The Special Meeting of the City Council of the City of Panama City Beach, Florida, related to the Rehearing of the Order of the Planning Board Denying the Variance for 502 Petrel, held on December 14, 2017.

ROLL
MAYOR MIKE THOMAS

COUNCILORS:
JOHN REICHARD
JOSIE STRANGE
PHIL CHESTER
HECTOR SOLIS

CITY MANAGER:
MARIO GISBERT
CITY CLERK:
JO SMITH
CITY ATTORNEY:
AMY MYERS

Mayor Thomas called the Special Meeting to order at 5:00 P.M. with all Council members, City Manager, City Clerk and City Attorney present.

Councilwoman Strange gave the invocation and led the Pledge of Allegiance.

Ms. Myers asked the Council members to give their Jennings Disclosures and the Council members did so.

Mr. Leonard gave a brief summary of the issues involving 502 Petrel. He explained that the plans for the single-family structure and accessory structure had incorrect setbacks on the accessory on one side and the rear. It also displayed a second floor that appeared habitable which was prohibited by the Code. On the primary structure, one side setback was incorrect. The Building Department incorrectly issued a building permit for both structures without having the Planning Department review the plans and setbacks. When the problems became apparent, the matter went to the Planning Board which heard the variance request and denied the request.

Councilman Solis asked the differences between the required setbacks and the existing setbacks. Mr. Leonard explained that because the Accessory building was a two story structure, the setbacks must be ten feet (10') away from all property lines. For the primary building, the side setback was five feet (5') and it should be seven and one-half feet (7.5'). Regarding the habitable area within the Accessory, Mr. Leonard said the Council had already conducted a First Reading of Ordinance 1441 which would allow habitation.

Councilwoman Strange asked if this was similar to Ms. Hatcher's situation. Mr. Leonard replied that it was different because in Mr. Rice's case, if the Planning Department had reviewed the plans, they would have been corrected before the permit was issued.

Mayor Thomas asked at what stage of construction had the notice to stop work been issued. Mr. Leonard said when application was made to the Planning Board, he, Mr. Silky and Mr. Scott verbally advised the owner to stop construction. However, the actual stop work order was not issued until after the Planning Board meeting.

Mayor Thomas asked if the changes proposed by the Ordinance were being made in order to make these structures legal. Mr. Leonard replied no. The Ordinance arose from the questions as to why not allow structures such as mother-in-law quarters in an R-2 District, and why a two story accessory could not have the same side setback as the primary two story structure on the same lot. Mayor Thomas asked what would remain illegal about the structure once the Ordinance was adopted. Mr. Leonard replied that the rear setback of the accessory structure and the side setback of the primary structure would both remain inconsistent.

Mr. Tyson Scott, Inspector, said prior to the slab inspection, he had received a call from a neighbor about possible setback issues. He inspected the setback which was slightly over five feet (5') and compared that to the plans which was consistent. He said five feet (5') was the minimum required per Code for life and fire safety. With the setback over five feet (5'), the slab inspection was approved. During the framing, the neighbor contacted the Building Department again about setback issues. Upon research, they identified that the setback should have been seven and one-half feet (7.5'), not five feet (5'). In the office, it was confirmed that the plans stated five feet (5') but no signatures from Planning Staff on their review. They contacted Mr. Rice about the problem and

gave him a verbal stop work order. Once the Variance request was denied at the Planning Board, an official stop work order was issued to Mr. Rice.

Councilman Reichard asked where the five feet (5') setback originated. Mr. Scott said the Florida Building Code (FBC) specified five feet (5'). However, the LDC specified seven and one-half feet (7.5'). Mr. Scott explained the protocol for plan submittal and reviews by the various departments.

Mr. Mike Burke, attorney for Don & Mary Ellen Rice, said this matter had not followed the appropriate process and the issue before Council was of fundamental fairness. The stop work order must be written, not verbal, and must be written by the Building Official, not Planning. On July 24th, Mr. Rice received the verbal stop work order and at that time, the only structure at issue was the accessory building, not the primary structure. He said evidence would be presented that the Accessory was a one story structure on the front which did not need a seven and one-half foot (7.5') setback.

Mr. Don Rice, owner, stated that he bought the Petrel property in 2013 with the intent to build two handicap assessible structures on the property for retirement. The second structure would be for an onsite healthcare person.

At this juncture, Ms. Myers swore the witnesses who would testify.

Mr. Rice continued that he knew the R-2 zoning would allow two habitable structures. The original plan had been to renovate the existing home and build a new accessory. However, those plans would not work so new plans were created by an architect who lived in the neighborhood and submitted March 15, 2017. The Water Department calculated the Impact Fees totaling $4,204 which he paid. He said he requested the Building Department to create a file for his project to submit the plans and paid Impact Fees, and to submit additional items as required. He obtained the demo permit on March 20th and met with Ms. Kathy Younce, Mr. Silky and Mr. Mark Shaeffer to see what items they needed. On April 12th, he returned for a building permit application. Mr. Rice said when he brought in the Notice of Commencement on April 17th, the Building Department had no record of his other documents. On May 9th, the drawings were approved and the building permit issued for $2,200. At the request of Mr. Burke, Mr. Rice detailed the various items paid since May 9th totaling $89,299.54.

On July 24th, Mr. Rice said he met with Mr. Leonard and Mr. Silky and was informed he would have to apply for a Variance. Mr. Rice said he questioned why since he had a signed building permit as well as approved plans. The Variance application for the rear and side setback and habitable status for the Accessory building had to be submitted the next day for the August Planning Board meeting. At that time, Mr. Leonard and Mr. Silky advised him that they could not tell him to stop work but that there could potentially be repercussions if the work was not stopped. On that day, the only issues were the two Variances on the Accessory structure.

At the August 14th Planning Board meeting, Mr. Silky announced that there were actually four Variances, with the additional Variances for the separation of rear and side accessory setbacks and the side setback for the primary structure that should be seven and one-half feet (7.5'), not five feet (5'). Mr. Rice said he had not known of any problems with the primary structure until the Planning Board meeting. On August 15th, he received the written stop work order and also received a limited work order to protect his property due to the impending hurricanes.

Mr. Burke asked Mr. Rice to read the letter into the record from his insurance company in which they described the primary structure as a one story single family dwelling with finished attic.

Mr. Brian Hess, representative of Ms Susan Spencer who lived south of the property, asked Mr. Rice the qualifications of the architect chosen to design the plans. Mr. Rice said that the architect seemed reputable and familiar with designing plans for the beach, and should have been familiar with the City's LDC.

Councilman Reichard asked what constituted a two story house versus a one story house with a loft. Mr. Burke displayed the definition of a "story" in the Land Development Code, and said there must be two habitable floors stacked for a structure to be a two story building. In the 2014 Florida Building Code, a habitable attic was not considered a story if it met certain requirements. Mr. Burke said the area above the garage was not a story because the garage was not a habitable area. Discussion ensued concerning the length of the habitable attic. Mr. Burke said under both the FBC and the LDC on the definitions of story, the structure was only one story. He displayed the plans and noted the location of the vaulted ceiling and the habitable attic above the garage. He

said according to the LDC, a five foot (5') setback was acceptable for a one story structure.

Mr. Leonard stated that everything Mr. Burke said was factual. The reason Staff considered the structure two stories was because the higher the structure, the more privacy, light, and air were lost. The garage could be made habitable and the City would never know. The two story portion of the structure did meet the setbacks and the one story portion of the same structure also met the setbacks, and the definitions were accurate.

Mayor Thomas asked if the structure was a one story or two story building. Mr. Leonard said the Planning Department considered it a two story dwelling. Mr. Burke asked Mr. Leonard if he agreed with the definition of a "story" in the LDC. Mr. Leonard said yes. Mayor Thomas said personally, if there was a floor above a garage, that was always considered a two story building. Mr. Burke said the two floors had to be habitable and he explained that definition, and a garage did not meet that definition. He said under the LDC, the habitable floors had to be stacked vertically to be stories which was different than the FBC.

Mr. Burke said his client did nothing wrong. He had brought plans to the Building Department which met the setbacks, plans were approved and the Building permit issued. Mr. Rice relied on the premise that the permit was good. Mr. Burke referenced case law in support of his statements. He mentioned fair play and that the Variance was recommended by Staff.

Ms. Myers also referenced case law stating a different position. She continued that there were nine conditions to grant a variance and she stated that she had heard no evidence in support of granting a variance. She stated that Mr. Rice had plans which had been improperly drafted, and a permit improperly issued for plans that were inconsistent with the LDC.

Mr. Burke mentioned fair play and that his client had no way of knowing that the plans had not went through the proper channels. He said this was not his client's fault and it was still a hardship.

Mr. Hess said this was a two story building with the height of the building affecting air and light. He said the second floor was still stacked over the first floor although shifted and not directly over the first floor. He said the LDC specified what conditions must be met to allow a variance. He said the architect designed incorrect drawings. He urged the Council to uphold the Planning Board's denial.

Mayor Thomas opened the Public Hearing at 6:20 P.M. and invited audience comments.

1 Ms. Charlotte Collins, 504 Petrel. Ms. Collins spoke of problems on her property due to flooding from Mr. Rice's raised lot and a fence damaged by his construction. She urged the Council to require the owner to adhere to the LDC.

2 Mr. Charles Osborne, 502 Albatross. Mr. Osborne spoke of Mr. and Mrs. Rice's integrity and their help for others. He reminded that the plans were submitted and approved, the permit issued, and money spent. He urged the Council to make things right and allow the Rice's to build their dream home.

With no further comments, the Mayor closed the Public Hearing at 6:26 P.M.

Ms. Myers entered the Agenda Packet into the record. Mr. Burke also entered all documents from the Building Department as well as the Don Hood Insurance letter into the record.

Councilwoman Strange said the City made errors and said it would set a precedence if the City did not support the Planning Board's decision. Councilman Solis said there were errors made and explained how he thought the Variances were reasonable.

Ms. Myers said if the Council made the determination that the garage and attic were not habitable spaces, and that the structures were one story, then no Variances were required. Councilman Chester asked Mr. Leonard about the garage not liveable and Mr. Leonard replied that because that section of the structure was two stories, the entire structure would be considered two story and meet those required setbacks. Councilman Reichard asked Mr. Leonard about the Staff recommendation to the

Planning Board to grant the Variances, and if he would still recommend the same after hearing today's testimony. Mr. Leonard said yes and explained his reasons in detail.

Councilman Solis said he agreed with Mr. Leonard with his reasons for granting the Variances.

Councilman Solis made the motion to grant the Variances on both structures. Second was by Councilman Reichard. Mayor Thomas said he thought the City had made errors and hated the cost to Mr. Rice. He reminded of the reasons a Variance could be granted. **The motion passed by majority roll call vote recorded as follows:**

Councilman Solis	**Aye**
Councilman Reichard	**Aye**
Councilman Chester	**Aye**
Councilwoman Strange	**Nay**
Mayor Thomas	**Nay**

The meeting was adjourned at 6:40 P.M.

READ AND APPROVED this 11th of January, 2018.

IN THE EVENT OF A CONFLICT BETWEEN THE FOREGOING MINUTES AND A VERBATIM TRANSCRIPT OF THESE MINUTES, THE FOREGOING MINUTES SHALL CONTROL.

Mayor

ATTEST:

City Clerk