

City Council Minutes, September 10, 2020

Consideration of Items for Consent Agenda

Mayor Sessions called the Consent Agenda to order at 6:30PM. Those present were Jay Burke, Monty Parks, John Branigin, Barry Brown, and Spec Hosti. Also attending were Dr. Shawn Gillen, City Manager; Bubba Hughes, City Attorney; Tracy O'Connell, Assistant City Attorney; George Shaw, Director, Community Development; and Janet LeViner, Clerk of Council. Nancy DeVetter attended via Zoom.

Mayor Sessions listed the following items on the consent agenda:

- Minutes, City Council Meeting, August 27, 2020
- Addendum No. 2 to Master Services Agreement No. 60826, MCCI.
- Software License Agreement: Thomas and Hutton Corporation dba geothinQ
- Thomas & Hutton, Professional Civil Engineering Services Contract (Collection of Sanitary Sewer Collection System Data)
- MOU between USCG Station Tybee and Tybee Island Fire Department
- Granicus Software Management Contract - STVR's

Mayor Sessions called the regular meeting to order. All those present for the consent agenda were present.

Opening Ceremonies

- Call to Order
- Invocation: Rev. June Johnson, All Saints Episcopal Church
- Presentation of Colors and Pledge of Allegiance

Recognitions and Proclamations

Mayor Sessions asked **Mack Kitchens** to approach the podium where she read a **Certificate of Appreciation** to acknowledge his bravery in rescuing a young lady in distress in the water. The Honorable Buddy Carter also presented Mr. Kitchens with a personal thank you letter. Mr. Kitchens thanked everyone for the recognition.

Citizens to be Heard.

Jenny Rutherford approached Mayor and Council to speak on **Transferrable Parking Passes**. Ms. Rutherford stated the property at 17th Street has had parking passes for a number of years and were able to be purchased through the City equal to the cost of one yearly parking pass. She feels that due to her not being able to purchase the decals at the reduced price as in the past, is unconstitutional. She asked Mayor and Council to reconsider. Mayor Sessions thanked Ms. Rutherford and understands her frustration. Council was asked to submit their concerns to the City Manager who has the authority to make the decision. Mayor Sessions asked Ms. Rutherford to resubmit her paperwork as it seems she is appealing the City Manager's decision. Ms. Rutherford confirmed.

Monty Parks made a motion to approve the consent agenda. **John Branigin** seconded. Vote was unanimous to approve, 6-0.

Public Hearings

Variance: requesting setback encroachment – 409 Tybrisa Street – 4000812010 – Zone R-2 – Paul Murach. **George Shaw** approached Mayor and Council. Mr. Shaw stated there was a contract to build the home and a separate contract for installation of a pool. During

the construction of the pool, issues were discovered concerning the soil and the pool was moved and went into the set-back. This was not discussed with the City and it was not noticed until the as-built was recently received. The pool sits 1' into the set-back. Staff is recommending denial and the Planning Commission recommended 3-2 for approval. Mr. Parks stated the Planning Commission recommended approval but with a \$1,000 fine. Mr. Shaw confirmed and added the fine would be at the discretion of the Judge. Mayor Sessions asked if the City has an ordinance that addresses an after-the-fact variance to include penalties and procedures. Mr. Hughes responded, Sec 5-090, LDC, has a sub-section that at one time prohibited anyone who had a structure that was in violation of the Code from applying for a variance until the structure was brought into compliance. The ordinance was later amended to provide the applicant must offer a written explanation and could apply for a variance if the property was out of compliance. Mr. Hughes continued, the Code section is clear in sub-section (f) of 5-090, and requires a written explanation of how it came to be that a structure was built in violation of the Code which was provided to the Planning Commission by Mr. Murach. Mr. Hosti asked if Mr. Murach could build a higher fence since the pool is in the setback. Mr. Shaw stated a 4' fence is required around all pools with lockable gates. Mayor pro tem Brown asked if the explanation was done prior to the pool being fully built? Or after? **Paul Murach** approached Mayor and Council. Mr. Murach stated neither the pool contractor nor the general contractor believed, when they moved the pool slightly due to the soil conditions, they were still within the set-back and this was not discovered until July 27, 2020. Mayor pro tem Brown stated he feels this is a problem between the contractors and owner of the property. It is their responsibility to correct the problem. Mayor Sessions asked Mr. Shaw the reasoning behind Staff's denial. Mr. Shaw stated the conditions for denial are clear as there must be a hardship created by the lot shape, size, etc. but the lot was fully developed and the pool is a luxury and accessory to the house. He feels it does not fit the definition for a variance. Mayor Sessions asked if there is a process the City does to insure the permit that was applied was built correctly. Mr. Shaw responded, the site plan shows the pool 5' from the property line and after construction they received an as-built of the property showing the pool 4'1" and 4'3" from the property line. Mayor pro tem Brown shared his concerns with no site visits done during construction. Ms. DeVetter stated she is in agreement with the Planning Commission regarding a fine. She asked Mr. Hughes what is the maximum fine that can be imposed. Mr. Hughes responded \$1,000 which could include court costs as it is the general penalty for violating provisions of the Code where no specific penalty is provided. Ms. DeVetter asked if anyone has been cited as of yet. Mr. Shaw responded no not as of yet. Mr. Parks agreed with Mayor pro tem Brown regarding the blame as it is not Mayor and Council's problem. Mr. Murach stated he is trying to find a solution for the issue. Mayor Sessions asked Mr. Murach and his family have moved into the residence. Mr. Murach responded the property is a rental, STVR, and the reality is without the variance the property cannot be sold. The pool was put in for medical reasons as his son has special needs but now he needs to sell the residence. Mr. Murach stated he does not have confidence in either contractor for them to speak to Mayor and Council at the public hearing that is why he came in from Atlanta. He is looking for a middle ground to satisfy the City and not put his family in an undue hardship. Mr. Branigin asked if the home was built in 2018 why was the as-built was not submitted until July 2020. Mr. Shaw responded, the City has requested not only the as-built but other documents and they were received in his office. He continued, a Certificate of Occupancy (CO) has not been issued. Due to an error at City Hall, a permit for water service was issued. Ms. DeVetter asked if the residence has been rented. Mr. Shaw confirmed even without a CO. Mr. Murach stated the contractor told him the City had issued a CO and he applied for a Business License which was approved as well. When the issues were found in July 2020, Mr. Murach stated he collected all the items Mr. Shaw needed such as surveys, drainage certification, height certification, etc. that Mr. Shaw needed and when Staff evaluated the paperwork he was informed the pool was 11" over the set-back and need a variance. **Anthony Kirk Balcom, 409 McCloud Avenue**, approached Mayor and Council. Mr.

Balcom stated he owns the adjacent property. He continued that his wife does not have an issue with the variance but he feels there is a problem as everyone needs to follow the rules. He asked Mayor and Council to do the right thing. Mayor Sessions thanked Mr. Malcom. **Peter Hand**, adjacent neighbor, approached Mayor and Council. Mr. Hand thanked Mayor and Council for all the time they have spent on public protection. He continued, in looking what has transpired he feels the foundation for the home is a spread foundation therefore causing problems especially with three stories. In reviewing the Code, Mr. Hand stated there is a process for approving pools, having a separate permit to be reviewed by an engineer and recommend or not recommend. He is asking Mayor and Council to deny this request as it is disrespectful to those applicants that have followed the Code. Mr. Murach apologized as there was never a willful attempt to break any law or harm anyone at the City and asked Mayor and Council to approve the variance request. **Monty Parks** made a motion to deny. **Barry Brown** seconded. Voting in favor to deny were Monty Parks, Barry Brown, Jay Burke, and Nancy DeVetter. Vote against were Spec Hosti and John Branigin. Vote to deny, 4-2.

Consideration of Bids, Contracts, Agreements and Expenditures

American Tower: Request for lease adjustment. No Action Taken. To be heard September 24, 2020.

Verizon: 4th Amendment to Lease Agreement. No Action Taken. To be heard September 24, 2020.

Consideration of Ordinances and Resolutions

Second Reading, 2020-13, Disorderly Household and Administrative Fine Offenses.

Mr. Hughes stated this is second reading on the ordinance that addresses violations of the disorderly house ordinance. It does two things: (1) makes the ordinances that apply to houses of any type, administrative civil penalties as opposed to ordinance violations that are prosecuted so they are handled administratively and (2) also makes those applicable to the provision of the disorderly house ordinance that has what is commonly called the three strike rule which can result in potential additional penalties. **Monty Parks** made a motion to approve. **John Branigin** seconded. Vote was unanimous to approve, 6-0.

Second Reading, 2020-19, Mask/Face Covering in City Buildings Operated by the City.

Mayor Sessions stated Dr. Gillen asked Mayor and Council to craft and approve the ordinance to ensure the safety of all Staff. **Barry Brown** made a motion to approve. **Monty Parks** seconded. Vote was unanimous to approve, 6-0.

Council, Officials and City Attorney Considerations and Comments

Monty Parks: Establish a Fine for Rentals without Registration. To be discussed at a later City Council Meeting. For introduction only.

Monty Parks: Increase in Annual Liquor License Renewal Fees. To be discussed at a later City Council Meeting. For introduction only.

Shawn Gillen approached Mayor and Council to discuss the **Retirement Incentive**. **Dr. Gillen** stated there is two pieces to this item. The first is the early retirement and the other is a retirement incentive. The early retirement takes time and GMA is working on the Resolution and ordinance changes to allow Staff to early retire under the Rule of 75. The other is the incentive. There are currently six (6) Staff currently eligible and five (5) who would be eligible for early retirement. The retirement incentive would apply to everyone. This would be a \$10,000 payout plus 18 months of COBRA coverage for single health care coverage. The window of opportunity would close with the early retirement option. It will be open for 45 days from the date Mayor and Council approve the change. It should close in mid-December. Mayor pro tem Brown asked

how Dr. Gillen would handle the vacancy with regard to institutional knowledge. Dr. Gillen stated the employee could be brought back on a contract level. **John Branigin** made a motion to approve. **Monty Parks** seconded. Vote was unanimous to approve, 6-0.

George Shaw approached Mayor and Council to ask for consideration to **a return to normal crossover approval process and fees**. Mr. Shaw stated when the dune build process was started as the City is the one building the dunes, to make it simpler for residents who have not been able to walk straight to the beach this process was put in place. The public hearing process and fee was waived i.e., no special review but still needed a building permit. Mr. Shaw is asked Mayor and Council for an end date to the approval process. Mayor Sessions asked how many people have taken advantage of this program. Mr. Shaw responded only one, the Desoto Hotel. **Monty Parks** made a motion to "return to the normal process". **Barry Brown** seconded. Vote was unanimous to approve, 6-0.

Spec Hosti made a motion to adjourn to Executive Session to discussion Litigation, Real Estate and Personnel. **Monty Parks** seconded. Vote was unanimous to approve, 6-0.

Monty Parks made a motion to adjourn to Regular Session. **Barry Brown** seconded. Vote was unanimous to approve, 6-0.

Barry Brown made a motion to adjourn. **John Branigin** seconded. Vote was unanimous to approve, 6-0.

Meeting adjourned at 8:35PM.

Janet R. LeViner, MMC
Clerk