



**REGULAR MEETING OF
THE PLANNING AND ZONING BOARD
MINUTES**

Monday, August 7, 2017

7:00 PM

City of Margate
Municipal Building

City Commission

Mayor Tommy Ruzzano
Vice Mayor Arlene R. Schwartz
Anthony N. Caggiano
Lesa Peerman
Joanne Simone

Interim City Manager

Samuel A. May

City Attorney

Douglas R. Gonzales

City Clerk

Joseph J. Kavanagh

PRESENT:

Todd E. Angier, Chair
Phil Hylander, Vice Chair
Antonio Arserio
August Mangeney
Richard Zucchini

ALSO PRESENT:

Douglas Gonzalez, City Attorney
Reddy Chitepu, Acting Director of Economic Development and Director of D.E.E.S
Andrew Pinney, Associate Planner
Andy Dietz, Associate Planner

The regular meeting of the Planning and Zoning Board of the City of Margate, having been properly noticed, was called to order by Chair Todd Angier at 7:00 p.m. on Monday, August 7, 2017. A roll call of the Board members was done followed by the Pledge of Allegiance.

1A) APPROVAL OF THE MINUTES FROM THE PLANNING AND ZONING BOARD MEETING ON JULY 11, 2017

Mr. Arserio made the following motion, seconded by Mr. Hylander:

MOTION: TO APPROVE THE MEETING MINUTES FOR JULY 11, 2017

Mr. Mangeney advised that his name was misspelled in several instances. Rita Rodi said the minutes would be corrected to reflect the misspellings of his name.

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes; Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 5-0 vote.

Economic Development Department

5790 Margate Boulevard, Margate, FL 33063 • Phone: (954) 935-5330 • Fax: (954) 935-5304
www.margatefl.com • edevdirector@margatefl.com

2) **NEW BUSINESS**

- 2A) **PZ-15-17** CONSIDERATION OF A TEXT AMENDMENT TO ALLOW DRIVE-THRU FACILITIES IN THE B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT
PETITIONER: STEVEN WHERRY, ESQ., GREENSPOON MARDER, P.A., FOR ROYAL PALM PLAZA INVESTMENT, LLC.

Andrew Pinney led with a PowerPoint presentation and advised that the text amendment to the B-1 zoning district was being requested by the property owner. He showed an aerial view of the subject property. He explained that the text amendment was to add "drive-thru facilities" as a special exception use. He said it was common in most of the other commercial zoning districts, i.e., B-2, B-3, TOC-Corridor, and the TOC-Gateway. He said the wording for the requested text amendment was submitted as, "drive-thru facilities (with a permitted use). See Section 33.1, subject to the limitation that the permitted use is located within a shopping center." He said the item had been reviewed by the Development Review Committee (DRC).

Mr. Pinney said staff considerations included the following:

- the zoning code currently did not offer a clear definition of "shopping center"
- there were a total of six (6) B-1 properties throughout the City. Three or more might be eligible if the wording read, "at a shopping center".
- the nature and location of B-1's could have a negative effect on affected areas/neighborhoods
- the background on the Purpose and General Description of B-1 zoning districts

Mr. Pinney showed a slide of Section 21.2 Purpose and General Description of the Zoning Code, read it aloud and highlighted selected verbiage; specifically, "The uses permitted typically do not provide high volumes of traffic, noise,..." and "...generally located on the periphery of the residential neighborhood on a minor street..." He said when staff reviewed the application, it determined that some exceptions could be made and it modified the proposed language slightly because not all B-1 properties fit the description in the Code as they were not all located on a minor street or on a periphery of a neighborhood. He said Staff did not want it to be a permitted use throughout the B-1 zoning district and it was appropriate as a special exception use. Therefore, he said Staff revised it so that it would only be a special exception use if the property was located on a major arterial road through the City because major arterials had higher traffic counts so adding a drive-thru would not have a substantial impact on traffic counts to a neighborhood. He said that limitation would result in there being only two eligible properties of the six B-1 properties in the City.

Mr. Pinney showed a slide of the revised proposed text amendment wording and read it aloud. He showed a City map which highlighted the B-1 properties and the roadways adjacent to them, noting that only two properties were located on an arterial road and thereby eligible to apply for a drive-thru facility if the ordinance was approved. He commented that the limitation to arterial roads was because the other B-1 properties were located on local roads and tucked into neighborhoods which did not seem to be appropriate locations.

Mr. Zucchini asked to have the drive-thru requirements defined. Mr. Pinney responded that it depended on the use. He gave an example of a restaurant and said that at least four stacking or reservoir spaces were needed of at least 10 foot by 20 foot including the one being serviced, logical and safe circulation of the property had to exist, and the request must have been

approved by the DRC and the City Commission. Mr. Zucchini asked whether spaces for waiting while orders were being prepared were required. Mr. Pinney said that the Code did not require them.

Mr. Arserio asked whether the petitioner had submitted plans for the proposed drive-thru. Mr. Pinney responded that the petitioner identified the tenant, Dunkin Donuts, but it was not far enough along in the process for plans. He said first the City Commission had to approve adding the use into the district, and then the petitioner would come back and submit their plans through the DRC process.

Mr. Hylander said it was his recollection that all the drive-thru's in the City had been subject to the special exception process and he asked if any had ever been denied. Mr. Pinney responded that the special exception process had been followed since the 1990's. He said that there had been applicants in the past that were denied through the DRC process while the logistics of drive-thru's were being worked through. Mr. Hylander said he could not recall any that had not been approved eventually.

Mr. Arserio commented that the feedback he has received from residents was that the City had too many drive-thru's. He said traffic would likely enter and leave via N.W. 73rd Avenue and he asked where the traffic would flow and whether it would build up along that road. Mr. Pinney responded that the use had to be approved first before the plan could be prepared.

Mr. Angier advised that the decision before the Board was whether the special exception would be added to the B-1 zoning district.

Mr. Pinney clarified how uses were distributed in a district and he explained the differences between permitted uses and prohibited uses and that a special exception fell in the middle between them. He said a special exception was a unique situation that deserved review based on its own merit as to whether the City wanted to approve it at that location and under what condition. He said this item would receive strict scrutiny review if it got approved into the district and the applicant moved forward.

Mr. Arserio expressed a concern that it seemed that special exceptions have always been granted in the past which was visible by the number of drive-thru's that have popped up everywhere.

Mr. Angier commented that those were decisions made by the City Commission. He said that night's discussion was to decide whether to include drive-thru's in the B-1 zoning district. He made the following motion which was immediately followed by public comment. Mr. Arserio said that we wanted to make a motion to deny because he did not want to set Pandora's box.

MOTION: TO DENY

Laura Knox, 6240 S.W. 7th Street, asked what the setback requirements were between the neighborhood and the actual drive-thru lanes. Mr. Pinney responded that he did not believe there was a setback but, if there were one, he said it would be provided for in Section 33.11 which covered the set-up of a the drive-thru lane, the size of the stacking spaces, etc. Ms. Knox

said it would be a problem due to all the carbon dioxide being released into the air by the cars waiting in the drive-thru lane which would blow into resident's homes and yards.

Attorney Douglas Gonzalez stated that under Section 33.11, the Code required a reservoir area, but nothing specific regarding setbacks. Mr. Pinney commented that the potential impacts of the use were weighed and considered at the time of the special exception hearing.

Steve Wherry, 200 East Broward Boulevard, on behalf of the applicant, said that the concerns raised by the Board were good and understandable ones. He said that the proposal was to add drive-thru's in the B-1 zoning district as a special exception use. He said it was discussed at the DRC meeting that should this text amendment be approved, the subsequent site plan modification application and special exception application would both be subject to the new special exception rules that were currently in progress. He said the special exception criteria came before the Planning and Zoning previously and was heard by the City Commission at first reading and would be going for second reading in late August. He said the revised special exception criteria added heightened criteria for the City Commission to consider when deciding whether to grant a special exception and it would also bring special exceptions before the Planning and Zoning Board for review and recommendation.

Mr. Wherry said the criteria that he thought were most relevant were the examination of a special exception request for the genuine need for the requested use, the avoidance of a proliferation of that use, and whether the use was in the best interest of the City. Together those criteria created a high burden for an applicant to carry when petitioning for the approval of a special exception application he said. He said some of those factors mitigated the concern the Board might have about adding this specific use as a potential additional use to the B-1 zoning district. He said the proposal to add drive-thru use to B-1 properties that were located on an arterial roadway was limited in that it was unlikely that there would be additional designated arterial roadways in the City that would create more opportunities. He said it was limited to one property area which was comprised of two individually owned parcels which together were the Royal Palm Plaza shopping center. He said the location that the owner had in mind was on the east side of the shopping center. He said that while plans have not been submitted, the owner has gone through a lot of effort to develop different versions of plans that have been shared with City staff so as to come up with a plan that would meet the City's expectations. He said the plan would come back before the Board for approval.

Mr. Wherry started to address the concern raised by the public, and Mr. Angier interrupted and advised that the decision before the Board that night should not be based on some future project. He reiterated that the item before them was a proposal by City staff to add a use to B-1 zoning as a special exception. He said he appreciated Mr. Wherry's explanation but the Board needed to divorce its decision from something being proposed in the future. He said the decision needed to be strictly on whether to add the exception to B-1 zoning. He said if the Board was opposed in some way to a future project, it might change their mind on allowing or disallowing the addition to the B-1 zoning; the decision needed to be strictly on whether to add the exception to the B-1 zoning. He said if it got approved and the project moved forward, the merits of the project would be discussed at the time it came back before the Board. Mr. Wherry agreed. He said the change in the zoning would allow a drive-thru amenity that his client regarded as important to the continued viability of their business. Mr. Angier agreed that competition could dictate some of the decisions that had to be made.

Mr. Arserio commented that recently he had seen the Commission's push to look at the rezoning, the Transit Oriented Corridor (TOC), and some other things in the City. He asked what the chances were of more B-1 zoning districts popping up in the City in the future. Mr. Pinney said the future was not carved in stone. Mr. Arserio said the Planning and Zoning was being asked to put something in writing that would affect the future of the City so they had the right to ask probing questions. He said the City needed to be stricter in its zoning and that special exceptions and variances had been granted left and right for years. He said allowing the text amendment made it more susceptible for such exceptions to be rubber-stamped.

Attorney Gonzalez advised that the request was limited to only two properties that were located on arterial roadways. Mr. Pinney concurred that the change to the text amendment would allow it to only apply to the two properties on Royal Palm Boulevard. He added that it was highly unlikely that there would be additional properties rezoned into B-1 due to reasons stated earlier, i.e., that they were generally located on the periphery of a residential neighborhood on a minor street in close proximity to a major street. He said the two parcels being discussed appeared to be an anomaly of the zoning district in that they were located on a major arterial road.

Mr. Arserio commented that traffic entering onto N.W. 73rd Avenue faced an entrance to a neighborhood community. Mr. Angier reiterated that the focus needed to be on whether to allow the exception to B-1 zoning which would only affect two properties. He said the merits of all future projects could be discussed at the time they came the Board. Attorney Gonzalez agreed noting that they would likely be using the new special exception criteria that was in process.

Mr. Zucchini said he did not object to allowing it as a special exception to B-1, but he did object to the drive-thru requirement because he did not think a four car lane was sufficient for a drive-thru. He said the drive-thru requirement for a drive-in needed to be looked into.

Mr. Pinney said that as a recommending body, the Board could recommend that the reservoir spaces be increased and that recommendation would be taken moving forward. He said it could be worked into the ordinance. Attorney Gonzalez stated that if they were looking to amend the ordinance, they should pull out the Code and go through each item or, if this amendment was approved, it should be brought back as a subsequent ordinance that was City driven in order to address the reservoir spaces which he said would be the preferred method.

Mr. Zucchini commented that they could make a motion to review the City Code at a future meeting. Attorney Gonzalez said it could be done at a future meeting or at the current meeting under General Discussion. He said it could be asked by consensus that Mr. Pinney conduct research on the issue and bring it back to the Board. He said the item they were dealing with now was the general application for a text amendment from Mr. Wherry's client.

Mr. Wherry commented that one of the features of a special exception was the ability of the Planning and Zoning Board and the City Commission to grant approval with conditions. He said if there were characteristics of a proposal that the Board and/or Commission determined to create more impacts than what the Code allowed, it was within their purview to create heightened standards that would apply to a given proposal.

Mr. Zucchini agreed but noted that his concern was that the Code itself for the drive-thru requirements should be reviewed.

Mr. Mangeney said he agreed because he lived right behind the Dunkin Donuts and he had to leave through that intersection every morning and there were cars into the street. He said voting against the item being discussed was like saying that the Board did not trust the City Commissioners to make the right decision and that the Board did not trust the people of Margate to hold the City Commissioners accountable for how they made their decision.

Mr. Arserio said he viewed his earlier motion as no motion because he made it prior to public discussion.

Attorney Gonzalez provided clarification and Mr. Mangeney made the following motion which was seconded by Mr. Angier:

MOTION: TO GRANT THE REQUESTED TEXT AMENDMENT TO ALLOW DRIVE-THRU FACILITIES IN THE B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT

Mr. Arserio said he also agreed with the need to re-look at the ordinance for the drive-thru's. He said it was not practical to have a drive-thru at that facility and that the Board was voting on a technicality. Mr. Angier disagreed and he reiterated the item that was being voted on. Mr. Arserio said special exceptions had been handed out for too long. He said that it was not that the City Commission was not trusted; rather, they had not been guiding in the right direction over the past several years.

Attorney Gonzalez reminded the Board that the City Commission had already approved on first reading a text amendment to the criteria for special exceptions that included things that the Planning and Zoning Board had discussed in the past as well as some discretion in terms of what was in the best interest that would allow the City Commission to further assess each application that came before them.

ROLL CALL: Mr. Arserio, No; Mr. Mangeney, Yes; Mr. Zucchini, Yes; Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 4-1 vote.

Attorney Gonzalez advised the Board that they could direct Mr. Pinney by consensus to explore the current text of the Code regarding the reservoir areas to see if adjustments were needed. The Board granted consensus.

2B) **PZ-16-17** CONSIDERATION OF AN ORDINANCE TO REZONE TWO REAL PROPERTIES TO CON CONSERVATION DISTRICT

PETITIONER: CITY OF MARGATE, ECONOMIC DEVELOPMENT DEPARTMENT

Andrew Pinney led with a PowerPoint presentation. He showed an aerial view of the subject properties. He explained that the ordinance was to rezone two properties to the new Conservation zoning district. He said that Broward County had purchased both properties in 2004 with the intent to preserve habitat and they had plans to create a passive park and

wetland area within the preserve. He said the current land use designation was Conservation which limited the use on the property. He showed the zoning map which reflected that the western parcel was zoned R-1C Residential Single Family Home and the eastern parcel was zoned B-2 Community Business district which were not consistent with the Conservation land use designation. He also showed a map of the current land use. He said the ordinance, if approved, would provide consistency between the land use and the zoning and would facilitate the County's project to create a passive park.

Mr. Hylander referenced the current land use map and asked about the parcel that was adjacent to the 767 and 777 Properties which was designated Office Park. Mr. Pinney explained that the property was owned by the same entity.

Mr. Arserio asked whether it was known when the County planned to create the passive park. Mr. Pinney said an email had been received recently from someone working on the County's behalf to start looking into the logistics of building the park and restoring the wetlands.

Mr. Zucchini asked if the zoning change would place any additional restrictions, such as setbacks, on the adjacent Office Park property. Mr. Pinney said it only pertained to the use and enjoyment of the subject properties.

Laura Knox, 6240 S.W. 7th Street, said she lived north of the park. She said the sign that was put up regarding the rezoning did not indicate what type of zoning and that caused a concern, but they were in agreement now that it was known it was going to be Conservation. However, she said the property line was wrong and that it should be ten foot south of the road because it was a private road. She said the property line was shown being on the road but she said she owned 10 feet south of that road and she had to have the County move its fence. She said the City needed to correct its website because it showed properly on the County's website. She said it was a private road that that the homeowner's paid to maintain. She asked where the entrance to the park would be located. Mr. Pinney said the driveway entrance to the call center would be shared. Mr. Pinney said the map images were for illustrative purposes. He said the Property Appraiser took aerial photographs every year and they overlaid property lines and, depending on the angle of the photo, the property lines might appear off. He said the map was not a technical document; it was just for reference purposes.

Adam Schneid, 6236 S.W. 7th Street, asked for the definition of a passive park. Mr. Pinney responded that it was a park with low interactive components such a walkway or a bench. He said it would not have playground equipment. Mr. Schneid asked whether there were plans for developments or paved parking and whether the plans were available. Mr. Angier responded that it was a County project. Mr. Pinney suggested that Mr. Schneid look at upcoming agendas on the City's website for when it would be going before the Development Review Committee.

Mr. Mangeney asked about the signs that were posted and whether they needed to specify the zoning changes. Mr. Pinney responded that there were three signs posted on the property. He said the verbiage was scripted in the Code, "A public hearing concerning the rezoning of this property will be held by the Planning and Zoning Board of the City of Margate on August 7, 2017 at 7:00 p.m. at 5790 Margate Boulevard. Call (954) 972-6454 for further information."

Ms. Know asked how many feet into the passive park were owned by the City. Mr. Pinney responded that the properties were privately held and the City had jurisdiction. Ms. Knox said the property owners within 300 foot were contacted and they agreed to the passive park. She said when they negotiated with the developer, they were told it would continue to be a passive park for fifty years. She said they told her that North Lauderdale owned the vast majority of it and that Margate only owned fifty feet of it. Attorney Douglas Gonzalez responded that it was inaccurate and that the property was located within Margate's city limits.

Mr. Hylander said it had been mentioned that the fence was not on the correct boundary lines and he asked whether something could be added to the ordinance which stated that when the County developed the property, they would relocate their fence onto their property. Reddy Chitepu advised that the issue would be addressed when the project came through the engineering permitting process; they would look at the location of the fence at that time.

James Adams, 6451 S.W. 7th Court, North Lauderdale, said the property was a jewel and it had been nicely maintained and it was like an Everglades microcosm.

Mr. Arserio made the following motion, seconded by Mr. Zucchini:

MOTION: TO APPROVE

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, Yes; Mr. Zucchini, Yes;
Mr. Hylander, Yes; Mr. Angier, Yes. The motion passed with a 5-0 vote

3) **GENERAL DISCUSSION**

Mr. Zucchini asked to have the drive-thru Code requirements reviewed and made available at the next Planning & Zoning Board meeting. Andrew Pinney agreed.

Mr. Zucchini commented that he was concerned that the only access would be through a shared use of a drive through someone's property and he asked if that would need to be changed in the future. Mr. Pinney responded that the City had commercial properties developed in the same way. He said a shared access agreement would be signed by both parties and recorded and both parties would be needed to rescind it.

Mr. Arserio asked if a shared access agreement existed for the road. Mr. Pinney said he assumed so but it would be looked into once the City received a site plan. Reddy Chitepu said there was not a cross access agreement in place yet; the City was working with developer on other aspects of the project as well as on the cross access agreement.

Mr. Hylander asked whether the Board could request an overall review of the parking requirements for prospective new developments. Mr. Pinney responded that it was being looked at and there was a workshop was scheduled on August 23, 2017.

Mr. Zucchini asked if the other Board members wished to direct Staff to review the code for apartment complexes to require elevator service for anything above two stories. Attorney Gonzalez responded that such items were addressed by the Florida Building Code and the City's

Code incorporated the Florida Building Code for such purposes. Mr. Zucchini asked if an additional requirement could be overlaid onto it. Attorney Gonzalez said he thought it would be very difficult and that there would be a lot of developer resistance to it. He said he was not sure if it could be done legally as the Florida Building Code was the applicable code throughout the State. He said he could look into whether the City could consider requirements over and above those that were required by the Florida Building Code. Mr. Zucchini asked about the Americans with Disabilities Act (ADA). Attorney Gonzalez said the ADA was a federal requirement that trumped everything. He said the federal rule did not require elevators on anything below four stories. Mr. Pinney concurred and added that three stories and below were garden apartments. Mr. Zucchini commented that walk-ups above two stories without an elevator were screaming for low income housing, and that the City should set a requirement. Mr. Angier asked Mr. Zucchini if it would be okay to have the Attorney Gonzalez look into whether the City had the ability to address the issue. Mr. Zucchini and Attorney Gonzalez both agreed to that action.

There being no further business, the meeting was adjourned at 7:58 p.m.

Respectfully submitted,

Prepared by Rita Rodi

Todd E. Angier, Chair