

In 2010 it became clear that owners of the residents of 404 Butler Avenue units 412, 425, 435, and 445 have been financially harmed by decisions made by a previous Council. Check out the details below.

November 15, 2010 Planning Commission Meeting

Chair Jay Burke opened a Public Hearing for a Zoning Variance request for 404 Butler Avenue, units 415, 425, 435, and 445; PINs 4-0004-20-051, -056, -061, and -066; Zone C-1. The petitioner was Alex Salgueiro. The request was a front setback variance for existing condominium units. Jonathan Lynn said that the building was originally constructed utilizing the minimum required setbacks for C-1(B), where the uses are hotel and motel, and a setback of 5-feet. He said that the use changed and it was now condominiums and would be subjected to setback requirements of C-1(C) which require a 20-foot front setback. Lynn said the applicant was requesting this be changed from hotel/motel to residential condominiums in order to provide individual ownership for the units, however, in order for us to agree to that and allow them to be referenced as condominiums they had to meet any setbacks that would be required by the definition of condominiums, and that was the reason for the variance request. He said that the building was already there and it has been used for quite some time; they are just changing the nature of that building, as opposed to hotel/motel, to condominiums. John Major asked if they were occupied currently as condominiums. Lynn said he did not know; the applicant would need to answer that. Monty Parks asked if it qualified as a mixed use. Lynn said loosely it could, yes. Parks said that if it had been within the setback requirements it could just go from being a hotel/motel to being condos. Lynn said that was correct. Parks asked if that has been done anywhere else. Lynn said he could not think of anywhere but that does not mean that it has not been done. Parks said he was looking for a reference point. Lynn said that if they meet everything else they would not need to come back for any kind of request from Planning Commission, or Mayor and Council. Parks said they were occupied as condos so obviously this has already been done. Major asked how we got here and why this was not done before we changed the designation from hotel/motel. He also asked what if they do not get the variance. Lynn said that we did not change the designation; the owner changed it. He said it was originally approved as a hotel/motel. Major asked how the owner did that without the City's approval. Lynn said that it was still within the C-1 requirements; in terms of how he did it: he just did it, and he was sure he was not alone in doing that. He said that in terms of where we go from here and how we do it, if it does not get approved he was not sure where that leaves the applicant; to us the building is still there whether it is 5-feet or 20-feet it is already in existence. Lynn said that he thinks all they are trying to do is come into conformance with what they consider condominiums in order to do whatever they need to do, he would assume financially, but the applicant would need to address that. Rob Callahan asked Lynn if he was saying there was no City approval required to convert from hotel to condominium. Lynn said that you are still in the same zoning district and if the setbacks were already met, there would not be any requirement. Major said that it was not met. Lynn said that the setbacks are different for C-1(B) and C-1(C). Callahan and Lynn discussed. Demery Bishop asked if you build knowing that you are building a hotel/motel with the 5-foot building setback and the intention is that as soon as it is built it would become condos and there is no City government over that because of zoning, would that not

allow that to be done intentionally, and that would not be policed or regulated. Lynn said he did not have an honest and accurate answer for that. Bishop and Lynn discussed. Mark Crapps with Kern-Coleman Engineering introduced himself and Alex Salgueiro, president of the association at Beachside Colony. Salgueiro said that he owns one of the units. He said that this has been an issue for quite some time. He said that they all bought units thinking they were a legally built condo; they paid a lot of money and they pay a lot of property taxes to the City of Tybee. Salgueiro said there are four units there representing over 2 million dollars that were sold to the owners. He said that it was the biggest and most expensive building on the property. He said that they all went through the process of purchasing the condos, the closings, the closing attorneys; they were not aware of the setback issue. Salgueiro explained that the association asked him to tackle this issue because several owners tried to sell their units and were not able to because of this setback issue. He said that it was brought up by a couple of closing attorneys so the only solution at this point was to come to the City because he investigated through Kern-Coleman, who designed the building for the developer, what the possibilities are. He said that right now the way the City rules are they could rebuild that building if it were to be knocked down, on its current footprint, but if somebody goes to sell one of the units on that end of the building any closing attorney could bring up this setback issue and quash the sale, and it puts those owners at a very huge disadvantage and not of their own doing. Major said that previously under our variance ordinance this would not even have been allowed to come because after-the-fact variances were not permitted. He said that they recently modified that; they put some language in there that said when an after-the-fact variance was brought there were conditions that had to be met or requirements were stipulated. Lynn said such things as the applicant needed to provide a narrative explaining the hardship, who created it, how it was created, when it was created. Major asked if they had all that; he was looking for the when and the how. He asked if these were ever occupied as a hotel/motel. Salgueiro said not to his knowledge. Major asked if they were built as condos. Salgueiro said they were built and rented for a short time and then sold as condos. He said they are all owned as condos now. Major asked if any of it was used as a hotel/motel now. Salgueiro said nothing in that building. He and Major discussed. Parks asked if they were advertised as condos when they were sold. Salgueiro said yes. Parks and Salgueiro discussed. Marianne Bramble asked if it was an auction. Salgueiro said no, these units were bought in the heyday at top dollar. Bishop asked if they were bought from the developer as condos. Salgueiro said yes. He said that every unit in that complex except for the ones the developer retains, which he believes is sixteen units out of ninety-seven, has been sold as a condo. He said they have gone through extensive legal work, have spent many thousands of dollars, to make sure that everyone in that complex right now has a legitimate deed to their condo, and they also own all of the common area property which was also kind of in a fog; the developer tried to claim that he owned it, which, by Georgia law, he did not. Parks asked if this developer was still in town. Salgueiro said yes. He said that one of the buildings was currently being held by the FDIC but the rest of the buildings were owned by individual, tax-paying Tybee citizens and they have been maintaining and improving the complex. Bishop summarized that it was built as hotel/motel under current regulations and sold as condos. Salgueiro spoke of the history of various buildings on the property. Major and Salgueiro discussed. Major asked who the builder was. Salgueiro replied Tommy Clark. Parks asked where it falls under hardship. Lynn said, in his professional opinion, it would be unique physical characteristics of the lot because the number of buildings on the lot exceeds just about anything you will find on the island. Gordon Griffith, owner of unit 435 with his wife, Laura, thanked

Salgueiro for this and for spending thousands of hours on getting the ownership of this condominium back into their control. He said they did not spend thousands of dollars; they spent hundreds of thousands of dollars and he would not bore them with a very unpleasant subject with the individual that they bought these from. He said he hoped they deal with Salgueiro and listen to him. Freda Rutherford said that having lived in a condo association built by Clark's prior engineer her heart goes out to these people. She spoke of having been involved in lawsuits, she threw in the towel and moved, that have been raging for about five years over buildings that came before the Planning Commission's predecessors and City Councils who considered developers their customers. Rutherford spoke about consideration of codes, title insurance lawyers, and end-users. Callahan asked what happens if they do not approve this. Lynn said nothing from our end, he would assume, however, it would fall back to the owner of the property; there would be, it sounded like, some kind of financial burden for them, however to us it would be just a building that was already there, unfortunately, as sad as that sounds. Burke asked if 3 passing this would make the units legal to sell. Lynn said that was his understanding from what he has heard from the applicant and matching up with our Land Development Code. Burke said that he did not see why that would not be a hardship. Lynn said that was why they get the big bucks. Major, Bishop, Bramble, and Parks spoke to the situation. Burke closed the Public Hearing and called for a motion. Bishop motioned to approve. Major seconded the motion. Bramble spoke further about the situation. Voting in favor of the motion to approve were Bishop, Bramble, Callahan, and Major. Parks voted against the motion. The motion to approve passed with a 4-1 vote. City Council would hear the request on December 9.

December 9, 2010 Council Meeting

Variance request, 404 Butler Ave (4-0004-20-051,056,061,066), LDC Section 3- 090, Applicant/Owner: Mr. Alex Salgueiro (on behalf of HOA).

Mayor opened public hearing.

Minutes prepared 1/7/2011vw Page 4 of 8 Mr. Lynn presented the petition for this variance request. He said its current use is condos and the applicant is seeking a front yard variance. He said the petitioner is requesting the variance in order to sell the unit, because the lot line with zero setbacks actually runs through the building eliminating their ability to sell the unit.

Mr. Salgueiro said his extensive research has shown that architect John Kern designed this building and permitted it for Mr. Clark. He said according to Mr. Kern this application was filed as a hotel. He said several people have not been able to sell their units because of the setback line that runs through the building. He said lawyers and realtors have picked up on this and now this building is unsellable. He said the owners have paid over twelve million dollars for these condos and pay a substantial amount of property taxes. He said they feel they have a serious hardship here. Mayor Buelterman asked if this building was built as a hotel. M. Hughes said his understanding is the Gull Reef was built as an extension of the Econo-Lodge, the original hotel on the property. He said this building faces the beach at the corner of Center Street. He said his understanding is this is the building the city was sued over because of granting a height variance in 1994. He said it was 20 units and the building permit was applied for on December 17, 1998. He said the variance that was ultimately granted was on June 20, 1994 and the city took the position that the variance had expired because it was not acted upon for over a year and the court ruled that the title had vested and they were entitled to build. He said several things trouble him about the petition that was filed and they might be comparing apples to oranges with comparing the Beach House with Gull Reef. He said he would be glad to

meet with their attorneys and straighten it out. He said this request is to record a plat that supersedes several earlier plats that affect more than just this building. He said he is very uncomfortable with trying to do that and in fact is not sure you can without the participation of the other people whether their property is impacted or not. He said he wouldn't want council to act on this petition and eliminate the opportunity for the petitioner to be able to reapply, if it turns out their right and this is the only solution. Mayor Buelterman said it doesn't necessarily behoove the petitioners to continue to have this hearing. He said our attorney will meet with you and make sure any issues are ironed out and if you need to come back for this variance, you would be allowed to. Speaking in favor of the petition was Harold Sims, Bob Wiggins. Bill Ulmer Mr. Hughes said he would welcome any documents from a bank or lawyer indicating why one of these couldn't sell because obviously that reason didn't exist when they bought theirs. He said he would also like to see something from a banker stating that if a variance is granted the property is sellable and wouldn't be a problem. Mayor closed public hearing.

Paul Wolff moved to continue to 2nd meeting in January, in order to give attorney time to research the documentation during construction of this building and come back with recommendation. Bill Garbett seconded. The vote was unanimous.

February 24, 2011 Council Meeting

Public Hearings – Zoning Packet Separate Variance Request: Beach Hotel at Beachside Colony. Mayor Buelterman asked Mr. Hughes to explain the resolution. Mr. Hughes said that two months ago there was a public hearing

Final Minutes, City Council Meeting, 02242011 regarding a variance request concerning one of the structures at the Beach Dune House. One of the problems they have is related to title issues because the structure is presently non-conforming because when it was applied to be built there were no setbacks in c C-1 zone for any structure. This one was built in to what would now be a side yard setback. The plat that was submitted at that time was of the entire project/development and it involved the corner of one building. It turns out it was applied to be built in accordance with the existing regulations. It has an encroachment on a side yard setback. Being in a C-1 zone the side yard of Center Street. The plat was presented before it was as if the set back being twenty (20) feet which was in error then and it should have been five (5) on the side yard. They have now presented a plat for that structure only and requesting a variance to alleviate the problems they are having with financing and titling issues. If the unit was to be destroyed it could not be rebuilt except with the conformity of the regulations with some sort of relief.

Mr. Hughes received a letter from an attorney who pointed out the title issues at a closing. Mayor Buelterman asked what exactly what were the concerns. Mr. Hughes explained due to the way the setback is depicted on the plat, if the structure was destroyed and a permit was not reapplied for within the six (6) months permitted under the current ordinance, it could not be rebuilt in its current footprint. It would have to be moved to meet the setbacks. Mayor Buelterman asked if this was not true with all the non- conforming structures. Mr. Hughes stated yes it applied to all non-conforming structures without a variance. If a variance is granted before or after the fact, it would no longer be considered non-conforming use. This is a unique situation as it was developed in stages. This property is not an unlawful use. The problem being if it were to be destroyed the obligations on applying to rebuild within a limited amount of time have created concerns from title companies. Mayor Buelterman asked Mr. Hughes to confirm his proposal which would be to grant the variance. Mr. Hughes said it would give them the relief they are seeking. They would also need to fix the plat showing the 3.5ft side setback. Mr. Robert McCorkle, attorney representing Beachside Colony Condominium Association

and their owners, discussed the main concern is their ability to recover from a disaster, apply and obtain a permit with six (6) months from date of tragedy. Mr. Hughes interjected that according to the city's Land Develop Code, a building permit to initiate restoration must be obtained within six (6) months provided further that mayor and council may provide an extension. The question for the council Mr. McCorkle stated is the physical circumstance and conditions of this building make it suffer a unique hardship? This building is built on a 0 lot line which was approved at the time. It is a condominium, it is a four story condominium, so whether the line is 20ft or 5ft is irrelevant to the issue that four units actually crossover this setback line. If the building were to come down and could not be rebuilt, you would have four owners who paid a collectively \$2,063,000.00 for the units would lose their homes. All these units are long thin units, front on the beach and stacked on top of each other, lot line to lot line. If the lot line comes in, these units cannot be rebuilt on that lot. The four units disappear. That is where the title issue has become. The title problems are unique to the individual owner. The Association does not own building; there are 97 owners of Beachside Colony. They own the building collectively with the exception of

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the individual owners. By Georgia law the owners and association are required by law to rebuild the building exactly as it existed when it was originally built. Under the current circumstances they could not do that. Mayor Buelterman asked Mr. McCorkle if a variance were granted would this resolve the issues relative to the closing attorney issues. He believes it would. What they have asked to do is have a plat relative to a subdivision plat. They are working on a cleaner plat so the city would not be approving everything that is on the plat. Mr. McCorkle has reduced the plat showing setback variances approved where the building is sitting. He is not asking that it apply to the entire lot, just to where the building is currently sitting. Mayor Buelterman confirmed that the variance would be 8.5ft off center. The total setback would be 10ft and the variance would be 8.5ft. on the side. This is the only variance that is being requested. **The only reason Mr. McCorkle is requesting that it be recorded is for refinancing and for those who have not been able to sell their units. His underwriters will issue title insurance but will accept specifically out the setbacks, being a catch 22 for the owner. If they record a record and it is signed, in his opinion it is no longer a pre-existing non-conforming use, it will have a 1.5ft set back from that point forward.** Wanda Doyle thanked Mr. Hughes for his hard work researching this issue and reaching an agreement for the variance. Mr. Hughes asked Mr. McCorkle if the council were to grant this variance as requested, does the physical structure occupy the entire lot. Mr. McCorkle confirmed, as it currently exists the physical structure occupies the entire width of the lot, i.e., the north/south view. Mr. Hughes asked if they received a variance on the southern boundary is there an issue with the northern boundary. If this is the case, we need to take care of everything now. He then asked if the ordinance on non-confirming uses was changed, as opposed as to this being done as a variance, would this change the title insurance issues? Mr. McCorkle feels you would still have the potential problems. Kathryn Williams asked that Mr. Hughes to revisit Article III at the upcoming workshop. She feels that we need to look at the language referencing the six (6) month permitting process and include something to reflect that if city hall was incapacitated or non-operational they would get an automatic extension in the permitting process. Paul Wolff has the same issues that Mr. Hughes that if, based upon the rules of the condo association, the property line is now the perimeter of the building. This is also the property line that the city recognizes based upon the plat. The plat needs to be redrawn with the property line extended the 10ft to the north so there would be a built in side setback on the northern edge. Mayor Buelterman stated that the simple solution would be to grant the variance and in the future look at the non-confirming issues. This would give the residents relief. Mr. Hughes confirmed that the variance would be 8.5ft on the southern boundary.

Mr. Robert Wiggins, a resident of one of the condos in question, explained that he sold his property for

\$455,000 last year and the individual that purchased it cannot get a clear title. He asked for relief.

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Frank Schuman moved to approve the 8.5ft side setback variance on the south side of the property.

Wanda Doyle seconded. The vote was unanimous.

How Did this Happen? Check the Facts Below.

Minutes from 1999 Council Meeting

The Site Plan Review for a hotel at 406 Butler Avenue PIN 4-4-20-18 for Tommy Clark, Jr. has been postponed at Mr. Clark's request until further engineering study can be completed. Hughes said that this needs to be readvertised. Byers said that it has been set for the next meeting. It was the consensus of Council to postpone. Youmans disagreed.

Youmans moved to approve the site plan review for the extension to existing motel by Tommy Clark at 404 Butler Avenue.

Anderson seconded. Monaghan said that she still has great concern on the size of the units and its looks a lot like condos. Monaghan mentioned some type of covenants to state that they will never be sold as condos. Hughes said that condos would not meet the setback requirements. Hosti said that Clark would have to come back before Council in order to subdivide the property. Youmans stated that more and more motels are going into having suites. Monaghan said that the City needs to protect itself. Pearce said that he will vote against the project and hopes that it will be sent back to the Planning Commission. Parker asked Byers if Council had everything it needs in order to vote. Byers said that the drainage will come back before Council after the Planning Commission has seen it. Council vote was 3 in favor to approve Youmans, Anderson, and Hosti); 3 opposed (Merves, Monaghan, and Pearce). **Mayor broke tie by voting against approval.** Monaghan moved to send back to Planning Commission. Pearce seconded. Vote by Council was 4 in favor (Merves, Monaghan, Hosti and Pearce); 2 opposed (Anderson and Youmans).

Mr. Tommy Clark presented Council with his petition for extension to existing motel at 404 Butler Avenue PIN 4-4-20-1. Clark said that when he came before the Planning Commission that he did not have all the information required. Mahoney said that there was a question at the Planning Commission meeting about commercial abutting residential district. Mahoney said that this project does not abut residential because residential is across the street. Mahoney said that Planning Commission approved the concept and that Clark will have to come back before Council for approval of building plans and drainage. Monaghan said that she just got the information today and what are the sizes of the suites? Clark answered that they were 9,000 square feet to 11,000 square feet, some with one bedroom and some with two bedrooms. Youmans asked if these suites will be for sale? Clark answered no. Mahoney said that these would be rental units and not for sale to the public. Monaghan asked if there were any plan in the future to turn them into condos. Mahoney said that it would have to come back before Council. Sissy Ward asked if this would do anything to the Center Street access to the beach. Parker answered no. A lady from Center Street complained about the noise from the carnival. Parker asked if she had called the police at the time. Gordon Marrow said that some problem

come with the territory when you purchased the land you knew it was commercial across the street. Marrow said that he does not see any reasons why these people can not develop the property. Kathryn Williams told Council to take into consideration that they might try to pull something over on them. Levy said that the Planning Commission voted 5 to 2 to table until all the correct information is presented to them. Levy said that there was erroneous information from the Zoning Administrator. Jeanne Hutton said that on the forms they were 32 pieces of information missing and this why we called it a rush to get approved. Parker asked why there were no complete plans for review. Clark said that he had a lot of questions before he spent the money for plans. Julian Toperek and Angel Schroeder opposed the project.

Minutes from 2001

Mr. Tom Olsen presented Council with a petition from **Tommy Clark** for a 27 condo unit **site plan Phase III at 404 Butler Avenue PIN 4-4-20-1**. Olsen said that this is for concept approval, everything meets all ordinances, all setbacks without requesting any variances, and the 65% green space required is in the addressed in the setbacks. Parking is adequate, 216 to meet the ordinances. This will be a 4-story structure and there will be 27 condos verses the 56 motel rooms at present. O' Brien questioned Phase II hotel suites asking if there is adequate parking. Olsen answered yes. O' Brien said Council learned that the hotel suites had been changed to condo, but the suites were approved by Council not the condos. O' Brien stated that she would not entertain any new construction until Phase II is in compliance with codes and ordinances. Sessions agreed. O' Brien said a buffer is needed between residential and commercial. Clark answered the parking and buffer concerns. Clark said that H. G. B. & DeY have approved all the drawings. Bargeron told Council that McAfee had the City go all over the site and all findings were in a red notebook that is no longer in McAfee's old office. O' Brien moved to **table decision on Phase III**. Pearce seconded. Vote by Council was **4 in favor** (Burke, Sessions, O' Brien and Pearce); 1 opposed (Youmans).

O' Brien questioned the **Tommy Clark project**, Hughes did not have the authority to write the letter concerning changing from hotel suites to condos. Hughes explained that his letter did not change the type of construction passed by Council. Parker asked if we had all the information on the project. McAfee answered yes. O' Brien asked about the green space – 65%. McAfee said they have a landscape plan. O' Brien asked about the stormwater plan.

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McAfee answered we have a report from H, G, B & DeY, plus a letter from DOT. Parker said that **all information should be ready for inspection by Tuesday, July 17th**. Burke asked about the grinder pump. O' Brien stated that Clark's lawyer any changes and they would come back before Council. Sessions asked about the parking – the actual plan. McAfee answered yes. Sessions said so it has 2 spaces for each unit. McAfee said that they do meet space requirement for the new construction but not for the other businesses. They need 180 for total, they are shy 33 spaces, and they have exemption for off street parking. O' Brien said it was brought to her attention that **a couple of units are being used for offices**. McAfee said no. **Cannon will check** on business licenses. O' Brien said she would like a written response within a week.

How did the Planning Commission vote on this issue?

Minutes from 2002

Smith presented the **Site Plan** from Tommy **Clark** for 36 condominium units at **404 Butler Avenue** - PIN 4-4-20-1. The Planning commission voted 5 in favor to approve and 3 Council Minutes against. Smith said that this request came with a height variance also, but Clark withdrew that request. Smith told Council that the engineers have reviewed and approved the plan. Tom Olsen said that there will be only 33 condo units and they will stay within the height limit, these condos will be replacing the existing Econo Lodge. Pam O' Brien spoke of her concerns and asked Council to table any consideration at this time. O' Brien gave the history of Phase I and Phase II. Attorney Mahoney said for the better part of 2 years there has been weekly meetings and that the City has received documents that the former Council and the former City Manager requested from Mr. Clark. All issues have been addressed and approved.