



City Commission

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**REGULAR MEETING OF
THE PLANNING AND ZONING BOARD
HYBRID VIRTUAL MEETING
<https://us02web.zoom.us/j/85042982289>
MINUTES**

**Tuesday, September 13, 2022
7:00 p.m.**

City of Margate
City Commission Chambers at City Hall

PRESENT:

Fred Bourdin, Vice Chair
Catherine Yardley, Secretary
Sloan Robbins, Board Member

ABSENT:

Todd Angier, Chair
Grant O'Donnell, Board Member

STAFF PRESENT:

David Tolces, Interim City Attorney, Weiss, Serota, Helfman, Cole, and Bierman
Elizabeth Taschereau, Director of Development Services
Andrew Pinney, AICP, Senior Planner
Howard Pavillard, Office Manager
Dennis D. Mele, Esq., LLP, Greenspoon Marder, agent for Dunkin' Donuts

The regular meeting of the Margate Planning and Zoning Board (P&Z) having been properly noticed, was called to order at 7:00 p.m. on Tuesday, September 13, 2022, by Vice Chair Fred Bourdin, in the City Commission Chambers at City Hall, 5790 Margate Boulevard, Margate, FL 33063.

1) APPROVAL OF MINUTES

- A) *ID2022-393*
APPROVAL OF MINUTES FOR THE JUNE 7, 2022, AND
AUGUST 9, 2022, PLANNING AND ZONING BOARD (P&Z)
MEETINGS

Ms. Yardley made the following motion, seconded by Mr. Robbins:

MOTION: TO APPROVE THE MINUTES FOR THE JUNE 7, 2022,
PLANNING AND ZONING BOARD (P&Z) MEETING

Development Services Department

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ROLL CALL: Mr. Bourdin – Yes; Ms. Yardley – Yes; Mr. Robbins – Yes. The motion passed with a 3-0 vote.

Ms. Yardley made the following motion, seconded by Mr. Robbins:

MOTION: TO APPROVE THE MINUTES FOR THE AUGUST 9, 2022, PLANNING AND ZONING BOARD (P&Z) MEETING

ROLL CALL: Mr. Bourdin – Yes; Ms. Yardley – Yes; Mr. Robbins – Yes. The motion passed with a 3-0 vote.

2) NEW BUSINESS

- A) *ID2022-368*
CONSIDERATION OF A SPECIAL EXCEPTION USE TO PERMIT DRIVE-THROUGH FACILITIES FOR AN EXISTING DUNKIN' DONUTS LOCATED AT 7300 ROYAL PALM BLVD.

David Tolces, Interim City Attorney, introduced the item by title only. He swore in those giving testimony on the item.

Andrew Pinney, Senior Planner, presented on behalf of staff. He provided a background on the subject property, as follows:

- Commercial Land Use
- B-1 Neighborhood Business District
- GATEWAY MILE 63-15 (1966)
- Dunkin' Donuts opened in 2008

Mr. Pinney shared images of the current conditions of the property at 7300 Royal Palm Boulevard and a rendering of the application provided by the applicant. He outlined the special exception process and the guidance to the P&Z included in the Code.

Continuing, Mr. Pinney explained the Code provides 10 criteria for special exception, and reviewed the Development Review Committee (DRC) findings for each:

1. The special exception shall be consistent with the purposes, goals, objectives, and policies of the Margate Comprehensive Plan and the Margate Code of Ordinances.
 - Staff finds the application to comply with this criterion.
2. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.
 - Staff finds the application to comply with this criterion.

- DEES recommends relocation of the dumpster enclosure away from queuing vehicles (as condition of approval).
3. The establishment, maintenance, or operation of the proposed use shall only be approved if in the best interest of the City. It shall be determined that a genuine need for the use is present in the City to support and justify the approval order to avoid creating an excessive proliferation of said special exception use.
 - Staff finds the application to comply with this criterion.
 4. The proposed shall be compatible with the existing natural environment and community character of the properties within the immediate neighborhood.
 - Staff finds the application to comply with this criterion.
 5. Utilities, roadway capacity, drainage, and other necessary public facilities, including police, fire, and emergency services, shall exist at the City's adopted level of service, or will be available concurrent with demand as provided for in the requirements of the Code of Ordinances.
 - Applicant's traffic engineer collected data from two (2) local Dunkin' Donuts and anticipate 154 trips (77 vehicles) during AM peak hour from 7 a.m. to 9 a.m.
 - According to accepted industry standards from the ITD for this type of use, 89 percent of drive-thru trips are assumed to be "pass-by", with primary trips "de minimis."
 - Staff has unclear findings due to data regarding level of service collected by the Metropolitan Planning Organize (MPO), but it is expected the road will be adequate once construction is complete.
 6. Adequate measures exist or shall be taken to provide ingress and egress to the proposed use, for both vehicles and pedestrians, in a manner that minimizes traffic congestion on public streets, and the use may not result in a significantly greater amount of traffic on local streets than would result from a development permitted by right.
 - Staff finds the application to comply with this criterion.
 - DRC recommends additional traffic signage and striping between buildings and in front of the dumpster. Showed images of the proposed ingress and egress.
 7. There shall be adequate parking areas and off-street truck loading spaces (if applicable) consistent with the parking requirements of the Code, and the layout of the parking and vehicular use areas shall be convenient and conducive to safe operation consistent with the City's standards to the greatest extent possible.
 - Staff has unclear findings as the existing loading zone is impacted. The applicant requested that resolving the issue be a condition of approval by the City Commission.
 8. The establishment of the special exception shall not impede the development of surrounding properties for uses permitted in the zoning district nor have a negative impact on the value of those properties.
 - Staff has unclear findings regarding impact on the value of the neighboring properties.
 - Applicant provided a rationale:
 - Drive-through efficiency and attraction will stabilize the shopping center
 - The subject property has buffer wall and landscaping

- Therefore, the drive-through has no negative impact on property value
 - Applicant did not provide analysis from a subject matter expert such as an appraiser or a real estate broker.
9. The design of the proposed use shall minimize adverse effects, including visual impacts, of the proposed use on adjacent property through the use of building orientation, setbacks, buffers, landscaping, and other design criteria.
- Staff finds the application to comply with this criterion.
 - DEES recommends extension of the buffer wall.
10. The City Commission finds that granting of the application will be in the best interest of the City.
- To be determined by City Commission.

Mr. Pinney stated the DRC had recommended a conditional approval of the application on October 26, 2021.

Mr. Robbins asked for additional clarification on the level of service question mentioned in criterion five (5). Mr. Pinney explained the 2019 MPO study which determined the level of service and the minimum standards created through that study. He stated the ranking is determined by design capacity as compared to actual use.

Ms. Yardley asked whether there was a turn lane for access going west. Mr. Pinney explained access from east and west.

Vice Chair Bourdin asked about pipes shown on the plans. Mr. Pinney stated the pipes referenced were fire stand pipes and were a major reason the plan contemplated building the drive-through out away from the building.

Applicant Presentation

Dennis D. Mele, Esq., LLP, Greenspoon Marder, agent for Dunkin' Donuts, presented on behalf of the applicant. He distributed a petition signed by 34 members of the community expressing support for the project.

Attorney Mele referenced the table from the staff presentation regarding level of service on the road and noted the highest traffic was in the afternoon rush hour when the applicant would have lower traffic impact. He noted the traffic numbers had come from measuring real stores.

Continuing, Attorney Mele referenced the DEES recommendation for extension of the buffer wall related to criterion nine (9) and provided additional clarification on the photos shown. He explained the applicant was comfortable with the condition and would provide an extended wall which was curved and blended in with the original.

Attorney Mele shared a *PowerPoint* presentation outlining the applicant's proposal. He shared a map of the location and noted the two (2) shopping centers have separate owners with an

agreement for cross access. He discussed the existing operation briefly, explaining the location was the only Dunkin' Donuts in Margate without a drive-through, and from 2019 to 2020, sales at the store had gone down 28 percent. He stated the traffic counts contemplated all new customers in order to avoid underreporting.

Continuing, Attorney Mele reviewed the proposed plan to add a 78-foot drive-through window on the east side of the store, using the paint and materials to match the existing elevation, along with a new menu board and order station. He pointed out there was a 66-foot separation from the rear of the building to the buffer wall, including mature landscaping. Attorney Mele explained there would be additional pavement added for a pass by lane and additional landscaping on the southeast corner of the property. He pointed out no changes were being made outside the shopping center.

Attorney Mele shared additional photos of the existing wall, landscaping, and access route for the garbage truck. He referenced the staff comment that the dumpster should be moved and stated they do not believe they will need to move it but will continue to work with staff on addressing all issues. He pointed out the drive-through had more than double the vehicle stacking requirement of Code. Attorney Mele stated if the City took the position that you can not add to a street with a level of service of F, that meant not only could you not build a drive-through there, you could not build anything else on that stretch of road. He asserted that is not the way the issue is managed and discussed impact fees and addition of services.

Attorney Mele addressed the 10 criteria for special exception and the ways in which the project meets the criteria. He noted the applicant would make changes to address the items which did not have clear staff approval.

Attorney Mele noted the applicant had been financially involved with this change for some time, but amendment of an Ordinance regarding improvements to shopping centers had been necessary prior to moving forward.

Vice Chair Bourdin asked staff whether Attorney Mele's presentation had met the desired goals of the DRC. Mr. Pinney noted the applicant's traffic engineer Karl Peterson was present and could address concerns with traffic.

Ms. Yardley stated her concern was for the residents, and noise from cars between 5 and 7 a.m. seemed unfair to the neighbors. Mr. Pinney responded that staff had shared the same concern during the application process, and the applicant had provided two (2) different acoustic studies and the results had been lower than the requirements of Code.

Vice Chair Bourdin called for public comment.

Richard Kent, 7401 Parkside Lane, argued against the three (3) minute time limit for public comment. He stated he had lived behind the project for 22 years, and the intersection was already the site of gridlock and multiple accidents. He asserted his peace would be disturbed by music

and other noises from the drive-through for no reason other than to sell more donuts and coffee. He invited Board members and staff to witness what happens at the intersection in the morning and afternoon. City Attorney Tolces stated the time limit was a part of the adopted procedures of the City Boards.

Kurt William Lussier, Margate, stated he is in the plaza all the time, and the water runoff reservoir was being left out of the images. He asked what would happen to that water if the area was changed. Mr. Lussier asserted there had been instances where people had driven through and hit houses, and it was not even a drive-through yet. He stated this had been turned down before and encouraged the Board to look into the reason.

Cindy Lussier, Margate, referenced the bump-out for the fire lines and asked how the firefighters would have access through traffic. She asked whether part of the sidewalk would be removed for the curved wall, and whether easements would be impacted. Continuing, she stated there must be a reason for the existing easement and trees between the shopping centers and asked whether traffic would be right along the wall adjacent to people's homes. She commented on existing traffic and stated drive-through customers would be turning onto the side street residents already cannot get out of.

John Jones, Margate, stated the idea of a drive-through in his neighborhood was a hideous thing. He stated the neighbors will not tolerate it and asserted ever since the shopping center was built in a residential neighborhood, they have suffered. He stated traffic has increased, and the architecture of the building bounces traffic noise into adjacent neighborhoods. He noted decibel readings he had taken on his front porch. Continuing, he stated someone had approved the cigar bar having a patio and outdoor, live entertainment in the middle of a neighborhood. He argued this type of traffic is meant for arteries through the City and stated the special exception could not be approved.

Travis Cappatellis, 1967 Parkside Avenue, stated the applicant had done a traffic study, but he questioned whether they had ever physically been to the location at 7 a.m. He asserted there are already traffic problems, and those making the decision needed to go out and see for themselves. He stated this project would definitely impact traffic.

Dean Curtis, Margate, commented that the site already is the source of noise and traffic, and the project would add to that problem. He questioned the traffic study and stated morning traffic is a fight each day. He stated the residents would help some residents, but not those that face the side of the building and asserted the wall would increase noise. He added that people have been happy for 15 years going inside the store.

Resident, Cypress Cove, stated her bedroom window faces the Dunkin' Donuts. She noted truck deliveries at 5 a.m. are loud and have destroyed their landscaping in the past. She asserted the changes to landscaping in the plan would make the deliveries closer to her home. Continuing, she addressed traffic and traffic enforcement issues on the street.

Jonathan Kraljic, 7357 Flores Way, stated his community uses NW 73rd Avenue to enter and exit their communities, and the street is not suitable for the type of traffic proposed. He stated if it had been, the Dunkin' Donuts would have had a drive-through when it was built. Mr. Kraljic referenced other Dunkin' Donuts in Town and stated the traffic backs up onto the road at those locations. He stated the plan relies on an agreement for traffic with the neighboring plaza, and level of service discussion did not consider NW 73rd Avenue. He added that the neighbors want the business to be successful, but they should be a good neighbor.

Mr. Kraljic distributed copies of a petition in opposition to the project which contained 58 signatures.

Jeffrey Balaban, 7409 Parkside Lane, stated he is directly behind Dunkin' Donuts. He asserted everyone was talking about traffic, but he has experienced issues with rats and all kinds of deplorable conditions as a result. He stated there had been multiple calls to Code Enforcement, but nothing has been done. He stated the project was not fair to the residential area and asked the Board to take that into consideration.

Laurel Grier, Cypress Cove, argued more traffic was not needed. She stated people would be driving behind her house to go for their donuts and coffee. She noted it did not make sense to her to add a drive-through when there is lots of available parking.

Alandra Alfonso, 7425 Santa Monica Drive, stated they can hear the noises from the neighborhood and the Dunkin' Donuts inside the homes. She discussed existing problems with traffic and enforcement. She asserted the same product with the addition of a drive-through would not increase sales because of the store's location. She stated a new location would make more sense than causing a problem for this neighborhood.

Elizabeth Kent, 7401 Parkside Lane, stated she was appalled by what the applicant wants to do to her neighborhood. She attested that at any time of day, you can't access NW 73rd Avenue without waiting 10-15 minutes. Continuing, she stated people would be driving into their backyard with windows down and loud music at 5 a.m., and property values would be affected.

Vice Chair Bourdin closed the item to public comment.

Attorney Mele responded to the public comments. He stated the swale in the back of the property was not being removed, and drainage would not be limited. He noted the application had been reviewed by DRC and the City's engineers had reviewed the drainage plan. He explained the same was true for the question regarding Fire Department access, as the Fire Department was also represented on the DRC and had reviewed the plans to determine adequate access.

Attorney Mele stated the wall extension would not interfere with the sidewalk or easement. He described the curved wall planned. He responded to the question regarding the extension of the paving, noting it was not adjacent to the wall and would be bordered with additional landscaping.

Continuing, Attorney Mele noted there had been a lot of comment regarding the project being in a neighborhood. He referenced the special exception criteria and stated staff had found the project met criterion one (1), as it was located on an arterial road. He corrected the commenters who had asserted the application was turned down previously and stated there had not been a previous request. He stated the shopping center was already built when Dunkin' Donuts came in, and the space was built without a drive-through.

Attorney Mele addressed concerns regarding sound, reiterating that the applicant had done a noise study at other Dunkin' Donuts locations in Town. He reviewed the process and stated the results were below the limits under Code. In response to a question regarding trimming the trees, Attorney Mele agreed, and explained that was a problem with that type of tree. He stated several of the acacia trees were being replaced with trees of more appropriate species to provide a heartier buffer.

Continuing, Attorney Mele referenced the previous incident described by speakers where a driver had hit the wall. He stated the wise thing to do would be to put up bollards so that does not happen, and noted if the City believed that was advisable, the applicant would install them.

Attorney Mele noted the concerns regarding noise. He stated the current hours of the store are 5 a.m. to 7 p.m., but the applicant would be willing to have the drive-through not open until 7 a.m. as a condition of approval.

Vice Chair Bourdin stated the biggest complaint seemed to be the increase in traffic. He asked whether the ongoing construction would alleviate the traffic concerns and expressed appreciation for the willingness to move the open to 7 a.m.

Mr. Pinney stated the traffic improvement at the intersection was nearly complete and was meant to alleviate the over congestion at that section of the roadway. He stated after hearing the concerns of the public, he was wondering if the traffic expert could comment on the possibility of restricting right turns exiting the drive-through lanes, which would direct traffic back to Royal Palm Boulevard.

Vice Chair Bourdin noted that he agreed the change would alleviate some of the public's concerns, and stated he hoped the construction would also have an impact.

Attorney Mele stated the applicant would be okay with a change to restrict right turns from the drive-through lane. He stated the applicant would also be happy to meet with the public prior to going before the City Commission.

Vice Chair Bourdin stated he believed that was important, and stated he liked the applicant's agreement to the changes.

Mr. Robbins stated lives off Atlantic Boulevard, and every street going eastbound is a disaster in the morning. He noted as cities grow; traffic is inevitable. Continuing, he stated Margate had a

history of supporting businesses that will grow and support the City and explained Dunkin' Donuts is not even accepting applications from franchisers that do not have access to a build-out for a drive-through. He added that the applicant had said their numbers are low, and he did not want to see a good tenant that has been successful go out of business. Mr. Robbins stated the noise and traffic will be the same no matter the hours. He posited the City could consider a traffic light.

Ms. Yardley commented that when looking at the pictures and the closeness of people's back yards to the proposed drive-through, she felt she would not like that to be her back yard. She stated if she was having a backyard barbecue, she would not want to have the smell of people's exhaust. Ms. Yardley asserted the building was not designed for what was being proposed, and there was not enough space. She stated the traffic was a huge problem, as the street was swamped already, and it was not fair. She added that she did not want the business to fail, but they would be taking away a lot of value from the people who live in the homes.

Vice Chair Bourdin stated he was kind of in agreement with what Ms. Yardley and Mr. Robbins were saying. He asserted the space between the drive-through and the residents' homes would have an impact on their lives, and they have made it clear it is already impacting their lives. Vice Chair Bourdin stated it looked to him like it was creating a lot of angst and disadvantage among the residents, despite the want to support the City's businesses. He thanked the public for coming out and voicing their opinions and stated it had determined his personal decision on the matter.

Interim City Attorney Tolces explained the process to make a recommendation, as provided for within the Code.

Ms. Yardley made the following motion, seconded by Vice Chair Bourdin:

MOTION: TO RECOMMEND DENIAL OF THE SPECIAL EXCEPTION AS THE BOA HAS FOUND IT IS NOT IN COMPLIANCE WITH THE CRITERIA.

ROLL CALL: Mr. Bourdin – Yes; Ms. Yardley – Yes; Mr. Robbins – No. The motion passed with a 2-1 vote.

Interim City Attorney Tolces explained the recommendation would be forwarded to the City Commission at such time as they consider the application.

B) *ID2022-378*
CONSIDERATION OF AN ORDINANCE TO AUTHORIZE THE CITY OR CRA TO ERECT IDENTIFICATION SIGNS ON PROPERTY OWNED BY THE CITY OR CRA.

David Tolces, Interim City Attorney, introduced the item by title only. He explained the Ordinance was intended to provide for the fact that there are certain properties owned by the Margate CRA where monument signs need to be erected or rehabilitated. He stated this change would allow the Margate CRA to erect those signs.

Vice Chair Bourdin called for public comment, however there being none to speak, he closed the item to public comment.

Mr. Robbins asked whether there were any examples available. Mr. Pinney stated he did not have samples, but he could explain what was and was not allowed within the Sign Code.

Interim City Attorney Tolces noted this did not approve any particular sign or type of sign, but approved the Ordinance which would allow the City or CRA to erect identification signs.

Ms. Yardley made the following motion, seconded by Mr. Robbins:

MOTION: TO RECOMMEND APPROVAL OF THE ORDINANCE AS PRESENTED.

ROLL CALL: Mr. Bourdin – Yes; Ms. Yardley – Yes; Mr. Robbins – Yes. The motion passed with a 3-0 vote.

3) GENERAL DISCUSSION

There being no further business to discuss, the meeting was adjourned at 8:17 p.m.

Minutes prepared by Prototype, Inc.

Respectfully submitted,

Sloan Robbins, Chair