



CITY OF BELLE ISLE, FL
PLANNING & ZONING BOARD MEETING

Held in City Hall Chambers 1600 Nela Avenue
Held the 4th Tuesday of Every Month
Tuesday, August 24, 2021 * 6:30 PM

AGENDA

Planning and Zoning Board Members

District 1 member – David Woods, VChair | District 2 member – Christopher Shenefelt | District 3 member – Michael Statham
District 4 member – OPEN | District 5 member – Rainey Lane | District 6 member – Andrew Thompson
District 7 member – Dr. Leonard Hobbs

a. Discussion of Accessory Dwelling Units

Welcome to the City of Belle Isle Planning & Zoning meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's website at cityofbelleislefl.org. Any person desiring to appeal a recommended action of the Board should observe the notice regarding appeals below. CAUTION: Untimely filing by any appellant shall result in an automatic denial of the appeal.

1. **Call to Order and Confirmation of Quorum**
 2. **Invocation and Pledge to Flag – Board Member Hobbs**
 3. **Approval of Minutes**
 - a.** Approval of the July 27, 2021 minutes
 4. **Public Hearings**
 - a.** **PUBLIC HEARING CASE #2021-08-010 - PURSUANT TO BELLE ISLE CODE SEC. 50-102 (B) (5), SEC. 50-102 (B) (7) AND SEC. 50-102 (B) (8) THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A FENCE TALLER THAN 6 FEET IN THE REAR AND SIDE YARDS; TALLER THAN FOUR FEET WITHIN 35 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY; AND, ALLOW SAID FENCE TO PROJECT PAST THE SIDE AND REAR PROPERTY LINES INTO LAKE CONWAY, SUBMITTED BY APPLICANTS DEBRA ANN WEIL AND LAWRENCE MAURMAN LOCATED AT 7315 LAKE DRIVE, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL #25-23-29-5884-17-021.**
 5. **Other Business**
 - a.** **ORDINANCE NO. 21-09 - AN ORDINANCE OF THE CITY OF BELLE, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.**
 - b.** **ORDINANCE NO. 21-10 - AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING SECTION 50-103(a) OF THE CITY'S CODE OF ORDINANCES AS SUCH PERTAINS TO HOME BASED OCCUPATIONS; PROVIDING FOR HOME BASED BUSINESS REGULATIONS CONSISTENT WITH GENERAL LAW; AND PROVIDING FOR ENFORCEMENT, SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.**
 - c.** Discussion of Accessory Dwellings
6. **Adjournment**

APPEALS: "If a person decides to appeal (Belle Isle's City Code Section 42-71) any decision made by the Board with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F. S. 286.0105). A notice of appeal to the City Clerk should be submitted within fifteen (15) days after such recommendation or decision is made "Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-851-7730) at least 48 hours in advance of the meeting. --Page 1 of 1

July 19, 2021

Discussion Item: Land Development Code Language Change- Accessory Dwelling Units

At the May 2021 Planning and Zoning Board meeting, the Board discussed adding the definition of kitchen and wet bar to the Land Development Code as these terms are not currently defined in the Code.

These are the definitions that were discussed:

Proposed Kitchen definition: Kitchen shall mean the facilities and equipment or rough in facilities, used in the preparation and serving of food. This may include, but is not limited to, stoves, microwave ovens, hot plates, sinks, refrigerators, cabinets and/or pantry-like shelves, a 220 V outlet, or any gas lines (natural gas or propane), a dishwasher, or other food preparation equipment, or any combination thereof; this may not include wet bars, outside grilling facilities, outside sinks or refrigerators, or other items determined by the zoning division manager as not constituting a kitchen.

Proposed Wet Bar definition: Wet bar shall mean a hand sink and under-the-counter refrigerator with no overhead cabinet.

The Board did not take any action on these definitions but asked staff to come back with information on a broader focus of accessory dwelling units. These types of units are not currently allowed in Belle Isle in single-family zoning districts. The Code also prohibits more than one kitchen in single-family homes.

The Board discussed the possibility to amend the Code to allow for accessory dwelling units so that families may be able to care for family members in need in their own homes, while still maintaining some level of independence.

For the Board's review and discussion, attached is an example of accessory dwelling unit code language from the City of Miramar, Florida. Also included is an article regarding the use of accessory dwelling units as a growth management tool.

Staff is seeking direction from the Board as to whether they would like an ordinance prepared for formal consideration regarding accessory dwelling units.

The specific conditions set out below shall be applied to each proposed use during site plan and/or conditional use review (if applicable).

405.1.1 Types. An Accessory Dwelling Unit (ADUs) is an ancillary or secondary living unit, that has a separate kitchen, bathroom(s), and sleeping area(s), existing either within the same structure, or on the same lot, as the primary dwelling unit.

405.1.2 Where Permitted. ADUs are allowed as an accessory use to a single-family detached dwelling, as per TABLE 402-1, Principal Use Table for Single-family and Multi-family zoning Districts, and providing that such structure meets the development and use standards as follows, and all other applicable standards of this Land Development Code, as amended from time to time.

405.1.3 Use. An ADU may be rented, or may be utilized by family members, guests and/or persons employed on site by the resident family of the principal dwelling;

405.1.4 Utilities. The ADU must share utilities with the primary residence and separate utility meters are not permitted.

405.1.5 Affidavit. The owner(s) of the parcel shall provide an affidavit attesting that the ADU will be in compliance with all applicable requirements of the City Code of Ordinances, the minimum housing standards of the Broward County Code of Ordinances, as well as the provision of Section 163.31771, FS, as amended from time to time.

405.1.6 Development Standards.

- (a) *Number.* No lot shall contain more than one accessory dwelling unit.
- (b) *Location.* Any proposed detached ADU must be located to the side or rear of the primary dwelling, to the best extent physically possible.
- (c) *Square Footage.* An ADU must not exceed 50% of the total square footage of the primary dwelling unit including unairconditioned areas, but in no case be greater than 1,200 square feet and in no case shall be less than 300 square feet in area.
- (d) *Plot Coverage.* Where applicable, any proposed ADU shall be within the plot coverage requirement of the zoning district where it is located.
- (e) *Height.* The maximum height of an ADU shall be two (2) stories. In no event, shall the height of the ADU exceed that of the primary dwelling.
- (f) *Architecture.* An ADU shall be architecturally compatible with the primary dwelling.
- (g) *Parking.* One (1) off-street parking space must be provided for a proposed ADU with two (2) sleeping areas or less. Two (2) off-street parking spaces must be provided for a proposed ADU with more than two (2) sleeping areas.
- (h) *Setbacks.*
 - Any proposed attached ADU shall be subject to the same front, side, side street and rear setbacks as the primary dwelling.
 - Any proposed detached ADU shall be subject to the following setback requirements:
 - Side and side street setbacks: same as the primary dwelling
 - Rear setback (detached): 10 feet for a one-story structure, and 15 feet for a two-story structure.
- (i) *Entrances.* An attached ADU may either share a common entrance with the primary dwelling unit and/or use a separate entrance, which shall be located only to the side or rear. A separate front entrance for an attached ADU shall be prohibited unless it is located within a personal courtyard area not visible from the right-of-way

- (j) *Easements.* Shall be located outside any dedicated easements. This may include but is not limited to a Lake Ma a. Easement, Drainage Easement, Utility Easement, and Landscape Easement.
- (k) *Nonconformity.* In no event shall the establishment of an ADU create a new nonconformity or expand an existing nonconformity. Conversion of detached garages or other accessory buildings and structures for the purpose of creating an accessory dwelling unit shall be permitted only if the newly created dwelling unit is permitted and all code requirements are satisfied.
- (l) *Impact Fees.* Impact fees shall be assessed for the police and fire protection, water and sewer capacity, and park and recreation fees that are created by the additional unit.

405.2. Adult Entertainment Uses and Establishments.

405.2.1. Intent. This subsection shall be liberally construed to accomplish its purpose to regulate and provide proper and adequate locations that would be compatible for proposed adult entertainment uses and establishments while keeping consistent with the city's comprehensive plan and vision. Adult entertainment uses as defined in section 201 shall be a permitted use within the PID district, subject to distance separation requirements as noted below.

It is the intent of the city commission, in adopting this subsection, to establish reasonable and uniform regulations that will reduce the adverse secondary effects that adult entertainment establishments have upon the residents of the city and protect the health, safety, aesthetics, morals and general welfare of the people of the city. It is further intended to provide for the proper location of adult entertainment uses in the city; to require a separation between such uses to avoid clustering; and to require separation from and thereby protect the integrity of incompatible uses in nearby neighborhoods, including residences, schools, places of worship, public parks and other commercial enterprises. Proper separation of adult entertainment uses prevents the creation of skid row areas in the city, which otherwise result from the concentration of these establishments and their patrons. This subsection has neither the purpose, nor the effect, of limiting or restricting access by adults to sexually-oriented, non-obscene materials protected by the First Amendment to the U.S. Constitution, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is instead the intent to limit the secondary effects of regulated uses through content-neutral regulation as set out in this subsection. Furthermore, the commission has found that the location of residential uses within viable, un-blighted and desirable areas supports the preservation of property values and promotes the health, safety, aesthetics, and welfare of the city and the public at large.

405.2.2. Conflicts with Other Laws. Whenever the regulations and requirements are in conflict or at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances or laws, the most restrictive shall apply.

405.2.3. Penalty for Violation of Subsection. Any person violating the provisions shall, upon conviction by a court of competent jurisdiction of any offense involving moral turpitude in connection with the operation of such adult entertainment establishment, be subject to the penalties of the LDC, city code, or by any other means authorized by law including, but not limited to, the revocation of a zoning certificate of use. The city code compliance officer shall immediately issue a written notice of intent to revoke the local business licenses and permits.

405.2.4. District and Distance Separation Regulations. See Tables 405-1 and 405-2.

TABLE 405-1
DISTRICT REGULATIONS*.

District Type	
All Residential Zoning Districts as described in section 401.1	Not Permitted

Accessory Dwelling Units:

A Smart Growth Tool for Providing Affordable Housing

By Jaimie Ross, President & CEO of the Florida Housing Coalition

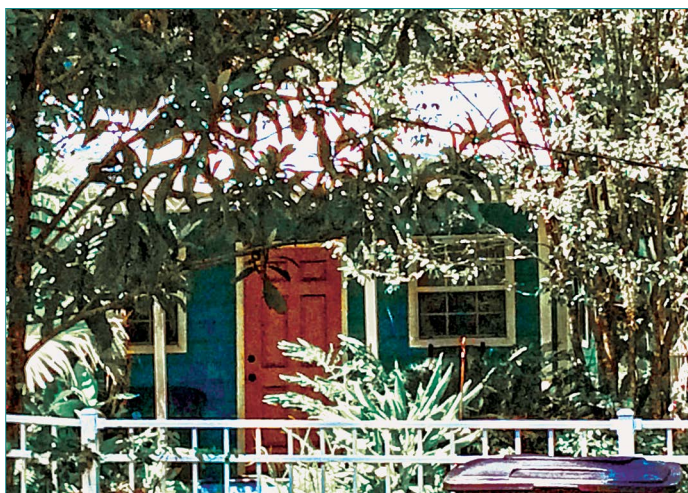
An accessory dwelling unit (ADU) is a residential unit that is secondary to the primary residence of the homeowner. It can be an apartment within the primary residence or it can be an attached or freestanding home on the same lot as the primary residence. The concept of an accessory dwelling unit is to have an additional complete residence, meaning a place for sleeping, bathing, and eating independent of the primary home. An ADU is a tool for providing affordable rental housing and promoting smart growth. These smaller housing units are typically infill units built where there is existing infrastructure, making greater use of the already developed land.

The Value of an Accessory Dwelling Unit

An accessory dwelling unit creates affordable housing in two ways: the secondary (accessory) dwelling is a small rental unit that will ordinarily rent at a price within the means of lower income persons; at the same time, the rental income from the accessory dwelling unit can render the primary residence more affordable by virtue of the income it generates for the resident owner of the primary residence.

Ordinarily, the accessory dwelling unit is smaller than the primary residence of the homeowner. But, if permitted by the local government, the owner may choose to live in the smaller unit and rent out what was the primary residence. At first blush this arrangement may seem odd, but in the case of a family that now has a single elderly member living on a fixed income, this arrangement can provide the perfect affordable living solution; a more appropriately sized living space and a higher rental income.

AARP engaged the American Planning Association (see resources sidebar on page 20) to develop a model state act and local ordinance as a resource for meeting the affordable needs of elder Americans. ADUs are particularly well suited for lower income elderly because in addition to increasing affordability, the elderly homeowner may also obtain companionship and needed services from the tenant in the ADU. The use of ADUs can assist the elderly to “age in place”. An example of this cited in the Public Policy Institute publication is from Daly City, California:



This cottage is an example of a detached accessory dwelling unit built in the side/backyard with roof lines, colors, and architectural design that matches the larger primary home.



“One homeowner with Alzheimer’s was able to trade ADU quarters for medical services from an ADU tenant, a nurse, who was also delighted by the arrangements.”

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars. Removing the land use barriers which prevent accessory dwelling units from being built may be all that local government needs to do for affordable accessory dwelling units to be built. This is an example of how regulatory reform can increase the supply of affordable housing.

However, if the purpose in permitting accessory dwelling units is to increase the supply of affordable housing, local governments need to be thoughtful about the manner in which ADUs are permitted. Without conditions placed upon the use of ADUs, the garage apartment in an expensive or desirable area could end up an “illegal use” such as a Bed and Breakfast. If local governments want to encourage the production of ADUs for affordable housing, a loan program to assist the homeowner in developing the unit is an effective way of providing an incentive for development together with an assurance of affordability through a recorded land use restriction agreement made in conjunction with the loan.

Obstacles to Accessory Dwelling Units

Traditional “Euclidian” zoning separates land uses in a way that prohibits more than one single residence on a platted lot, regardless of the acreage. If two or more residences are situated on a single lot, they would need to be in a more intensive residential zone, such as one that permits duplexes or multi-family housing.

Some single family zoning may permit an accessory dwelling unit, but require that special circumstances be shown to warrant the use, such as a unit limited to use as a “granny

flat” or “mother-in law” suite to accommodate immediate family members. The local zoning code may also limit the accessory dwelling use by proscribing separate metering of the accessory dwelling unit. In short, there may be a number of land use regulations to overcome. Another obstacle to ADUs may be neighborhood or community resistance. The owners of single family homes may object to having renters in their neighborhood; they may fear increased traffic and parking, or perceive a threat to their property value.

Promotion of ADUs as an Affordable Housing Strategy

When the SHIP Legislation was adopted in 1992*, included in the list of regulatory reform items for consideration by all SHIP jurisdictions (all counties and entitlement cities in Florida), was permitting accessory dwelling units in all residential areas. Most jurisdictions did not opt to include this incentive, but a number of jurisdictions in Florida do make some provision for accessory dwelling units.

In 2004, Chapter 163 Florida Statutes, was amended to include Section 163.31771 entitled “Accessory dwelling units.” The law encourages local governments in Florida, especially those in urban areas, to permit accessory dwelling units in all areas zoned for single-

family residential use. The purpose of this legislation is to increase the production of affordable rental housing. To that end, the statute provides that “an application to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to extremely low income, very low income, low income or moderate income person or persons.” The statute also states that each affordable accessory dwelling unit shall apply toward satisfying the affordable housing component of the housing element in the local government’s comprehensive plan. Local governments in Florida are, of course, empowered to permit accessory dwelling units without this statute, but the statute brings this underutilized tool to the fore and makes

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars.

explicit the connection to local government comprehensive planning obligations.

Considerations for ADU Ordinances

Accessory dwelling units could be permitted without adoption of a separate ordinance by simply having accessory dwelling units enumerated as a permitted use within the single family residential use category. It is unlikely, however, that this will be the chosen vehicle, as it fails to provide the parameters for the development and use of accessory dwelling units, which are key to successfully balancing the production of affordable rental housing with the concerns of the existing single family homeowners.

Virtually all ADU ordinances require that the owner reside in either the primary or the secondary unit. But there are a number of issues that can be decided differently depending upon community needs. All programs for the development of ADUs should consider the following:



This is an example of an attached accessory apartment in the back of this single family home. Neither the accessory apartment or the off-street parking are visible from the front of the house.

- **Conditional use or “by right”** – If the ADU is a conditional use, a public hearing would be required – this makes the process more difficult for the applicant, but provides a forum for input from the neighborhood. If the ADU is “by right” it is a permitted use and, provided the application meets the requirements in the ordinance, it will be approved administratively, without public hearing.
- **Permitting process** – To encourage the development of ADUs, local government can create a user friendly process for construction which includes expedited processing (a requirement under the SHIP program), a manual to help the homeowner, and a staff person charged with overseeing the program.

- **Size regulations** – ADU ordinances commonly have a minimum lot size for the total parcel and a maximum ADU size. The goal is to maintain the aesthetic integrity of the single family neighborhood. Performance standards rather than arbitrary size limitations may better address neighborhood concerns.
- **Design requirements** – To ensure compatibility and maintain the aesthetic character of the neighborhood, an ADU ordinance may set forth minimum design standards and have architectural review requirements.
- **Parking requirements** – To avoid parking problems in an urban area, the ordinance may require that there be sufficient on-street parking or off-street parking, or may require that parking be at the back of the residence.
- **Type of unit** – Different considerations may apply if the ADUs are within the primary residence, such as a basement apartment; attached to the primary residence, such as a garage apartment; or detached from the primary residence, such as a cottage.
- **Occupancy restrictions** – Some ordinances may prescribe the maximum number of people who can live in the ADU or the type of renters, such as limiting the rental to relatives or the elderly.
- **Incentives to produce ADUs** – Loans for the production of the ADU may make it easier to monitor for affordability and assist the local government in directing applicants on its rental waiting lists to affordable ADUs.
- **Monitoring** – Some ADU programs have an annual affidavit requirement or other means for monitoring whether the ADU continues to be used in accordance with the local ADU requirements.



ADUs do not have to be an afterthought. New construction of single-family homes could also include construction of an ADU. "Carriage houses" accessible from alleys are commonly found in the "New Urbanism" or Traditional Neighborhood Design. But without an ADU ordinance requirement that these units be affordable, the carriage houses in this "new urbanism" community exceed affordable rents, as the desirability of the traditional neighborhood design development drives housing prices out of the affordable range.

One of the keys to a successful program is the information and technical assistance provided to the community and the prospective developer/owner of an ADU. To ensure the success of its program, Montgomery County, Maryland has a guidebook to assist applicants through the permitting process for accessory apartments. The County also assists the applicant by having a staff person assigned to help applicants through the process.

In 2004, the Environmental Protection Agency gave the city of Santa Cruz California the National Award for Smart Growth Achievement for its Accessory Dwelling Unit Policies and Regulations, which includes a manual for developing ADUs, including architectural designs. You can access the Santa Cruz manual and ADU prototypes on line at: <http://www.cityofsantacruz.com/home/showdocument?id=8875>

If your local government would like technical assistance to help develop an accessory dwelling unit ordinance or navigate the issues to be addressed with accessory dwelling unit ordinances, contact the Florida Housing Coalition at (850) 878-4219, or Jaimie Ross at ross@flhousing.org **HNN**

*Florida Statute 420.9076 (4) "At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas: (e) the allowance of affordable accessory residential unit in residential zoning districts.



JAIMIE ROSS

Jaimie A. Ross is the President & CEO of the Florida Housing Coalition. Ms. Ross served as the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991-2015. Prior to her tenure at 1000 Friends of Florida, Ross was a land use and real property lawyer representing for profit and nonprofit developers and financial institutions with a law firm in Orlando. Nationally, she serves on the Boards of Grounded Solutions Network and the Innovative Housing Institute. Ross is the past Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

Resources for ADU Models

"Accessory Dwelling Units: Model State Act and Local Ordinance," Public Policy Institute, Rodney L. Cobb & Scott Dvorak, American Planning Association
http://assets.aarp.org/rgcenter/consume/d17158_dwelling.pdf

Examples:

Massachusetts Smart Growth Toolkit Bylaws
<http://www.horsleywitten.com/services/planning/smart-growth-low-impact-development/>

Santa Cruz California ADU Manual
<http://www.cityofsantacruz.com/home/showdocument?id=8875>

State of Georgia (Department of Community Affairs)
http://www.dca.state.ga.us/intra_nonpub/Toolkit/ModelOrdinances/TND_ModOrd.pdf

Municipal Research & Service Center of Washington "Accessory Dwelling Units Issues and Options"
<http://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/ADU30.pdf.aspx>

Vermont "Accessory Dwelling Units: A Guide for Homeowners"
http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/2013Edition_Accessory_Apts_Brochure.pdf

Accessory Dwelling Units: Model State Act and Local Ordinance
<http://www.docdatabase.net/more-accessory-dwelling-units-model-state-act-and-local-ordinance-577683.html>

Accessory Dwelling Units Report to the Florida Legislature
http://landuselaw.wustl.edu/Articles/ADU_Report.pdf

City of Santa Cruz Accessory Dwelling Unit Development Program
<http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>



CITY OF BELLE ISLE, FL PLANNING & ZONING BOARD MEETING

Tuesday, July 27, 2021, * 6:30 pm
MINUTES

The Belle Isle Planning & Zoning Board met in a regular session on July 27, 2021, at 6:30 pm at the City Hall Chambers located at 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

- District 4 - OPEN
- Board member Woods
- Board member Statham
- Board member Lane
- Board member Shenefelt
- Board member Thompson
- Board member Hobbs

Absent was:

Also present was City Manager Bob Francis, City Planner April Fisher, Attorney Dan Langley, and City Clerk Yolanda Quiceno.

1. Call to Order and Confirmation of Quorum

Chairman Holihan called the meeting to order at 6:30 pm. City Clerk confirmed quorum.

2. Invocation and Pledge to Flag – Board Member Hobbs

Board member Hobbs gave the invocation and led the Pledge to the Flag.

3. Approval of Minutes

- a. Approval of the May 25, 2021 minutes

City Manager Francis stated that the minutes should be revised to reflect that he was absent.

Board member Statham made the following correction,
 Page 3, Paragraph 9 reads,
 After discussion, Board member Woods moved to recommend that the 35% impervious ratio be maintained.
 Board member Hobbs seconded the motion, which passed 6:1 with ~~Comm~~ Statham, nay.
 Should read,
 After discussion, Board member Woods moved to recommend that the 35% impervious ratio be maintained.
 Board member Hobbs seconded the motion, which passed 6:1 with Board member Statham, nay.

Board member Lane moved to approve the minutes as amended.
Board member Statham seconded the motion, which passed unanimously 6:0

4. Public Hearings

- a. **PUBLIC HEARING CASE #2021-07-001 - PURSUANT TO BELLE ISLE CODE SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64, THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A BUILDING ENCROACHMENT WITHIN 50 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY, SUBMITTED BY APPLICANT ALAN LEOW LOCATED AT 2802 ALSACE COURT, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL #18-23-30-4385-04-241.**

Vice-Chairman Woods gave an overview of the conditions for approval.
 Mr. Leow, the property owner, referenced a site plan of his property and said the code does not apply in this case because his property is unique as it is a peninsula surrounded by Lake Conway. The lake set back to the south was not

intended for his type of property because he does not have any neighbors immediately to the North or south of his property line on the lake. The code is designed to prevent residents from building too close to the property line and other homes. If he follows the current code, his new home will have very tight restrictions and leave very little space to have a vehicle turn around on his driveway. The house is in the plan stages, and he said he would like to possibly build his home further north to allow additional room on the driveway. Additionally, Mr. Leon said he plans to remove as few trees as possible and have little impact on the surrounding neighbors' view.

Chairman Woods asked if he considered moving the driveway a little further south with a 30-foot setback. Mr. Leow said shifting the driveway will allow less than 10-feet.

Vice-Chairman Woods said another reason for the setbacks is to allow the land area between the built-up area and the water to absorb the runoff from a roof or driveway.

Vice-Chairman opened for public comment.

- Patsy Moser, property owner and neighbor to 2802 Alsace Court, said she is in favor of the proposed plan.

There being no further comment, he closed public comment and opened for Board discussion.

Vice-Chairman Woods commented that this application does not meet the requirement of the minimal variance to accomplish the task. It is possible to move the garage further south and allow an additional 15-foot turnaround area. He said the Board might consider his comment and plan to relocate the house further north in any motion that is made and request a new site plan. Discussion ensued.

Board member Statham asked if the applicant knows his impervious surface ratio. The applicant said he does not know the impervious percentage because he is in the preliminary stage. Vice-Chairman Woods asked if the calculation could be inclusive of the surface between the applicant's property line and normal high water line. April Fisher said the applicant could use the area within the property boundary to use in their calculations. Ms. Fisher said she and staff, previous to submitting his application, have met with staff and are aware of the property standards. The pool setbacks are 35ft to the water's edge and 30ft to the edge of the patio, and the requirements for the pool can be met with the preliminary plans without needing a variance. There is nothing that requires the applicant to submit all the possible variances at this time. However, if he runs into the need, he must submit to the Planning & Zoning Board for approval.

Vice-Chairman Woods said this is a unique property, and a good compromise may be to allow a 10-foot variance all around the house, creating a 40-foot setback to the North. Discussion ensued. April Fisher, City Planner, said she would caution the Board in conversation in the area of design. Board member Statham said allowing a 10-ft variance around the house may cause a problem and set a precedent.

The applicant said there is still a concern about the garage area and the entry road to the house. He said he would like to request the variance not to exceed the eastern 85ft on the north side of the home where the garage and stairs are located. Discussion ensued.

After discussion, Board member Statham moved pursuant to Belle Isle Code SEC. 50-73 (A), SEC. 50-102 (A) (4), (5), AND (8) AND SEC. 42-64 of the Belle Isle Land Development Code having been met TO APPROVE a building setback of 30 feet from the NHWE for the easternmost 150 feet of the north property line exclusive of the flag portion of the lot submitted by applicant ALAN LEOW located at 2802 Alsace Court, Belle Isle, FL 32812 also known as Parcel #18-23-30-4385-04-241.

Board member Shenefelt seconded the motion, which passed 5:1 with Board member Thompson, nay.

Vice-Chairman Woods stated that the applicant should wait 15 days before any construction to allow for any appeals. City Manager Francis asked if the applicant is still interested in purchasing the submerged land reclaimed by the State. The applicant said yes, he would be interested. During discussions with staff, Mr. Leon said he offered to allow the City to build a boat dock for Police Department use.

5. Other Business

- a. Review and Discussion: Comp Plan Amendment Private Property Rights Element ORDINANCE NO. 21-09 - AN ORDINANCE OF THE CITY OF BELLE, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.**

Attorney Langley said one of the Bills passed during the Legislative session required all local governments to pass a Comp Plan property rights element. It is a generalized statement on how the City, in its decision-making process, should consider the rights of property owners. The Statute mandates that until an Ordinance is passed, a City will not be able to pass any other Comp Plan amendments. Attorney Langley recommended approval of the Ordinance at the next Planning & Zoning meeting for recommendation to Council for approval on September 7, 2021.

- b. Discussion of Accessory Dwelling Units**

City Planner April Fisher said this is a follow-up to prior Board discussions. The Board requested a broader focus on the definition of kitchen and wet bar in accessory dwelling units. Currently, the Code definition is open to interpretation concerning rental properties. She provided an example of dwelling unit code language from the City of Miramar. Staff is seeking direction from the Board as to whether they would like an ordinance prepared for formal consideration. Discussion ensued.

The Board discussed long-term rentals and single-family residents with secondary kitchens to allow elder family care.

After discussion, the Board consensus allowed was for the Board to review the attachments and bring forward comments at the August meeting.

City Manager Francis said the staff would advertise for the open seat. He said Comm Holihan stated that he might have a candidate for District 4 for Council consideration. In addition, the nominations of Chairman can be placed in the August agenda.

6. Adjournment

There being no further business, Vice Chairman Woods called for a motion to adjourn the meeting, unanimously approved at 7:40 pm.

August 13, 2021

Variance Application: 7315 Lake Drive

Applicant Request: PUBLIC HEARING CASE #2021-08-010 - PURSUANT TO BELLE ISLE CODE SEC. 50-102 (B) (5), SEC. 50-102 (B) (7) AND SEC. 50-102 (B) (8) THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A FENCE TALLER THAN 6 FEET IN THE REAR AND SIDE YARDS; TALLER THAN FOUR FEET WITHIN 35 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY; AND, ALLOW SAID FENCE TO PROJECT PAST THE SIDE AND REAR PROPERTY LINES INTO LAKE CONWAY, SUBMITTED BY APPLICANTS DEBRA ANN WEIL AND LAWRENCE MAUERMAN LOCATED AT 7315 LAKE DRIVE, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL #25-23-29-5884-17-021.

Existing Zoning/Use: R-1-AA/ single-family home

This application seeks a variance to allow a fence taller than six feet that will also project into Lake Conway to the end of the property's existing dock.

Security and safety of the property owners' dogs and themselves are a concern due to an abutting neighbor's dog that and other dogs that access the lake from Swann Avenue Park. The applicant has provided information supporting the variance request with additional information about the security and safety issues encountered. Please see this information enclosed with this agenda item packet.

The board in granting an application for the variance may consider as justifying criteria, the following from Sec. 50-102 (b) (16):

1. A difference in grade between the property upon which the fence will be installed and the immediately adjacent property;
2. The height or construction materials of already existing abutting walls or fences; and/or
3. Conditions existing upon or occupational use of adjacent property creating an exceptional privacy or security need of applicant.

The requirements of Sec. 42-64 (1) except for subsections 42-64 (1) (d) and (1) (f) shall otherwise be met.

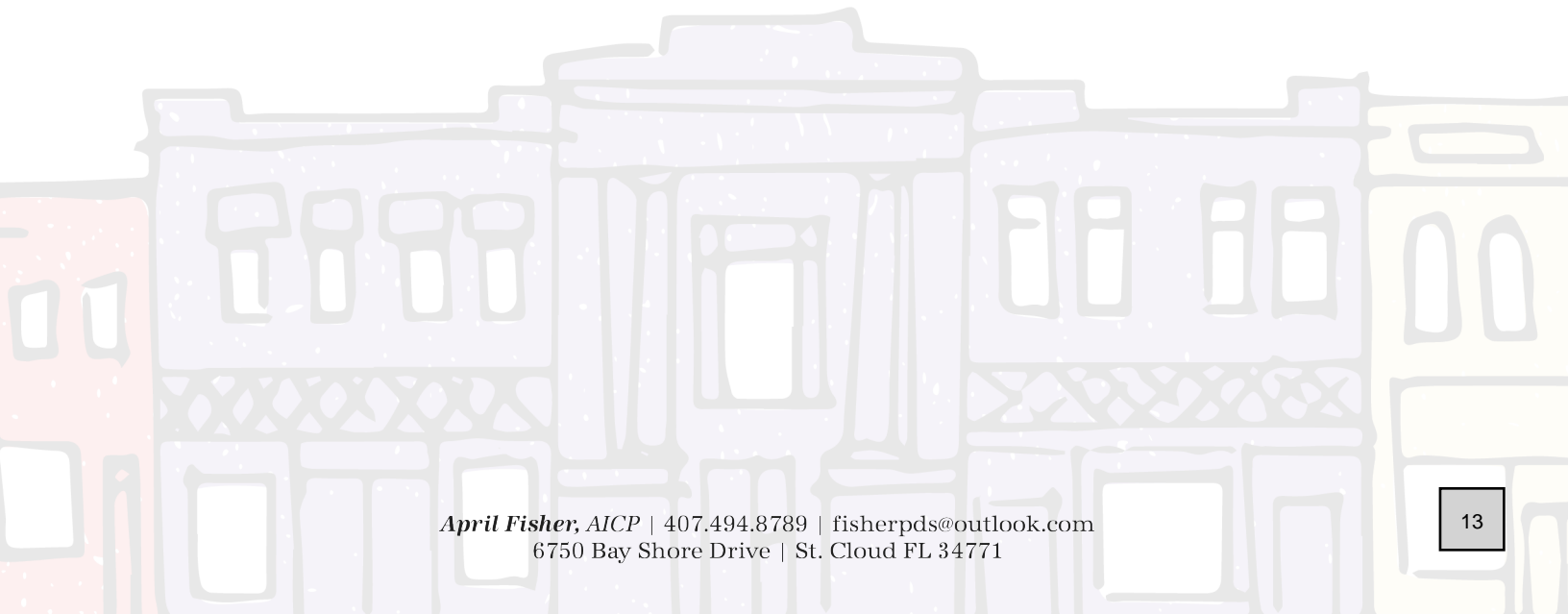
Staff Recommendation

Based on the applicant's identification that security and safety are concerns, staff recommends approval of the requested variance. This is consistent with meeting the criteria established in Sec. 50-102 (b) (16) (3) which the Board may consider as justifying criteria according to the code.

Additional Notes

Please note that the Board may approve the proposed variance application as it is presented to them, approve with specific conditions, continue the application if additional information is being

requested for consideration, or deny the application, citing which variance criteria are not met. A decision by the Board may be appealed by an aggrieved person to the City Council pursuant to Code Sec. 42-71.



MEMORANDUM

TO: Planning and Zoning Board

DATE: August 24, 2021

PUBLIC HEARING CASE #2021-08-010 - PURSUANT TO BELLE ISLE CODE SEC. 50-102 (B) (5), SEC. 50-102 (B) (7) AND SEC. 50-102 (B) (8) THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE TO ALLOW A FENCE TALLER THAN 6 FEET IN THE REAR AND SIDE YARDS; TALLER THAN FOUR FEET WITHIN 35 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY; AND, ALLOW SAID FENCE TO PROJECT PAST THE SIDE AND REAR PROPERTY LINES INTO LAKE CONWAY, SUBMITTED BY APPLICANTS DEBRA ANN WEIL AND LAWRENCE MAURMAN LOCATED AT 7315 LAKE DRIVE, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL #25-23-29-5884-17-021.

Background:

1. On August 11, 2021, the applicant, Debra Weil and Lawrence Maurman, submitted a request, application, and required paperwork.
2. A Notice of Public Hearing legal advertisement was placed on Saturday, August 14, 2021, in Orlando Sentinel.
3. Letters to the abutting property owners within 300 feet of the subject property were mailed on August 11, 2021.

The Board may adopt all, some, or none of these determinations as part of their findings-of-fact. The Board may also add any additional findings-of-fact that are presented at the public hearing. The Board will need to determine if the criteria set forth in Chapter 42, Article III, Section 42-64(1) of the Land Development Code have been met and approve, approve with conditions, or deny this request.

SAMPLE MOTION TO APPROVE:

"I move, pursuant to Belle Isle Code **SEC. 50-102 (B)(5), SEC. 50-102 (B)(7), AND SEC 50-102 (B)(8)** of the Belle Isle Land Development Code having been met **TO APPROVE** A FENCE TALLER THAN 6 FEET IN THE REAR AND SIDE YARDS; TALLER THAN FOUR FEET WITHIN 35 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY; AND, ALLOW SAID FENCE TO PROJECT PAST THE SIDE AND REAR PROPERTY LINES INTO LAKE CONWAY, SUBMITTED BY APPLICANTS DEBRA ANN WEIL AND LAWRENCE MAURMAN LOCATED AT 7315 LAKE DRIVE, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL #25-23-29-5884-17-021.

SAMPLE MOTION TO DENY:

"I move, pursuant to Belle Isle Code **SEC. 50-102 (B)(5), SEC. 50-102 (B)(7), AND SEC 50-102 (B)(8)**, the justifying criteria of the Belle Isle Land Development Code, **having NOT been met; [use only if NONE of the justifying criteria have been met]** the requirements of, Subsections: [STATE ONLY THE SUBSECTIONS BELOW THAT ARE NOT SATISFIED]; [may be used in addition to above or alone] **TO DENY** A FENCE TALLER THAN 6 FEET IN THE REAR AND SIDE YARDS; TALLER THAN FOUR FEET WITHIN 35 FEET OF THE 86.9 CONTOUR LINE OR NORMAL HIGH WATER ELEVATION OF LAKE CONWAY; AND, ALLOW SAID FENCE TO PROJECT PAST THE SIDE AND REAR PROPERTY LINES INTO LAKE CONWAY, SUBMITTED BY APPLICANTS DEBRA ANN WEIL AND LAWRENCE MAURMAN LOCATED AT 7315 LAKE DRIVE, BELLE ISLE, FL 32809 ALSO KNOWN AS PARCEL #25-23-29-5884-17-021.

SUBSECTION (D), a literal enforcement of the provisions of the zoning ordinances would result in unnecessary hardship and that said hardship is created by special conditions and circumstances peculiar to the land, structure or building involved, including but not limited to dimensions, topography or soil conditions.

SUBSECTION (E), personal hardship is not being considered as grounds for a variance since the variance will continue to affect the character of the neighborhood after title to the property has passed and that the special conditions and circumstances were not created in order to circumvent the Code or for the purpose of obtaining a variance.

SUBSECTION (F), the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

SUBSECTION (G), the granting of the variance will be in harmony with the general purpose and intent of the Code, will not be injurious to the neighborhood, will not be detrimental to the public welfare, and will not be contrary to the public interest.

City of Belle Isle
1600 Nela Avenue, Belle Isle, Florida 32809 • Tel 407-851-7730 • Fax 407-240-2222

APPLICATION FOR VARIANCE / SPECIAL EXCEPTION

DATE: 8/10/21 P&Z CASE #: 2021-08-010

VARIANCE SPECIAL EXCEPTION OTHER DATE OF HEARING: 2/28/21

Applicant 1315 LAKE DR., BELLE ISLE, FL	Owner LAWRENCE MAJERMAN
ADDRESS (407) 973-5271	DEBRA ANN WEIL
PHONE:	
PARCEL TAX ID #: 25-23-29-6322-01-000	

LAND USE CLASSIFICATION:

ZONING DISTRICT: (5-1'-6" - OUT OF WATER - 2-3' FOOT IN WATER) EXPOSED

DETAILED VARIANCE REQUEST:

(P.T.) ADD 8' GALVANIZED CHAIN LINK FENCE ON BOAT DOCK SIDE OF BOAT DOCK SIDE OF ONE SIDE OF YARD - 50' TO END OF DOCK TO PROTECT US & OUR DOGS FROM NEIGHBOR'S UNLEASHED PIT BULL & SWAN BEACH LOOSE DOGS FROM OUR PROPERTY

PT. 2: ADD 4' WOOD EXTENSION ON EXISTING FENCE ON FENCE TO PROTECT OUR YARD FROM DOGS JUMPING OVER OUR FENCE.

- The applicant hereby states that the property for which this hearing is requested has not been the subject of a hearing before the Planning and Zoning Board of the kind and type requested in the application within a period of nine (9) months prior to the filing of the application. Further that the requested use does not violate any deed restriction of the property.
- By submitting the application, I authorize City of Belle Isle employees and members of the P&Z Board to enter my property, during reasonable hours, to inspect the area of my property to which the application applies.
- Applicant shall provide a minimum of ten (10) sets of three (3) photographs in support of this application as follows: at least one (1) photograph of the front of the property and at least two photographs (from different angles) of the specific area of the property to which the application applies.
- Sec. 42-64. - Variances. The board shall have the power to approve, conditionally approve or deny applications for variance from the terms of the Land Development Code.
 - Criteria. The board shall not approve an application for a variance from terms of the Land Development Code unless and until:
 - A written application for a variance is submitted to the city manager or the city manager's designee on a form provided by the city clerk setting forth all of the special conditions and circumstances that exist in favor of the granting of the variance and addressing the requirements of subsections (1)(d)-(g) of this section of the criteria set forth in this section. Upon submission of the properly completed application and the appropriate fee, the city manager or the city manager's designee shall refer the application to the board.
 - Notice of public hearing for the variance shall be given as required by the article for hearing before the board.
 - The public hearing on the application for the variance shall be held. The applicant, the applicant's agent as evidenced by a signed writing, or the applicant's attorney shall appear before the board.
 - It is determined that literal enforcement of the provisions of the zoning ordinances would result in unnecessary hardship and that said hardship is created by special conditions and circumstances peculiar to the land, structure or building involved, including but not limited to dimensions, topography or soil conditions.
 - It has been determined that personal hardship is not being considered as grounds for a variance since the variance will continue to affect the character of the neighborhood after title to the property has passed and that the special conditions and circumstances were not created in order to circumvent the Land Development Code or for the purpose of obtaining a variance.
 - It is determined that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
 - It is determined that the granting of the variance will be in harmony with the general purpose and intent of the Land Development Code, will not be injurious to the neighborhood, will not be detrimental to the public welfare, and will not be contrary to the public interest.

The board shall find that the preceding requirements have been met by the applicant for a variance.

(2) Violations of conditions.

- a. In granting any variance, the board may prescribe appropriate conditions and safeguards to ensure compliance with the Land Development Code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Land Development Code and punishable in accordance with this article. At the discretion of the board, such variance may be revoked for violation of the condition and/or safeguards.
- b. The board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances, except as permitted above, shall the board grant a variance to permit a use not generally or by special exception permitted in the zoning district involved, or any use expressly or by implication prohibited by the terms of the Land Development Code in the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of land, structures or buildings in other zoning districts, shall be considered grounds for the authorization of a variance.

Diana Weed
APPLICANT'S SIGNATURE

[Signature]
OWNER'S SIGNATURE

FOR OFFICE USE ONLY:

FEE: \$300.00

8/10/21 ^{LL} 98591452 Hep
Date Paid Check/Cash Rec'd By

Determination _____

Appealed to City Council: Yes No Council Action: _____

Mauerman Fence Variance Request, Pt. 2 / Narrative Questions 1-4 - 7315 Lake Dr., Belle Isle, 32809

1 message

Debbi Weil <aneverlastingtan@yahoo.com>

Wed, Aug 11, 2021 at 2:16 PM

To: April Fisher <aprilfisher73@gmail.com>, Heidi Peacock <hpeacock@belleislefl.gov>, Bob Francis <bfrancis@belleislefl.gov>

Cc: John Mauerman <ljmouerman@gmail.com>

Please see further answered narrative questions 1-4 below. Hope this is more of what you are looking for:

1) The current zoning only allows for a maximum height of a 4 foot fence with no less than a 35 foot setback from the lakefront/water on our property in the backyard, of which we currently have.

Unfortunately, our neighbor's dog has demonstrated she is easily capable of scaling over this fence to enter our yard and walking / swimming in shallow water onto our lakefront property to come after us and our pets. Therefore, we wish this variance to allow us to add an extension on top of our existing 4' tall wood fence on the side (an additional 2 feet of matching wood), neighboring their yard, and adding a chain link fence extending out from our property into the water to our boat dock, to separate and block their dog and all the dogs from Swann Beach that run along the shore (2 lots down) from also entering our property. The owners next door refuse to properly restrain their dog and Belle Isle has not maintained the fencing at Swann Beach to prevent this from happening and thus putting us and the safety of our pets in jeopardy.

2) The variance is not a personal hardship, it is a safety issue. Their dog attacked my husband and tried to attack our dogs through our back aluminum, 4' fence, along our lakefront. Many dogs from Swann Beach have also walked over to our property, because there is no fencing at Swann Beach to keep them safely in that area.

3) This is a minimal variance request as it will not interfere with the use of our or our neighbor's land or current structure.

4) Yes, this variance is safe and will simply match what COBI already grandfathered and is already existing on the opposite of our yard / property and many other properties in Belle Isle.

Please let me know if you need any further information.

Debbi

On Tue, Aug 10, 2021 at 12:19 PM Debbi Weil <aneverlastingtan@yahoo.com> wrote:

Back story and general concerns as to why we are requesting this variance:

When we bought this house in 2018 we paid for a custom, hand built, professionally installed \$18,000 decorative solid wood and black aluminum fencing on our property in our backyard, to protect and secure our 4 small dogs. We did it to COBI code and needed to file a variance on one side bordering our neighbor's (The Anderson's) to replace their existing fence with our newer style, which was approved.

Our opposite neighbor (Henry Tran, residing at [7307 Lake Dr., Belle Isle](#)) has a son (Danny) residing there that owns a large, white pit bull that is never on a leash, tethered, or restrained, is allowed outside both in their non-fenced yard, left unattended and unsupervised in their front and backyard. This dog constantly runs out their front door, runs around the neighborhood and wanders their property, the side walk and approaches people, pets and our dogs. This dog has no tags and up until a week ago, had no collar. It now has a silver choke chain, no tags or identification. Several neighbors have complained about this dog, as it is always loose, off leash, approaching them, unsupervised, etc. As Mr. Francis is aware, this is a very problematic neighbor, historically getting cited constantly and receiving fines on a monthly basis. They have no respect for their neighborhood, the environment, their property, the lake, the law, or concern for other's well being, including their direct neighbors.

We have a very secure backyard and walk our dogs, on leash and harnesses twice a day, but often have to immediately run back in our house to safety, because their dog is loose in theirs or our front or backyard, off leash and runs after us and our dogs. We are not able to pick up or protect our dogs from this dog going after or attacking our dogs. It is a nuisance and safety issue. And we are tired of living in fear, stress and anxiety of this dog on our own property.

This is an ongoing, regular occurrence. The owner, does not walk this dog on a leash, he simply lets her out the back or front door to do its business, which is against the Orange County leash law. They know it and they don't care. This family has a history of this type of pet owner negligence on file with the County and had previously owned 2 pit bulls that they also let roam off leash, outside that tragically attacked a child at the park and were eventually removed from their home. So this is standard pet ownership behavior for this family and it is not acceptable, but not likely to change. So now we need to do something on our end to protect ourselves.

This past Sunday my husband John was cleaning up our lake front area and the neighbor's 5 year old son, James let their 80 pound+ pit bull out back, off leash. He saw my husband out back and came charging at him, as their yard and water line / lakefront area is not fenced, and neither is ours, hence this variance request.

I was in our yard, behind our fence and witnessed all of this. My husband was calling to the boy to come get their dog off of him. The boy was saying he couldn't grab the dog because he was too big to handle. I was then also shouting at both the boy and my husband to call the dog off of him. My husband didn't want to touch the dog for fear of getting bit by the dog.

With all this commotion, my dogs heard it and all came running out of our house in our defense. Even though we have a fence, their dog was on our property, in our yard. And because we can only have a 4 foot fence (black aluminum with 8" spacing in between facing the lake), their dog was going after trying to attack our dogs through the fence and trying to get over our fence!

I could not grab all my dogs and their little boy could not grab or control or stop their dog. They did not have an adult present that could either. I was able to grab one of my dogs to safety while the other 2 eventually followed me inside the house. They had their 80 year old, 95 pound, non-English grandmother finally come over who couldn't do anything to control the dog or help either. The dog eventually stopped the aggression and attack mode when my dogs went inside our house. We are all EXTREMELY lucky no one got hurt, except for a few pulled muscles.

Our neighbors are constantly letting this dog wander out in their backyard, which opens to our lakefront and she walks in the water to our property all the time. We reported this incident to 311 and BIPD, which both went and spoke to the owners. They have no intention of building a fence or walking this dog on a leash, so we have no choice but to secure our yard, spend the money, once again to protect ourselves and our dogs from this dangerous dog and all the other dogs that run over from Swann Beach (2 doors down, which is also not fenced). The Swann Beach dog owners are nowhere near their dogs once they break free and are 2 houses down on our property in our yard.

We should be able to be in our lakefront, on our property, and not live in fear of our safety because we are following the law and our neighbor is not. We also let our dogs out in our backyard 8-10 times a day, in our fenced yard, yet their dog can easily jump over our 4 foot section of wood fencing at any time as well as walk into our lakefront section and get over our back aluminum 4 foot fencing in the back area.

If we could add the variance aluminum fencing, we wouldn't have to worry about their dog or other dogs coming into our yard or climbing over our 4 foot high wood fence to get to our dogs or us.

We don't want to constantly live in fear, or paranoia every time we let them out or leave them outside to enjoy their yard. We don't want to take the chance that an attack or the death of one of our dogs has to happen before anything else is done to protect our family.

We are asking for a 2 part variance as follows:

PART 1: Adding approximately 50 feet of an 8 foot high galvanized aluminum fencing on the left side of the back of where our wood fence ends, where our beach begins - going into the water - extending to the length of our boat dock. This will sink approximately 2 - 3 feet in the sand/water and only stick up about 5-6 feet off the land/water. This will prevent our neighbor's dog and other dogs from Swann Beach from walking on the ground and shallow water onto our property.

The 311 Officer that came out to take our statement from this incident, Office McCracken, accessed our property and said he would help support our request for the fencing variance for the city to help protect our dogs and property. a.

NOTE: There is already this type of existing fencing on the opposite side of our property that was previously there when we acquired the house. We are asking to add this same type of structure. See photo.

PART 2: Adding approximately 20 feet in length and 2-4 feet on top of our already existing wood fence on one side in the back. It is built to code at the lakefront set back at 4 feet, however, their dog can easily and has tried to jump over this 4 foot section. We are asking to add 2-4 feet to the top to match what we have to secure our yard and protect us and our dogs from their dog and other dogs from getting into our property.

Variance Narratives:

- 1) The variance complies and would not interfere with the soil, water or topography as there is the exact same structure in place on the opposite side of our property already.
- 2) The variance will not alter the character of the neighborhood or property, affect access or anyone else's ability to enjoy this property moving forward should we not dwell here in the future. It will not change the integrity of the property. If anything, it would add to and enhance it.
- 3) The variance is minimal and does not affect the land or building structure whatsoever.
- 4) Agreed the granting of the variance will be harmonious with the general purpose and intent of the zoning ordinances and not detrimental to the public or public interest.

Please let me know if you have any questions of need further supporting documentation. All photos and land survey was sent in first email.

D Weil-Mauerman
(407) 973-5271

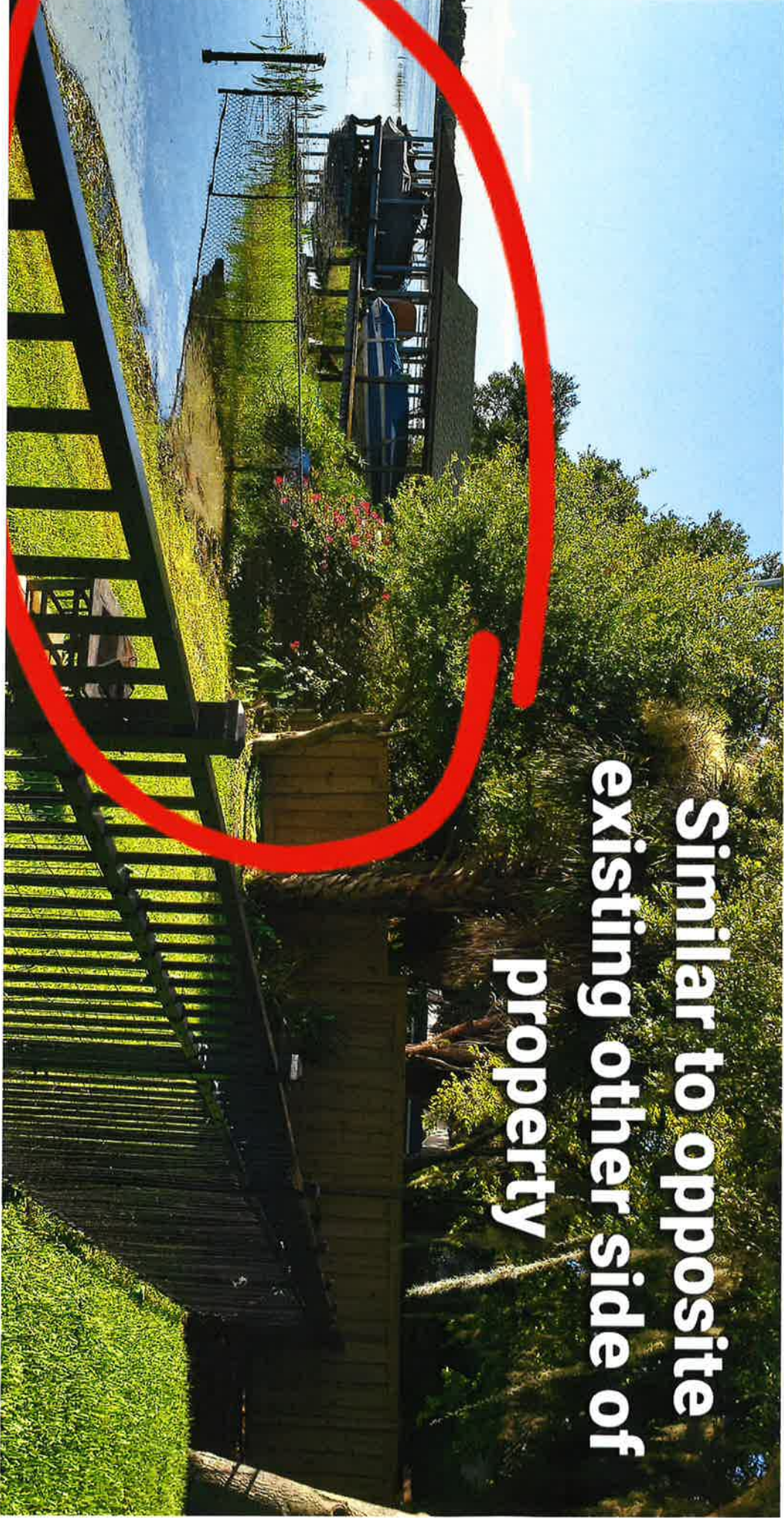
Galvanized, 8' x 50' chain link fence

a.



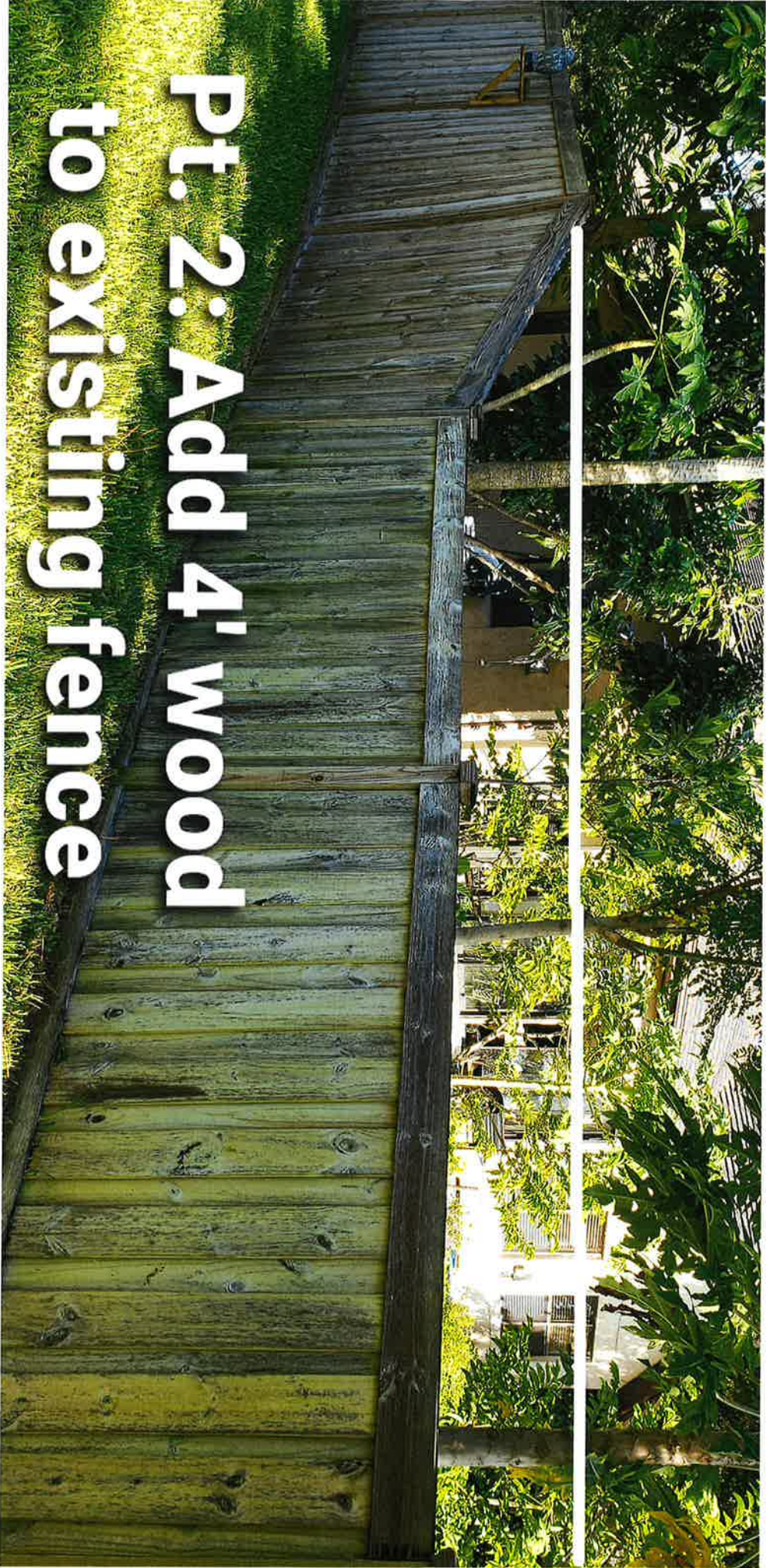
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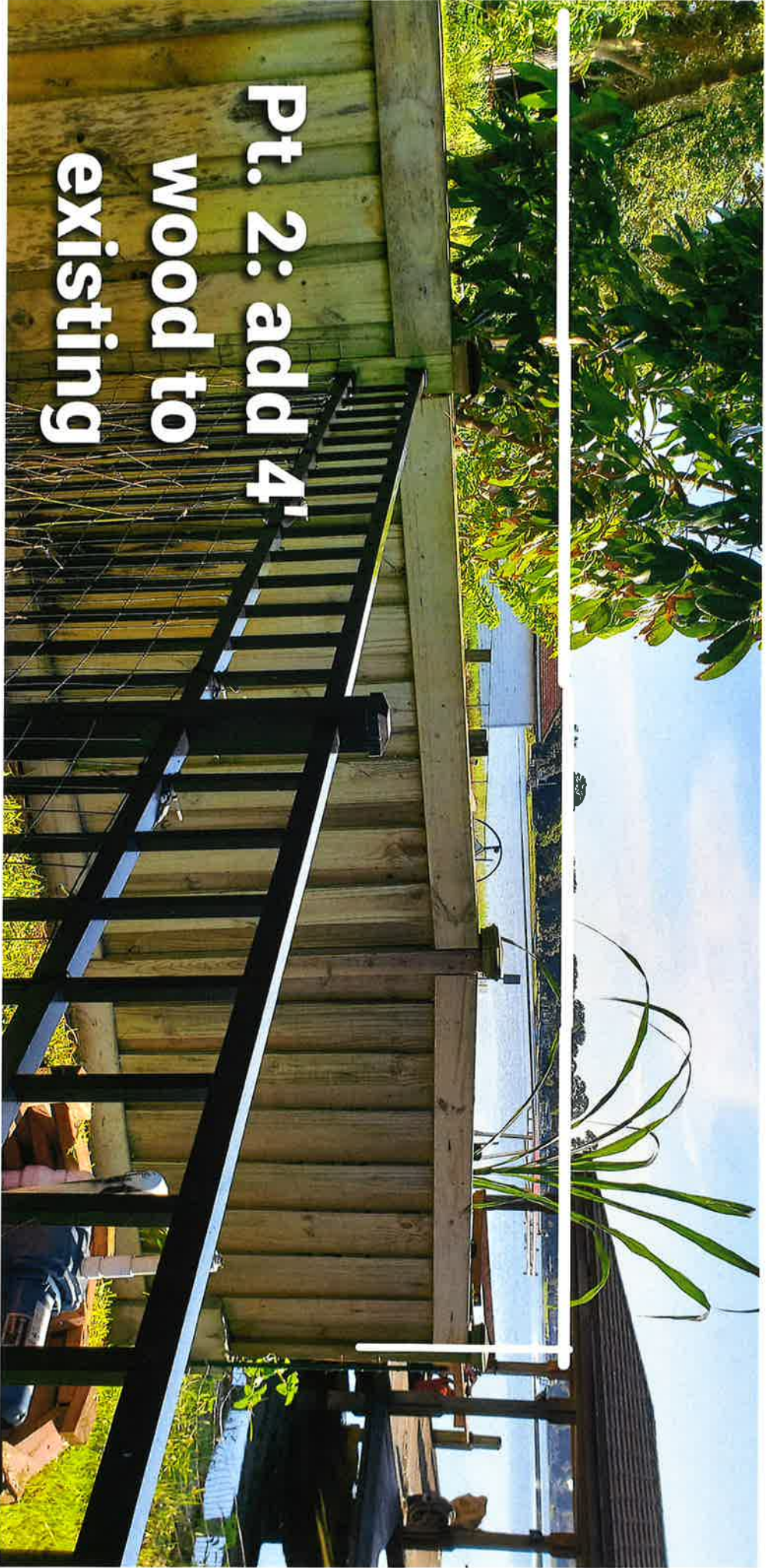


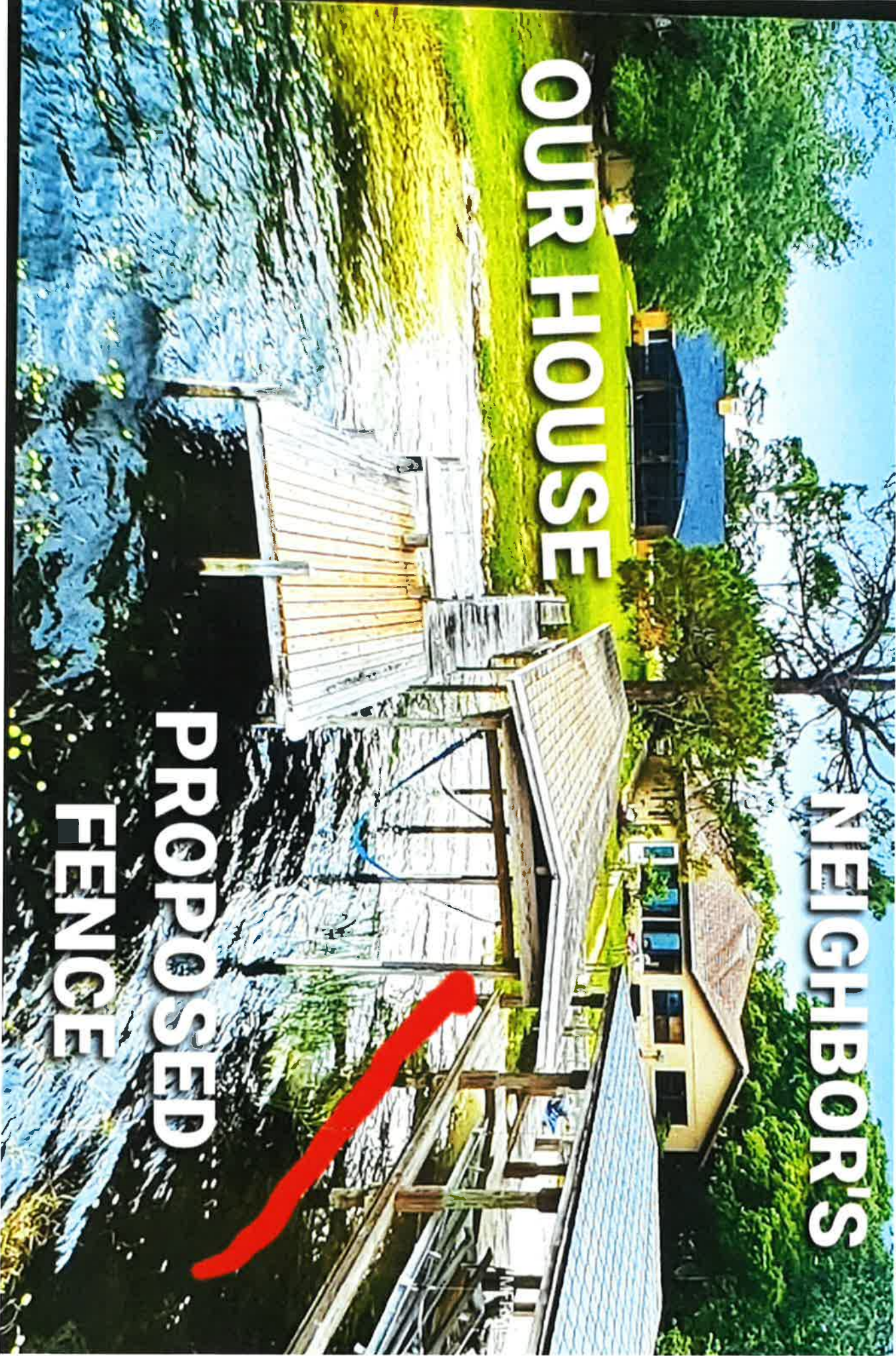
**Similar to opposite
existing other side of
property**





**Pt. 2: Add 4' wood
to existing fence**

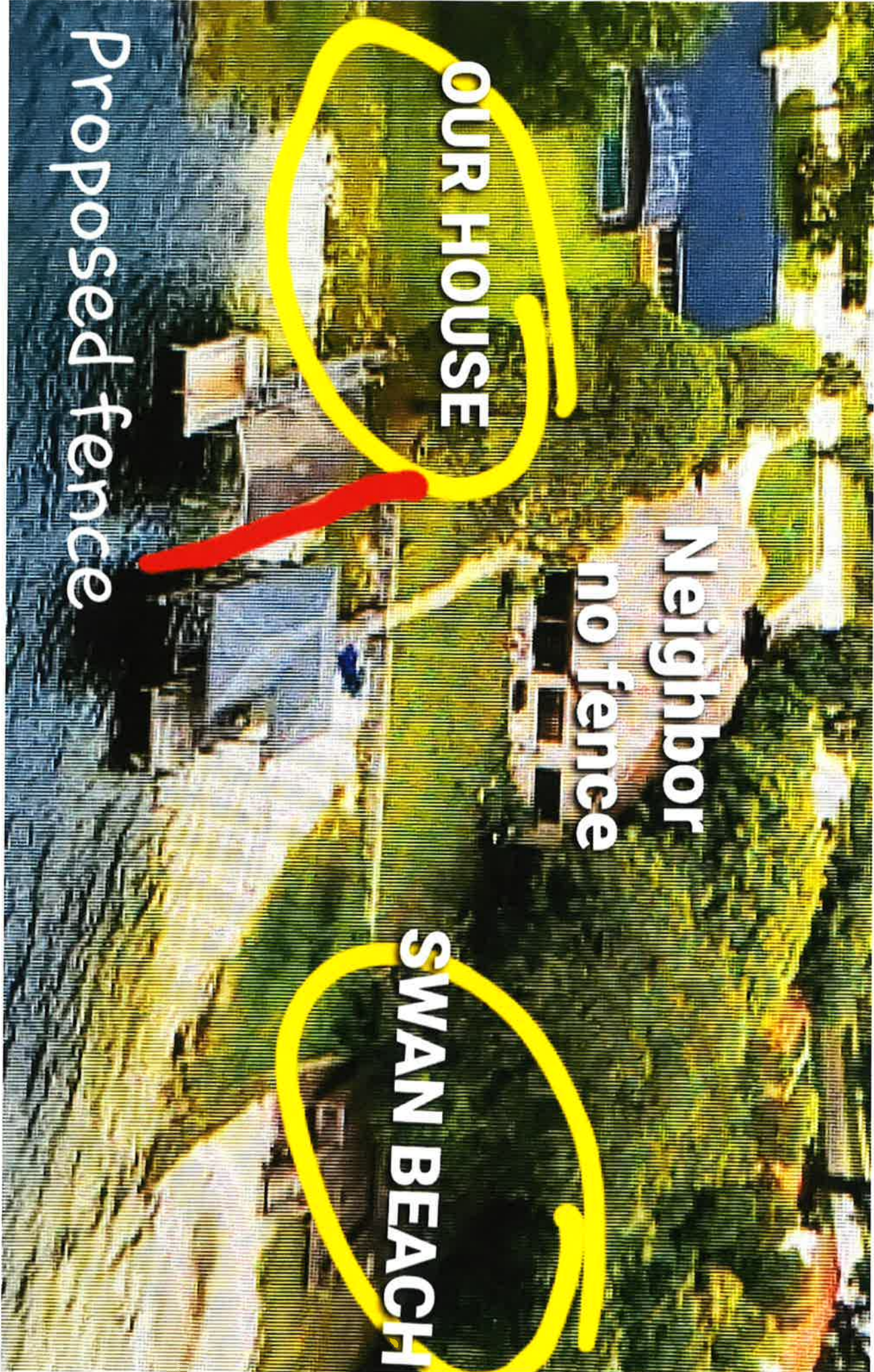




OUR HOUSE

**PROPOSED
FENCE**

NEIGHBOR'S



August 13, 2021

Ordinance Public Hearing:

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.

The Florida Legislature passed a bill that is effective as of July 1st that requires all cities and counties to have a Private Property Rights Element in their Comprehensive Plans. Local governments will not be able to process other Comprehensive Plan Amendments without first having adopted the required Private Property Rights Element.

Staff Recommendation

The Board, as the recommending body of the City for land development code regulation amendments, should recommend approval of the subject ordinance to the City Council.

Additional Notes

Please note that the Board may recommend approval of the proposed ordinance as it is presented to them, recommend approval with changes, continue the hearing if additional information is being requested for consideration, or recommend denial of the ordinance.

ORDINANCE NO. 21-09

AN ORDINANCE OF THE CITY OF BELLE, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, the City of Belle Isle, Florida (the “City”) proposes to amend the City’s Comprehensive Plan (the “Comprehensive Plan”) to adopt a Private Property Rights Element as set forth herein; and

WHEREAS, the Florida Legislature changed statutory provisions of chapters 163, Florida Statutes effective on July 1, 2021 to ensure that private property rights are considered in local decision making and requiring the adoption of a Property Rights Element into the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Belle Isle desires to update the Comprehensive Plan consistent with such statutory changes by adopting a “Property Rights Element”; and

WHEREAS, the Planning and Zoning Board as the City’s Land Planning Agency reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes, and made a recommendation to the City Council; and

WHEREAS, the City determines that the Comprehensive Plan amendment set forth herein complies with the law and is in the best interest of the City.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, AS FOLLOWS:

SECTION 1: RECITALS. The above recitals are true, correct and incorporated herein by this reference.

SECTION 2: ADOPTION. The Comprehensive Plan of the City of Belle Isle is hereby amended to adopt a new Property Rights Element to read as follows:

PROPERTY RIGHTS ELEMENT
Goals, Objectives and Policies

GOAL 1:

The purpose and overall goal for the Property Rights Element is to signify respect for judicially acknowledged and constitutionally protected private property rights, and to ensure that those rights are considered in the City of Belle Isle’s decision-making concerning land use and zoning matters.

Objective 1.1:

The following objective provides a framework for ensuring that private property rights are considered in local decisionmaking concerning land use and zoning matters.

Policy 1.1. The following rights shall be considered in decision-making by the City of Belle Isle concerning land use and zoning matters:

- 1) The right of a property owner to physically possess and control their interests in property, including easements, leases, or mineral rights.
- 2) The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
- 3) The right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.
- 4) The right of a property owner to dispose of his or her property through sale or gift.

This element is not intended to create any property rights or due process rights that are not already judicially acknowledged and constitutionally protected. This element is not intended to alter the legislative nature of decisions made in the adoption of comprehensive plan amendments and land development code amendments. This element is not intended to require discussion, evidence and findings of fact concerning the matters set forth herein. Ordinances adopted and land use and zoning decisions made by the City are presumed to have considered the matters set forth in this element.

SECTION 3: SEVERABILITY. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.

SECTION 4: CONFLICTS. If any ordinance or part thereof is in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION 5: CODIFICATION. Any goal, objective, and policy number, letter and/or any

heading may be changed or modified as necessary to effectuate the foregoing and/or to be consistent with the numbering system within the Comprehensive Plan. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Comprehensive Plan may be freely made.

SECTION 6: EFFECTIVE DATE. This Ordinance shall become effective pursuant to a Notice of Intent issued by DEO finding the Comprehensive Plan amendment (“Amendment”) set forth in this Ordinance to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Amendment shall not become effective until DEO or the Administration Commission enters a final order determining the adopted Amendment to be in compliance.

FIRST READING AND TRANSMITTAL READING: _____

SECOND READING AND ADOPTION: _____

ADOPTED this ____ day of _____, 2021, by the City Council of the City of Belle Isle, Florida.

City of Belle Isle

Nicholas Fouraker, Mayor

ATTEST:

Yolanda Quiceno, CMC-City Clerk

August 13, 2021

Ordinance Public Hearing:

**AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA;
AMENDING SECTION 50-103(a) OF THE CITY'S CODE OF
ORDINANCES AS SUCH PERTAINS TO HOME BASED
OCCUPATIONS; PROVIDING FOR HOME BASED BUSINESS
REGULATIONS CONSISTENT WITH GENERAL LAW; AND
PROVIDING FOR ENFORCEMENT, SEVERABILITY,
CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.**

State legislature passed a bill this year that limits a local governments ability to regulate certain aspects of home-based businesses. The attached ordinance updates the City Code to be consistent with the new state law.

Staff Recommendation

The Board, as the recommending body of the City for land development code regulation amendments, should recommend approval of the subject ordinance to the City Council.

Additional Notes

Please note that the Board may recommend approval of the proposed ordinance as it is presented to them, recommend approval with changes, continue the hearing if additional information is being requested for consideration, or recommend denial of the ordinance.

ORDINANCE NO. 21-_____

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING SECTION 50-103(a) OF THE CITY’S CODE OF ORDINANCES AS SUCH PERTAINS TO HOME BASED OCCUPATIONS; PROVIDING FOR HOME BASED BUSINESS REGULATIONS CONSISTENT WITH GENERAL LAW; AND PROVIDING FOR ENFORCEMENT, SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has historically regulated home occupations, otherwise known as home-based businesses;

WHEREAS, the Florida Legislature recently enacted Chapter 2021-202, Laws of Florida, codified as § 559.955, Florida Statutes, with an effective date of July 1, 2021;

WHEREAS, new § 559.955, Florida Statutes, prohibits local governments, including the City from regulating home-based businesses in any manner inconsistent with the terms of such statute; and

WHEREAS, the City’s current ordinance regulating home occupations is inconsistent with the mandates contained in newly enacted § 559.955, Florida Statutes, regarding home-based businesses, and the City desires to amend such ordinance to conform to § 559.955, Florida Statutes.

NOW, THEREFORE, be it ordained by the City Council of the City of Belle Isle, Florida, as follows:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. City Code Amendment. Section 50-103(a) of the Belle Isle Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 50-103. - Accessory uses.

(a) *Home-based businesses ~~occupation~~.*

(1) It is the purpose of this section to provide for the orderly conduct of a limited commercial activity on property otherwise zoned for residential purposes. ~~Such activity shall not be of a nature that would impose any disruption to the quality of life, safety, character health welfare or appearance of a residential neighborhood.~~

(2) Unless otherwise expressly permitted by applicable statutes or residential zoning regulations, including, but not limited to, mixed-used development plans and agreements for planned unit development, only commercial activity meeting the

~~definition of a home-based businesses, as defined in § 559.955, Florida Statutes, is permitted on property zoned for residential use. Any use conducted entirely within a dwelling unit including the garage area, and carried on by an occupant thereof, which use is clearly incidental and accessory to the use of the residence for dwelling purposes and does not change the character thereof. This also includes the garage area and only if the garage door remains closed.~~

(3) ~~All business occupations, trades or professions qualifying as home occupations under this chapter shall exist and~~home-based businesses located on property zoned for residential purposes must operate subject to the following provisions, conditions and restrictions:

a. ~~The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may reside at the business. The business may have additional remote employees that do not work at the residential dwelling. Only such commodities made on the premises may be sold on the premises. All such sales of home occupation work or products shall be conducted within a building. Home occupations that market commodities via the internet, telephone or other off-site advertising may sell commodities produced off premises so long as said commodities are drop shipped to the client/customer. Shipment and delivery of products, merchandise, or supplies shall be limited to the hours of 7:00 a.m. and 7:00 p.m. in single rear axle vehicles.~~

b. ~~Parking related to the business activities of the home-based business must comply with the zoning requirements applicable to other residential properties within the same zoning classification, and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted. Home-based businesses must comply with any regulations pertaining to the operation or parking of vehicles and trailers to residences where no home business is conducted. Any vehicles or trailers used in connection with the home-based business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces of the residence. There shall be no outdoor display, or storage of merchandise or products, nor shall there be any display visible from the outside of the building.~~

c. ~~As viewed from the street, the use of the residential property must be consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. No person shall be engaged in any such home occupation other than members of the immediate family~~

~~residing on the premises. Written consent by the owner of the property is required to engage in any form of home occupation by a tenant at the time of application.~~

- d. ~~No heavy equipment, defined herein as commercial, industrial, or agricultural vehicles, equipment, or machinery, may be parked or stored such that it is visible from the street or a neighboring residential property. equipment or machinery shall be used or stored on the premises in connection with the home occupation, except such that is normally used for purely domestic or household purposes. Examples include, but not limited to, cement mixers, tractors, welding or create excessive noise, smoke, fumes, odor, or vibration.~~
- e. ~~The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property. No more than 25 percent of the floor area of the first floor shall be used for home occupation purposes. Interior alterations are allowed as long as alterations do not result in the eliminations of the kitchen, dining area, bathrooms, living room or the bedrooms in the residence.~~
- f. ~~The activities of the home-based business must be secondary to the property's use as a residential dwelling. No sign shall be used other than one nonilluminated nameplate attached to the building entrance, and such plate shall not exceed one square foot in area.~~
- g. ~~The business activities conducted at the residence must comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors as such regulations apply to other residences where no business is conducted. Fabrication of articles, by way of example and not by way of limitation such articles commonly classified under the term "arts and handiercrafts," may be deemed a home occupation.~~
- h. ~~All business activities conducted at the residence must comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids as such regulations would apply to a residence where no business is conducted. By way of example and not by way of limitation plant nurseries, tearooms, food processing, restaurants, sale of antiques, commercial kennels, day care, or pain management clinics shall not be allowed as home occupations.~~
- i. ~~By way of example and not by way of limitation barbershops and beauty parlors (not to exceed one chair), accountant offices, real estate offices,~~

~~insurance offices or any professional office uses of the like may be deemed a home occupation.~~

~~j. No home occupation shall be permitted wherein group instruction or group assembly or activity is involved. To that end, no group dance instruction, group exercise class or similar activities.~~

~~k. No alteration of the residential character of the premises be made, and the home occupations shall not be allowed to create a nuisance or to create any undue disturbance.~~

~~l. No business, trade, profession or occupation shall qualify as a home occupation if it will generate noise which is audible beyond the property lines of the property upon which the promise is located.~~

~~m. No business, trade, profession, or occupation which generates vehicular trips or visitors to the premises exceeding ten per day shall qualify as a home occupation. Instruction based home occupations may receive one student/customer at a time, by appointment only.~~

~~n. No vehicles which display advertising relating to the business on the premises may be utilized so as to avoid the restriction or signs contained above.~~

~~o. No more than three passenger vehicles may be parked on or about the premises at any one time. Off street parking must be provided on a hard surface as provided in sections 30-73 and 30-133. The home occupation shall not generate excessive vehicular traffic or parking.~~

~~p. As a condition for granting of the home occupation license. The licensee agrees the city is authorized to conduct an inspection during normal business hours, with sufficient notice to the licensee, for the purpose of determining whether or not the provisions of this Code section are being complied with.~~

~~q. Use of the garage or any activity associated with the home occupation shall not displace any required parking in currently useable garage.~~

(4) Violations / enforcement. Anyone or any entity operating a home-based business in a manner inconsistent with this section is in violation of this code, and the city may enforce these provisions by any legal means available or as otherwise directed by general law, including, but not limited to, code enforcement proceedings or an action to enjoin any violations of this section. Nothing herein may be deemed to excuse or exempt the owner or operator of a home-based business from paying any taxes, including business tax receipts, that may be due and owing in connection with the operation or establishment of any such business

~~or complying with any federal or state occupational or licensure requirements. *Approval of application; administrative procedures.* All applications for home occupation permits shall be reviewed by the city manager or city manager's designee for compliance with the provisions set forth herein.~~

~~a. All applicants must provide two proofs of residence; a Florida Driver's License and a utility bill, and a copy of the applicant's lease, if renting the premises.~~

~~b. Submitted applications which fail to comply with the provisions of the Code shall be denied, and the applicant notified, in writing, of the denial and the reasons for the denial.~~

~~e. Applications compliant with all the provisions of this Code shall be approved upon the posting requirement in section 50-103(5) below and issued a permit, provided that all written objectives to the application, if any, have been reviewed and found to be without merit and unsupported by fact.~~

(5) *Intent.* It is the intent of this code provision to be interpreted in harmony with general law pertaining to home-based businesses, and in the event of any conflict with such general law, general law will govern and control the interpretation and application of this § 50-103(a). ~~*Posting required for posting application.*~~ All applicants for a home occupation permit shall be required to place a notice on the premises, to inform the public that a home occupation permit has been applied for. This notice shall be posted on the premises for ten days prior to the disposition of the permit applications. When the application is submitted to the city, a placard will be given to the applicant for posting. It is the applicant's responsibility to post the placard on the premises so it can be seen by the public.

~~(6) *Appeals and hearing on application.* Applications which are denied by the city manager or the city manager's designee shall have the right to appeal to the planning and zoning board. Such appeal shall be in writing and delivered to the city clerk no less than ten days after the denial of the application. The appeal will be placed on the next available planning and zoning board agenda for action. The planning and zoning board shall have the right to overturn, modify or affirm the decision made by the city manager, or the city manager's designee. The board's decision shall be final.~~

~~(7) *Revocation of home occupation permit; procedure; conditions.*~~

~~a. Any person may seek revocation of a home occupation permit by making written application to the city manager or city manager's designee and an investigation will be made to determine whether the permit holder is conducting a home occupation in a lawful manner prescribed in this section.~~

- ~~b. If the city manager determines that the permit holder in in violation of the provisions of this section, the city manager may revoke, suspend, or revise the permit.~~
- ~~c. The decision of the city manager shall be subject to appeal to the planning and zoning board as in section 50 103(b). The decision of the board is final.~~
- ~~d. The following shall be considered as grounds for revoking a home occupational permit.~~
 - ~~1. Any change in the use or any change in extent or nature of the use or area of the dwelling unit being used, that is different from that specified in the approved home occupation application, this not first approved by the city manager.~~
 - ~~2. The operator of the home occupation must apply for a new home occupation permit prior to any such changes.~~
 - ~~3. Any change in use, extent of use, area of the swelling being used, or mechanical or electrical equipment being used that results in conditions not in accordance with the provisions of the require conditions shall result in immediate revocation of the permit.~~
- ~~(8) The following conditions shall apply for home occupation permits which have been revoked:~~
 - ~~a. *Initial revocation.* Reapplication may only occur when the condition(s) causing the revocation has been corrected.~~
 - ~~b. *Second revocation.* Reapplications may only occur after one year and when the condition(s) has been corrected.~~
 - ~~c. *Third revocation.* No permit shall be reissued.~~

SECTION 3. Codification. Section 2 of this Ordinance will be incorporated into the Belle Isle City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made. In addition, to the changes made by this Ordinance, any and all references to “occupational license” and “occupational license tax” in the City Code of Ordinances shall be changed to read “local business tax receipt” and “local business tax,” respectively.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court

of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion will be deemed a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Conflicts. If a conflict arises between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of such conflict, as permitted under the law.

SECTION 6. Effective date. This Ordinance will become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

FIRST READING: _____, 2021

SECOND READING: _____, 2021

ADOPTED this ____ day of _____, 2021, by the City Council of the City of Belle Isle, Florida.

CITY COUNCIL
CITY OF BELLE ISLE

Nick Fouraker, Mayor

ATTEST:

Yolanda Quiceno, City Clerk

Date

July 19, 2021

Discussion Item: Land Development Code Language Change- Accessory Dwelling Units

At the May 2021 Planning and Zoning Board meeting, the Board discussed adding the definition of kitchen and wet bar to the Land Development Code as these terms are not currently defined in the Code.

These are the definitions that were discussed:

Proposed Kitchen definition: Kitchen shall mean the facilities and equipment or rough in facilities, used in the preparation and serving of food. This may include, but is not limited to, stoves, microwave ovens, hot plates, sinks, refrigerators, cabinets and/or pantry-like shelves, a 220 V outlet, or any gas lines (natural gas or propane), a dishwasher, or other food preparation equipment, or any combination thereof; this may not include wet bars, outside grilling facilities, outside sinks or refrigerators, or other items determined by the zoning division manager as not constituting a kitchen.

Proposed Wet Bar definition: Wet bar shall mean a hand sink and under-the-counter refrigerator with no overhead cabinet.

The Board did not take any action on these definitions but asked staff to come back with information on a broader focus of accessory dwelling units. These types of units are not currently allowed in Belle Isle in single-family zoning districts. The Code also prohibits more than one kitchen in single-family homes.

The Board discussed the possibility to amend the Code to allow for accessory dwelling units so that families may be able to care for family members in need in their own homes, while still maintaining some level of independence.

For the Board's review and discussion, attached is an example of accessory dwelling unit code language from the City of Miramar, Florida. Also included is an article regarding the use of accessory dwelling units as a growth management tool.

Staff is seeking direction from the Board as to whether they would like an ordinance prepared for formal consideration regarding accessory dwelling units.

The specific conditions set out below shall be applied to each proposed use during site plan and/or conditional use review (if applicable).

405.1.1 Types. An Accessory Dwelling Unit (ADUs) is an ancillary or secondary living unit, that has a separate kitchen, bathroom(s), and sleeping area(s), existing either within the same structure, or on the same lot, as the primary dwelling unit.

405.1.2 Where Permitted. ADUs are allowed as an accessory use to a single-family detached dwelling, as per TABLE 402-1, Principal Use Table for Single-family and Multi-family zoning Districts, and providing that such structure meets the development and use standards as follows, and all other applicable standards of this Land Development Code, as amended from time to time.

405.1.3 Use. An ADU may be rented, or may be utilized by family members, guests and/or persons employed on site by the resident family of the principal dwelling;

405.1.4 Utilities. The ADU must share utilities with the primary residence and separate utility meters are not permitted.

405.1.5 Affidavit. The owner(s) of the parcel shall provide an affidavit attesting that the ADU will be in compliance with all applicable requirements of the City Code of Ordinances, the minimum housing standards of the Broward County Code of Ordinances, as well as the provision of Section 163.31771, FS, as amended from time to time.

405.1.6 Development Standards.

- (a) *Number.* No lot shall contain more than one accessory dwelling unit.
- (b) *Location.* Any proposed detached ADU must be located to the side or rear of the primary dwelling, to the best extent physically possible.
- (c) *Square Footage.* An ADU must not exceed 50% of the total square footage of the primary dwelling unit including unairconditioned areas, but in no case be greater than 1,200 square feet and in no case shall be less than 300 square feet in area.
- (d) *Plot Coverage.* Where applicable, any proposed ADU shall be within the plot coverage requirement of the zoning district where it is located.
- (e) *Height.* The maximum height of an ADU shall be two (2) stories. In no event, shall the height of the ADU exceed that of the primary dwelling.
- (f) *Architecture.* An ADU shall be architecturally compatible with the primary dwelling.
- (g) *Parking.* One (1) off-street parking space must be provided for a proposed ADU with two (2) sleeping areas or less. Two (2) off-street parking spaces must be provided for a proposed ADU with more than two (2) sleeping areas.
- (h) *Setbacks.*
 - Any proposed attached ADU shall be subject to the same front, side, side street and rear setbacks as the primary dwelling.
 - Any proposed detached ADU shall be subject to the following setback requirements:
 - Side and side street setbacks: same as the primary dwelling
 - Rear setback (detached): 10 feet for a one-story structure, and 15 feet for a two-story structure.
- (i) *Entrances.* An attached ADU may either share a common entrance with the primary dwelling unit and/or use a separate entrance, which shall be located only to the side or rear. A separate front entrance for an attached ADU shall be prohibited unless it is located within a personal courtyard area not visible from the right-of-way

- (j) *Easements.* Shall be located outside any dedicated easements. This may include but is not limited to a Lake Ma c. Easement, Drainage Easement, Utility Easement, and Landscape Easement.
- (k) *Nonconformity.* In no event shall the establishment of an ADU create a new nonconformity or expand an existing nonconformity. Conversion of detached garages or other accessory buildings and structures for the purpose of creating an accessory dwelling unit shall be permitted only if the newly created dwelling unit is permitted and all code requirements are satisfied.
- (l) *Impact Fees.* Impact fees shall be assessed for the police and fire protection, water and sewer capacity, and park and recreation fees that are created by the additional unit.

405.2. Adult Entertainment Uses and Establishments.

405.2.1. Intent. This subsection shall be liberally construed to accomplish its purpose to regulate and provide proper and adequate locations that would be compatible for proposed adult entertainment uses and establishments while keeping consistent with the city's comprehensive plan and vision. Adult entertainment uses as defined in section 201 shall be a permitted use within the PID district, subject to distance separation requirements as noted below.

It is the intent of the city commission, in adopting this subsection, to establish reasonable and uniform regulations that will reduce the adverse secondary effects that adult entertainment establishments have upon the residents of the city and protect the health, safety, aesthetics, morals and general welfare of the people of the city. It is further intended to provide for the proper location of adult entertainment uses in the city; to require a separation between such uses to avoid clustering; and to require separation from and thereby protect the integrity of incompatible uses in nearby neighborhoods, including residences, schools, places of worship, public parks and other commercial enterprises. Proper separation of adult entertainment uses prevents the creation of skid row areas in the city, which otherwise result from the concentration of these establishments and their patrons. This subsection has neither the purpose, nor the effect, of limiting or restricting access by adults to sexually-oriented, non-obscene materials protected by the First Amendment to the U.S. Constitution, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is instead the intent to limit the secondary effects of regulated uses through content-neutral regulation as set out in this subsection. Furthermore, the commission has found that the location of residential uses within viable, un-blighted and desirable areas supports the preservation of property values and promotes the health, safety, aesthetics, and welfare of the city and the public at large.

405.2.2. Conflicts with Other Laws. Whenever the regulations and requirements are in conflict or at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances or laws, the most restrictive shall apply.

405.2.3. Penalty for Violation of Subsection. Any person violating the provisions shall, upon conviction by a court of competent jurisdiction of any offense involving moral turpitude in connection with the operation of such adult entertainment establishment, be subject to the penalties of the LDC, city code, or by any other means authorized by law including, but not limited to, the revocation of a zoning certificate of use. The city code compliance officer shall immediately issue a written notice of intent to revoke the local business licenses and permits.

405.2.4. District and Distance Separation Regulations. See Tables 405-1 and 405-2.

TABLE 405-1
DISTRICT REGULATIONS*.

District Type	
All Residential Zoning Districts as described in section 401.1	Not Permitted

Accessory Dwelling Units:

A Smart Growth Tool for Providing Affordable Housing

By Jaimie Ross, President & CEO of the Florida Housing Coalition

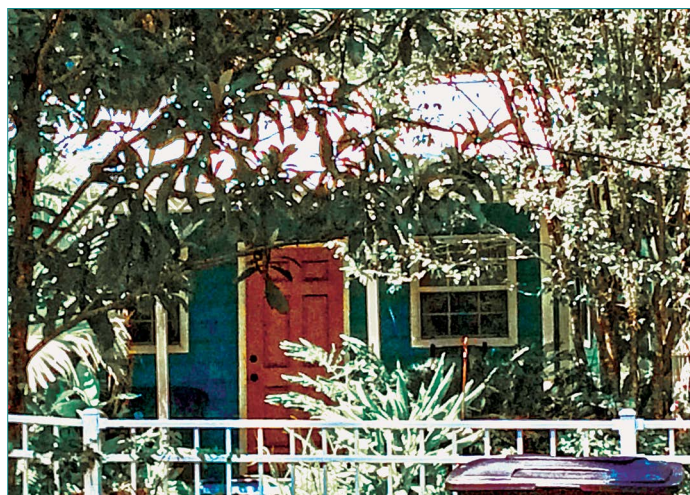
An accessory dwelling unit (ADU) is a residential unit that is secondary to the primary residence of the homeowner. It can be an apartment within the primary residence or it can be an attached or freestanding home on the same lot as the primary residence. The concept of an accessory dwelling unit is to have an additional complete residence, meaning a place for sleeping, bathing, and eating independent of the primary home. An ADU is a tool for providing affordable rental housing and promoting smart growth. These smaller housing units are typically infill units built where there is existing infrastructure, making greater use of the already developed land.

The Value of an Accessory Dwelling Unit

An accessory dwelling unit creates affordable housing in two ways: the secondary (accessory) dwelling is a small rental unit that will ordinarily rent at a price within the means of lower income persons; at the same time, the rental income from the accessory dwelling unit can render the primary residence more affordable by virtue of the income it generates for the resident owner of the primary residence.

Ordinarily, the accessory dwelling unit is smaller than the primary residence of the homeowner. But, if permitted by the local government, the owner may choose to live in the smaller unit and rent out what was the primary residence. At first blush this arrangement may seem odd, but in the case of a family that now has a single elderly member living on a fixed income, this arrangement can provide the perfect affordable living solution; a more appropriately sized living space and a higher rental income.

AARP engaged the American Planning Association (see resources sidebar on page 20) to develop a model state act and local ordinance as a resource for meeting the affordable needs of elder Americans. ADUs are particularly well suited for lower income elderly because in addition to increasing affordability, the elderly homeowner may also obtain companionship and needed services from the tenant in the ADU. The use of ADUs can assist the elderly to “age in place”. An example of this cited in the Public Policy Institute publication is from Daly City, California:



This cottage is an example of a detached accessory dwelling unit built in the side/backyard with roof lines, colors, and architectural design that matches the larger primary home.



“One homeowner with Alzheimer’s was able to trade ADU quarters for medical services from an ADU tenant, a nurse, who was also delighted by the arrangements.”

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars. Removing the land use barriers which prevent accessory dwelling units from being built may be all that local government needs to do for affordable accessory dwelling units to be built. This is an example of how regulatory reform can increase the supply of affordable housing.

However, if the purpose in permitting accessory dwelling units is to increase the supply of affordable housing, local governments need to be thoughtful about the manner in which ADUs are permitted. Without conditions placed upon the use of ADUs, the garage apartment in an expensive or desirable area could end up an “illegal use” such as a Bed and Breakfast. If local governments want to encourage the production of ADUs for affordable housing, a loan program to assist the homeowner in developing the unit is an effective way of providing an incentive for development together with an assurance of affordability through a recorded land use restriction agreement made in conjunction with the loan.

Obstacles to Accessory Dwelling Units

Traditional “Euclidian” zoning separates land uses in a way that prohibits more than one single residence on a platted lot, regardless of the acreage. If two or more residences are situated on a single lot, they would need to be in a more intensive residential zone, such as one that permits duplexes or multi-family housing.

Some single family zoning may permit an accessory dwelling unit, but require that special circumstances be shown to warrant the use, such as a unit limited to use as a “granny

flat” or “mother-in law” suite to accommodate immediate family members. The local zoning code may also limit the accessory dwelling use by proscribing separate metering of the accessory dwelling unit. In short, there may be a number of land use regulations to overcome. Another obstacle to ADUs may be neighborhood or community resistance. The owners of single family homes may object to having renters in their neighborhood; they may fear increased traffic and parking, or perceive a threat to their property value.

Promotion of ADUs as an Affordable Housing Strategy

When the SHIP Legislation was adopted in 1992*, included in the list of regulatory reform items for consideration by all SHIP jurisdictions (all counties and entitlement cities in Florida), was permitting accessory dwelling units in all residential areas. Most jurisdictions did not opt to include this incentive, but a number of jurisdictions in Florida do make some provision for accessory dwelling units.

In 2004, Chapter 163 Florida Statutes, was amended to include Section 163.31771 entitled “Accessory dwelling units.” The law encourages local governments in Florida, especially those in urban areas, to permit accessory dwelling units in all areas zoned for single-

family residential use. The purpose of this legislation is to increase the production of affordable rental housing. To that end, the statute provides that “an application to construct an accessory dwelling unit must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to extremely low income, very low income, low income or moderate income person or persons.” The statute also states that each affordable accessory dwelling unit shall apply toward satisfying the affordable housing component of the housing element in the local government’s comprehensive plan. Local governments in Florida are, of course, empowered to permit accessory dwelling units without this statute, but the statute brings this underutilized tool to the fore and makes

Permitting accessory dwelling units is a way for government to create an environment in which the private sector can produce affordable housing, without having to invest public dollars.

explicit the connection to local government comprehensive planning obligations.

Considerations for ADU Ordinances

Accessory dwelling units could be permitted without adoption of a separate ordinance by simply having accessory dwelling units enumerated as a permitted use within the single family residential use category. It is unlikely, however, that this will be the chosen vehicle, as it fails to provide the parameters for the development and use of accessory dwelling units, which are key to successfully balancing the production of affordable rental housing with the concerns of the existing single family homeowners.

Virtually all ADU ordinances require that the owner reside in either the primary or the secondary unit. But there are a number of issues that can be decided differently depending upon community needs. All programs for the development of ADUs should consider the following:



This is an example of an attached accessory apartment in the back of this single family home. Neither the accessory apartment or the off-street parking are visible from the front of the house.

- **Conditional use or “by right”** – If the ADU is a conditional use, a public hearing would be required – this makes the process more difficult for the applicant, but provides a forum for input from the neighborhood. If the ADU is “by right” it is a permitted use and, provided the application meets the requirements in the ordinance, it will be approved administratively, without public hearing.
- **Permitting process** – To encourage the development of ADUs, local government can create a user friendly process for construction which includes expedited processing (a requirement under the SHIP program), a manual to help the homeowner, and a staff person charged with overseeing the program.

- **Size regulations** – ADU ordinances commonly have a minimum lot size for the total parcel and a maximum ADU size. The goal is to maintain the aesthetic integrity of the single family neighborhood. Performance standards rather than arbitrary size limitations may better address neighborhood concerns.
- **Design requirements** – To ensure compatibility and maintain the aesthetic character of the neighborhood, an ADU ordinance may set forth minimum design standards and have architectural review requirements.
- **Parking requirements** – To avoid parking problems in an urban area, the ordinance may require that there be sufficient on-street parking or off-street parking, or may require that parking be at the back of the residence.

- **Type of unit** – Different considerations may apply if the ADUs are within the primary residence, such as a basement apartment; attached to the primary residence, such as a garage apartment; or detached from the primary residence, such as a cottage.

- **Occupancy restrictions** – Some ordinances may prescribe the maximum number of people who can live in the ADU or the type of renters, such as limiting the rental to relatives or the elderly.
- **Incentives to produce ADUs** – Loans for the production of the ADU may make it easier to monitor for affordability and assist the local government in directing applicants on its rental waiting lists to affordable ADUs.
- **Monitoring** – Some ADU programs have an annual affidavit requirement or other means for monitoring whether the ADU continues to be used in accordance with the local ADU requirements.



ADUs do not have to be an afterthought. New construction of single-family homes could also include construction of an ADU. "Carriage houses" accessible from alleys are commonly found in the "New Urbanism" or Traditional Neighborhood Design. But without an ADU ordinance requirement that these units be affordable, the carriage houses in this "new urbanism" community exceed affordable rents, as the desirability of the traditional neighborhood design development drives housing prices out of the affordable range.

One of the keys to a successful program is the information and technical assistance provided to the community and the prospective developer/owner of an ADU. To ensure the success of its program, Montgomery County, Maryland has a guidebook to assist applicants through the permitting process for accessory apartments. The County also assists the applicant by having a staff person assigned to help applicants through the process.

In 2004, the Environmental Protection Agency gave the city of Santa Cruz California the National Award for Smart Growth Achievement for its Accessory Dwelling Unit Policies and Regulations, which includes a manual for developing ADUs, including architectural designs. You can access the Santa Cruz manual and ADU prototypes on line at: <http://www.cityofsantacruz.com/home/showdocument?id=8875>

If your local government would like technical assistance to help develop an accessory dwelling unit ordinance or navigate the issues to be addressed with accessory dwelling unit ordinances, contact the Florida Housing Coalition at (850) 878-4219, or Jaimie Ross at ross@flhousing.org HNN

*Florida Statute 420.9076 (4) "At a minimum, each advisory committee shall make recommendations on affordable housing incentives in the following areas: (e) the allowance of affordable accessory residential unit in residential zoning districts.



JAIMIE ROSS

Jaimie A. Ross is the President & CEO of the Florida Housing Coalition. Ms. Ross served as the Affordable Housing Director at 1000 Friends of Florida, a statewide nonprofit smart growth organization, from 1991-2015. Prior to her tenure at 1000 Friends of Florida, Ross was a land use and real property lawyer representing for profit and nonprofit developers and financial institutions with a law firm in Orlando. Nationally, she serves on the Boards of Grounded Solutions Network and the Innovative Housing Institute. Ross is the past Chair of the Affordable Housing Committee of the Real Property Probate & Trust Law Section of the Florida Bar.

Resources for ADU Models

"Accessory Dwelling Units: Model State Act and Local Ordinance," Public Policy Institute, Rodney L. Cobb & Scott Dvorak, American Planning Association
http://assets.aarp.org/rgcenter/consume/d17158_dwelling.pdf

Examples:

Massachusetts Smart Growth Toolkit Bylaws
<http://www.horsleywitten.com/services/planning/smart-growth-low-impact-development/>

Santa Cruz California ADU Manual
<http://www.cityofsantacruz.com/home/showdocument?id=8875>

State of Georgia (Department of Community Affairs)
http://www.dca.state.ga.us/intra_nonpub/Toolkit/ModelOrdinances/TND_ModOrd.pdf

Municipal Research & Service Center of Washington "Accessory Dwelling Units Issues and Options"
<http://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/ADU30.pdf.aspx>

Vermont "Accessory Dwelling Units: A Guide for Homeowners"
http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/2013Edition_Accessory_Apts_Brochure.pdf

Accessory Dwelling Units: Model State Act and Local Ordinance
<http://www.docdatabase.net/more-accessory-dwelling-units-model-state-act-and-local-ordinance-577683.html>

Accessory Dwelling Units Report to the Florida Legislature
http://landuselaw.wustl.edu/Articles/ADU_Report.pdf

City of Santa Cruz Accessory Dwelling Unit Development Program
<http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>