter 30 for 107 A Commercial Boulevard (Linda Connors, Development Services Director)

Development Services Director Connors stated that the request is for conditional use for a sign permit within the B-1 zoning district. The request is for a Midcentury Modern wall sign, which has already been placed on the building. Its letter and symbol heights, and the symbol width, do not currently comply with Code.

Code allows the Commission to waive regulations regarding signs if the sign is in the Midcentury Modern style. The Town’s Architect has reviewed the sign and found its font to be in this style. The Planning and Zoning Board voted 5-0 to approve the request. Staff suggests that the Commission approve the request with the following conditions:

- The sign shall be in the form as provided on the September 27, 2018 application
- The wall sign shall not exceed 14 in. in height and the symbol shall not exceed 17 in. in height and 42 in. in width
- Total square footage for the wall sign shall not exceed 20.42 sq. ft.
- Sign must meet all requirements of Florida Building Code
- Any new signage for the building would need to comply with existing Code or apply for the appropriate exemptions

Town Manager Bentley recommended that the Commission round up the approved dimensions to the next half-inch, as it may not be possible to manufacture the sign to its current exact fractions in the event that it requires replacement.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Vice Mayor Sokolow made a motion, seconded by Commissioner Malkoon, to approve. Motion carried 5-0.

Town Attorney Trevarthen advised that while Items 17b and 17c will be voted on separately, they address the same property and will be heard and discussed together.

The Commissioners disclosed any ex parte communications on the Item. Individuals wishing to speak on the Item were sworn in at this time.

b. Case Number 2018-V-03: Jay and Kim Flynn (Applicants) – Requests (1) a variance to Section 30-478(b)(2) of the Town's Code of Ordinances, to allow 0' of vehicular use area (VUA) landscaping where 2 ½ feet is required and (2) a variance to Section 30-122(a)(1)b.2.iii to permit a minimum separation between parking spaces and property line of 0' where 5' is required (Linda Connors, Development Services Director)

c. Request for a Site Plan Modification for 241 Commercial Boulevard (Linda Connors, Development Services Director)

Development Services Director Connors explained that 241 Commercial Boulevard is a mixed-use property, renovated in 2002. At that time, its parking was nonconforming and within the required setback for the landscaped area. It was approved with a requirement that the property owner maintain the Town's landscaping, which is adjacent to the property, to serve as a landscaped buffer between the parking area and the street.

Jay and Kim Flynn, Applicants, have requested to change their angled parking, which will change the setback area to zero. The Town's landscaping remains as a buffer. Because of the change to the parking angle, the Applicants have gained more landscaping on either end of the property and can reconfigure the parking to provide a space that is compliant with the Americans with Disabilities Act (ADA).

The Board of Adjustment reviewed the request at their October 3, 2018 meeting and recommended approval, with the conditions that the off-site landscaping shall be provided and maintained in lieu of the required parking setback. A buffer will be added as submitted in the Site Plan. The Applicants' responsibility regarding maintenance shall be documented in a maintenance agreement, and all applicable state and federal permits shall be obtained before issuance of the building permit, as will certification that there are no outstanding fines or monies owed to the Town.

Development Services Director Connors next addressed the Site Plan, which requests the addition of an elevator to allow access from the ground floor to the second floor and roof. Architectural review has been conducted and approved. There will be some storage on the site, with new covered entry and parking requirements.

Staff recommends approval of the Site Plan, with certain conditions regarding storm drainage and off-site landscaping as previously discussed. The Town landscaping on Harbor Drive and Commercial Drive will be enhanced. Building permits must be secured within 18 months of approval. All applicable state or federal permits shall be obtained prior to commencement of construction, and there must be no outstanding fines. The Planning and Zoning Board voted 5-0 to approve both requests.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Town Attorney Trevarthen advised that Code requires that the Commission make findings on the variance criteria. Staff has provided these findings in the backup materials, noting that while Criterion 1 was not met and Criterion 7 was not applicable, all other criteria were met.

Commissioner Oldaker made a motion, seconded by Vice Mayor Sokolow, to approve Item 17b and incorporate the findings of Staff in his motion. Motion carried 5-0.

Vice Mayor Sokolow made a motion, seconded by Commissioner Oldaker, to approve the Site Plan [Item 17c]. Motion carried 5-0.

- d. Case Number 2018-V-03: Claudio Arena (Applicant) – Requests a variance from Section 30-313(u)(2)(b)(9), of the Town Code to allow a generator to be placed on the rooftop of the property located at 238 Shore Court where rooftop generators are not permitted in single-family and duplex districts (Linda Connors, Development Services Director)**

The Commissioners disclosed any ex parte communications on the Item. Individuals wishing to speak on the item were sworn in at this time.

Development Services Director Connors stated that the subject property is a town home in the Sky 230 development, which has applied for a generator on the roof of the property. Sky 230 is divided between duplex and RM-25 zoning districts, with the subject property in a duplex. There is no exterior grass area where the generator could otherwise be located.

The property owner has submitted a building permit application for the generator; however, because the Town's requirements limit generators in duplex zoning districts to ground placement, the application was denied. The Applicant has brought forward a variance request, which was reviewed at the October 3, 2018 Board of Adjustment meeting. It was determined that the Applicant met five of the seven requirements for a variance as outlined in Code. The Board voted 5-0 in favor of the request, with the following conditions:

- All applicable state and federal permits must be obtained before the issuance of a building permit
- Prior to the issuance of the permit, the Clerk shall certify that there are no fines or monies owed to the Town

Vice Mayor Sokolow expressed concern for the proper venting of exhaust from the generator so there is no chance of fumes entering rooftop ventilation openings. He emphasized the need to ensure this is properly done.

Commissioner Strauss addressed the noise created by a rooftop generator, asking if there is a Code requirement that necessitates muffling of noise. Development Services Director Connors advised that generators must prove they have limited noise as part of the inspection process.

Town Manager Bentley noted that the Application shows both the location of the generator and the specific model to be installed. He expressed concern with what would happen when the time comes to replace a generator with a different model. It was clarified that even if a different model is used in the future, the generator must meet general Code requirements for the location.

Ilma Avila, applicant for Claudio Arena, explained that her husband is the contractor who would install the generator. The device is not located inside a cabinet, but would not be visible to neighbors looking over the roof deck. The generator will be placed inside a one-unit aluminum enclosure.

Kai Stadler, developer of the Sky 230 property, stated that when the property was designed, the intent was to place a generator on the rooftop terrace with a steel and cement support structure. He asserted that the roof would maintain any size generator and would allow residents protection in the event of natural disasters such as hurricanes.

Town Manager Bentley asked if there are any condominium prohibitions related to installation of the generator. Mr. Stadler replied there are no such prohibitions.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Vice Mayor Sokolow made a motion, seconded by Commissioner Oldaker, to approve, based on the findings of Staff that [the Application] complies with the rules for variance.

Town Attorney Trevarthen clarified that the Application met variance Criteria 1 and 2, did not meet Criteria 3, and that Criteria 4, 5, and 6 were not applicable.

Motion carried 5-0.

18. ADJOURNMENT

With no further business to come before the Commission at this time, the meeting was adjourned at 9:20 p.m.



Mayor Chris Vincent

ATTEST:



Town Clerk Tedra Allen



Date