

MINUTES OF THE WORKSHOP MEETING OF THE APALACHICOLA CITY COMMISSION
HELD WEDNESDAY, FEBRUARY 23, 2022, 4:00 PM AT THE APALACHICOLA COMMUNITY
CENTER.

PRESENT: Mayor Brenda Ash
Commissioner Despina George
Commissioner Adriane Elliott
Commissioner Donna Duncan
ABSENT: Commissioner Anita Grove

Travis Wade, City Manager
Deborah Guillotte, City Clerk
Dan Hartman, Attorney

CALL TO ORDER

Mayor Brenda Ash called the meeting to order.

AGENDA ADOPTION

Commissioner Despina George made a motion to adopt the Agenda. Commissioner Adriane Elliott seconded with discussion, asking that we add Public Comment.

Commissioner Despina George amended her motion to adopt the Agenda, adding Public Comments. Commissioner Elliott seconded and the motion carried 4-0.

CITY OF APALACHICOLA - BUILDING HEIGHT DISCUSSION - SEE ORDINANCE 2017-04

Attorney Dan Hartman reviewed the building height currently regulated by Ordinance 2017-04, with the building height of 35 feet. Attorney Hartman stated that some citizens would like to have a referendum or other options to strengthen our building height, so buildings cannot be more than 35 feet. Attorney Hartman reviewed options consisting of the following: 1) referendum to amend the Charter, and 2) strengthening the existing Ordinance by adding language with regard to voting requirements/technical language, or 3) a variance. Attorney Hartman reviewed the referendum process, and making changes to the existing Ordinance.

Commissioner comments consisted of the following: 1) keeping the building height at 35 feet and putting before a referendum by the citizens; 2) the best way of strengthening the height limit at 35 feet; and 3) Board of Adjustment - variance process.

PUBLIC COMMENT

Public comments consisted of the following: 1) placing the 35 feet building height before a referendum of the citizens by vote; 2) maintain and enhance/strengthen current City Ordinance 2017-04. See Attachment “A”

Attorney Hartman asked that citizens having any suggestions, please get these to Mr. Wade.

The Commission requested that Attorney Hartman research the pros and cons of a referendum verses strengthening the current Ordinance.

ADJOURNMENT

Commissioner Elliott made a motion to adjourn the meeting. Commissioner George seconded and the motion carried 4-0.

Brenda Ash, Mayor

Deborah Guillotte, City Clerk

Historic Apalachicola Partnerships for Preservation, Inc. (HAPPI)
P.O. Box 965
Apalachicola, Florida 32329

February 21, 2022

Dear Commissioners,

I regret that I cannot attend the Wednesday workshop on February 23rd, but, on behalf of HAPPI, I do want to share with you HAPPI's position about a referendum on the City's building height limit. As we understand it, the proposal is to have a referendum on whether to amend the City's charter to include a building height limit of 35 feet, so that another referendum would be required to change the building height. The purpose of this would be to preserve Apalachicola's current visual landscape.

While HAPPI completely supports the effort to preserve Apalachicola's visual landscape, we believe a different mechanism would provide more protection for the 35-foot height limit than the referendum process. At the present time the height limit is part of the City's Land Development Code, generally applicable throughout the city. The only alternative for a person or entity seeking to exceed the building limit is to apply to the Board of Adjustment for a variance. The City's law, which is consistent and reinforced by a long line of judicial case law, is that a variance can only be granted when the applicant documents a hardship, not caused by the applicant, such that there would be no reasonable use for the property without the variance. In addition, a variance must have four votes, not a simple majority, to be granted. A decision granting a variance by the Board of Adjustment can be appealed to the City Commission. By a simple majority, the Commission may reverse the grant of a variance; but to affirm the variance again requires four votes. Either the applicant or the opponents of a variance can then appeal to the court system, where judicial case law is very firm that an actual hardship must be shown to receive a variance, and any variance granted must be tailored to no more than necessary to permit a reasonable use of the property. Thus, granting a variance in one case based on a showing of hardship does not create any precedential value for granting a variance where hardship cannot be proved. For these reasons, the present system works well to enforce the current height limit.

We do not believe a referendum approach would preserve the same level of protection for the prevailing height limit. If the 35-foot height limit was changed by referendum, the new height limit would be available across the board to all property owners, without any showing of hardship.

We also have a concern that a referendum process is more susceptible to the use of misleading information. The most likely scenario is that the proponent of an increase in the height limit is

a well-financed developer who would have the means and inclination to spend substantial amounts of money to convince the voters to change the height limit, and there would be an opportunity to gain an advantage through misleading information. The opponents of changing the height limit would most likely be diverse citizen groups who do not have access to fund a public awareness campaign to the extent a well-financed developer would.

If the goal is to make it harder to change the current height limit, the better approach would be to add an ordinance that would require four votes, rather than a simple majority, to change the height limit through the ordinance adoption process. The ordinance adoption process would require staff to at least factually determine the likely consequence of changing the building height, and would, to some degree, blunt the inequality of resources between those seeking the change and those opposing it.

Regardless of what method is chosen to make it harder to change the height limit, in the end, preservation of the visual landscape is always going to require vigilance and engagement by the public and elected officials. We don't believe there is any method that would allow the public to feel that the height issue is permanently put to rest. What we can do is emphasize transparency, accurate information, and thoughtfulness.

Finally, we would like to point out that the height limit is not the only element that protects Apalachicola's visual landscape. The City's historic plat, the streets, squares, and alleys are also critical components that are equally deserving of a heightened level of protection. The Commission should develop an ordinance that comprehensively protects all the elements of the City's visual landscape from unwanted change.

Sincerely,
Bonnie Davis
HAPPI
Apalachicola, Florida