



City Commission

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REGULAR MEETING OF THE PLANNING AND ZONING BOARD MINUTES

Tuesday, June 3, 2019

7:00 PM

City of Margate
Municipal Building

PRESENT:

Richard Zucchini, Chair
Rob Reiner
Juli Van Der Meulen
Todd Angier
Donald Fritz

ALSO PRESENT:

Chris Saunders, Interim City Attorney, Weiss Serota Helfman
Cole & Bierman, P.L.
Robert Massarelli, AICP, Director Development Services

The regular meeting of the Planning and Zoning Board of the City of Margate, having been properly noticed, was called to order by Chair Richard Zucchini at 7:35 p.m. on Tuesday, June 3, 2019. A roll call of the Board members was done followed by the Pledge of Allegiance.

Chair Zucchini asked for consensus to move up item 2D to immediately after item 2A. Mr. Massarelli responded to that request by explaining the importance of the current order of the agenda items, stating his recommendation is to not change the order of the agenda. Consensus was not reached by the board.

1) APPROVAL OF MINUTES

ID 2019-289

1A) APPROVAL OF MINUTES FROM THE PLANNING AND ZONING MEETING ON FEBRUARY 5, 2019

Mr. Angier made the following motion, seconded by Ms. Van Der Meulen:

MOTION: APPROVED AS WRITTEN

Development Services Department

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ROLL CALL: Mr. Fritz, Yes; Mr. Angier, Yes; Ms. Van Der Meulen, Yes; Mr. Reiner, Yes; Mr. Zucchini, Yes. The motion passed with a 5-0 vote.

1) NEW BUSINESS

ID 2019-299

2A) CONSIDERATION OF A SPECIAL EXCEPTION USE TO PERMIT A NEW POPEYE'S LOUISIANA KITCHEN RESTAURANT WITH DOUBLE DRIVE-THROUGH

All those speaking on the item were duly sworn.

Mr. Andrew Pinney gave a brief presentation on the special exception. He gave an overview of the application, explained the review criteria, and concluded with the staff recommendations. He stated the zoning district of the TOC-C, explaining that a restaurant is a permitted use by right, however, when adding on a drive-through facility it is then considered a special exception use. He stated that the Popeye's development is an add-on to a planned commercial development for the limited access self-service storage facility that is currently under construction at 780 S. State Road 7. He gave a history of the property and gave an overview of the special exception process. Mr. Pinney referenced the elevations and showed photos of the proposed development. He gave recommended changes to the architectural design which include: adding a balcony feature and spandrel glass window with canopy to the State Road 7 façade; and change of color to use black metal awnings and white trim around the building. He summarized the ten criteria according to Section 31-54 (c) of the Margate Code of Ordinances. He concluded with the staff recommendation of approval with the following conditions: satisfy all remaining DRC comments; apply recommended changes to the architectural design of Popeye's; provide a traffic study to include a level of service analysis; increase landscape plantings between the drive through and the property line; limit hours of operation for restaurant and drive through to 10:00pm; recommend an improvement to the existing public alley.

Les Stevens, Attorney, 5301 N. Federal Highway, Boca Raton, introduced himself and stated that he is speaking on behalf of the applicant, GI of Margate, who is the contract purchaser of this property. Mr. Stevens began by complimenting staff, saying that they have done an incredible job. He stated that he is in agreement with staff's recommendation as to the architectural and color palette changes. Mr. Stevens advised that they will be providing a supplement to the traffic study which will deal with the level of service as required. He then referenced the alley which is city property, explaining that they are part of a PCD (Planned Commercial Development) with Nuvo Self-Storage which had contemplated a restaurant on this parcel. He stressed that this (restaurant) is a permitted use and the only thing that requires a special exception is the dual order lanes. He said that all other code requirements have been met or exceeded. He stated that he is willing to work with and accommodate the city with any future plans that they have in regards to the alley. Mr. Stevens then mentioned the hours of operation, stating that this is the only issue and cannot agree to a 10:00pm for the exterior, however, they are willing to limit it to a midnight closing. He referenced the Wendy's on 441 and Atlantic Boulevard, which is open until 3:00 a.m. and has a residential neighborhood catty-corner to the location. He stated that all other criteria have been met or exceeded that entitles the petitioner approval of the special use exception. He further explained that the restaurant is a permitted use under the PCD, it is being developed with Nuvo, and will be entering into a declaration of covenants and restrictions

which will govern the continued maintenance, repair and the like of all entrance ways and drainage area. He then referred to the project site plan pointing out areas that satisfy the completion of the PCD. He stated that staff was both cooperative and helpful in assisting with the design for this location, to meet all the criteria and keeping the residential area in mind throughout the entire process. Mr. Stevens then requested approval of the dual drive-through area and to then refer it to City Commission for final approval.

Richard Zucchini, commented that he watched the Commission meeting in October of 2016 when this development was approved. He said that he listened to the Commission encouraging the retail/restaurant use on this side of the property. He then referenced the retention pond on the north side of the parking lot asking if there was a possibility or consideration of an entrance from 441. Mr. Stevens responded that he believed that under the PCD this was not approved by the City Commission, due to the traffic flow and the retention requirements. Mr. Zucchini then mentioned the light poles on the south side back edge of the property, asking if they will continue with the installation of additional light poles? Mr. Stevens responded "yes". Mr. Zucchini then asked if they are using LED lighting, and if it is a level one or a level two? Mr. Stevens replied yes to LED lighting and that it is less than a half-foot candle which will be shaded candles, and it will be angled so that light will not be bouncing up and back to residential. Mr. Zucchini stated that he is happy to see stacking. He then said that his only concern is the entrance off of Southwest 8th, and how it is a little bit further west from the entrance to the playground area; asking if there was consideration of a landscaping element for the playground area to further divide and separate it away from the car traffic. Mr. Pinney asked for clarification to his concern wondering if this would be for additional landscaping at Serino Park? Mr. Zucchini replied "yes". Mr. Pinney stated that this could be added as a condition. Mr. Stevens stated that his client would be willing to install a landscape buffer providing that the city will maintain it. Discussion ensued.

Todd Angier asked staff how they came up with a 10:00pm time to close? Mr. Pinney responded that his concern is with the compatibility of having a drive-through next to a residential neighborhood. He explained that 10:00pm is a common time in the city code; whether it is for the noise code or a temporary use permit, which typically has a 10:00pm shut-down. Mr. Angier asked if the city noise ordinance is 10:00pm? Mr. Pinney replied that he would have to confirm this time. Mr. Angier asked if Popeye's would be responsible for any improvements to the alley? Mr. Pinney responded that this could be a condition, stating that they have been asked to consider a solution for the present situation with a median dividing the alley from a two-way drive aisle. Discussion ensued.

Mr. Pinney confirmed city code in regards to the time as stated previously, referring to Section 33-82, maximum noise level in use districts. Explaining that residential has two different maximum noise levels: 10 pm – 7am of fifty-five decibels or from 7 am to 10 pm of sixty decibels. Mr. Stevens asked staff what the decibel level is for this commercial property? Mr. Pinney responded that from 10 pm – 7 am it is sixty decibels and from 7 am – 10 pm is sixty-five decibels.

Mr. Zucchini asked what the proximity of the distance from the corner is and could an entrance north of the parking lot over the retention area been viable? Mr. Pinney responded that the condition of the PCD approval was to share one driveway off of State Road 7.

Mr. Stevens stated that he is asking the board to approve the 12:00 am time or possibly an 11:00 pm closing with the dining room closing at 10:00 pm to allow time to close down the kitchen and

for an hour of clean-up. Mr. Zucchini mentioned limited addition hours based on the day of the week.

Public Comment:

Joanne Szozda, 898 NW 55th Terrace, stated that she did not receive a letter, otherwise she would have contacted staff sooner. She said that within an hour she was able to get eighty signatures stating that they do not want a drive-through in her neighborhood. Ms. Szozda said that there are children at the park and there is already too much traffic and she does not want cars throwing out trash in her neighborhood.

Marian Phelps, 5507 SW 8th Court, stated that she does not want Popeye's in her neighborhood. She said that she lives in an area with very little issues and crime, and as soon as Popeye's goes in there will be more crime in the neighborhood.

Aira Austin, 851 SW 55th Way, stated that he has concerns with the restaurant and with the lanes in the drive-through, he is worried that the overflow of cars will come out onto 8th Court and impact the area. He then said that it will bring more trash to the park.

Julia Tabio-Cueto, 831 SW 56th Avenue, expressed her concern of the noise level due to the fact that she lives directly behind the restaurant. She stated that her children cross the street to wait for the bus and she is worried for their safety in the afternoons while crossing from the bus stop due to the traffic. Ms. Cueto asked to consider the affect that this restaurant will have on the residents of her community.

Alexandra Adesso, 5551 SW 8th Court, stated that she is opposed to having a Popeye's at that location.

Dean Adkins, 5560 SW 10th Street, asked in regards to the zoning and about the original permit for NUVO and if the first restaurant was planned to have a drive-through? Mr. Pinney responded to this by explaining the PCD approval for NUVO, stating that at that time it was unclear what the next phase of development would be at the corner. He stated that it was a much different layout which has now been changed to accommodate the drive-through, which is the special exception currently being heard. Mr. Adkins followed up by again asking if the original plan was for a sit down diner or a drive-through. Mr. Pinney responded by saying when the storage was approved it was unknown what the future development was going to be. Mr. Massarelli commented that a restaurant is a use by right and that a restaurant cannot be denied at this location. He stated that the issue is to allow a drive-up window at this restaurant. He stressed that the focus is narrowed to the drive-up only. Mr. Zucchini stated that the original approval was for retail which included a restaurant. He then explained that owners have a right to use this location for retail or a restaurant, and the only reason that this is being heard is for the special exception on the drive-through.

Gary Widman, 871 SW 56th Avenue, commented that he has been a resident for forty years and his problem is with the process. He said that this project was approved three years ago and this is the first this community is hearing about it. He is upset that there is no communication with the people. Mr. Zucchini responded by recommending everyone to keep in tune with the city calendar. He explained that the calendar shows upcoming public meetings along with the

agendas, which shows what items are coming up. Mr. Widman stated that this was done without any notification and at what point is this a violation of rights. He asked if this is a violation of city rules? Mr. Pinney responded by explaining the notification process that is currently in affect in the city since the 2016 election. Discussion ensued.

Tamara Rampasard, 5570 SW 10th Street, named the cities where a Popeye's Restaurants is located, asking why they chose Margate. She stated that her concern is with the potential traffic and safety that Popeye's may cause in her neighborhood.

Juan Cueto, 831 SW 56th Avenue, stated that his concern is with the closing time and with the park after dark. He is also worried about potential break-ins that the Popeye's may cause to his home.

Mike Smith, 884 SW 55th Terrace, commented that his issue is with the traffic. He is concerned with the traffic flow on 441 and in his neighborhood.

Kimberly Adkins, 5560 SW 10th Street, expressed her concern for the safety of the children that live in her neighborhood.

Belkis Hernandez Reynoso, 5501 SW 8th Court, stated that she recently moved into this neighborhood and she is both worried and concerned that Popeye's will lower her property value and increase vandalism.

Daria Norton, 5590 SW 7th Place, commented that she is a 27-year resident and her concern is with the drive-through stacking and the potential for overflow on SW 8th Court. She stated that if you eliminate the drive-through you can solve the problem of the closing time.

Audrey, 5540 SW 8th, commented that she believes in free enterprise but she also believes that the corner is too small and is too close to the residential neighborhood.

Commissioner Arlene Schwartz, stated to the public that the members of this board are volunteers and they are here to listen to your concerns. She said that this board does not make the final decision, telling the public to be sure to show up when the item comes before the Commission.

George Salama, 5541 SW 8th Court, commented that his family is objecting to Popeye's. He stated that it will have an adverse effect overall on the neighborhood from both crime statistics wise and safety wise.

Mr. Les Stevens, thanked the board and members of the public. He then stated that the principal managing partner of the franchisee is a resident of Margate. Mr. Stevens explained that the Popeye's in Pompano now has a double stack drive-through built specifically to avoid the stacking problem with the property. He stated that all the criteria, such as traffic, lighting, and health safety and welfare issues have all been met. He stated that State Road 7 is a commercial thoroughfare. He explained that this project as a whole is part of a Planned Commercial Development (PCD) which was approved in 2016, in which their involvement has only been within the past year. Mr. Steven's stated that this is a quasi-judicial hearing and therefore there is quasi-judicial criteria which needs to be met in order for the board to deny the application. He explained that staff pointed out that there must be competent substantial testimony to that end. He said that many of the comments from the property owners are conjecture as to traffic, criminality, and

the like, as there has been no substantial competent testimony as to any statistics that show that this is true or not. Mr. Stevens stated that the staff and the Board Chair have pointed out that this is a permitted use within the property and that they are here in regards to the drive-through situation. He said that the drive-through has been addressed with staff to minimize the impact on the neighborhood, which has been specially designed to be the good neighbor from both a lighting and traffic standpoint. He again stated that all the criteria for approval have been met and the condition that is open is in regards to the hours, and the recommendation may have to be re-addressed at the City Commission level. Mr. Stevens stated that he requests approval from the board on this matter.

Mr. Zucchini stated that he is still concerned with an entrance on the side across from the park, however that the applicant does have a right to have a restaurant and/or retail at that location.

Mr. Les Stevens responded on the entrance stating that it was a requirement of the PCD that was approved in 2016, and that the applicant did not have a choice and had to work around that approval.

Mr. Pinney read Section 31.54(e), which explains the role that the Planning and Zoning Board must make when contemplating the motion for the vote on this item: *"Meeting of the planning and zoning board. The planning and zoning board shall conduct a public hearing in which they discuss the DRC report and the project proposal, prior to making a recommendation concerning the project to the city commission. If the planning and zoning board determines that the proposed use is in compliance with general standards of review, use regulations, and development standards of this Code, then they shall recommend approval of the special exception to the city commission, with or without conditions, as determined appropriate. If the planning and zoning board finds that the proposed special exception is not in compliance, they shall recommend denial of the application. The planning and zoning board may continue the matter until any additional information or studies requested have been completed and offered in testimony."*

Mr. Reiner commented that he volunteered for this position because he wants to make a difference both for the city and for the residents. He stated that he is also a resident with children, he said that he is listening to the public and wants to thank everyone for coming tonight.

Mr. Angier commented that the board does not have the ability to say yes or no on this project, the only thing that is presented before the board tonight is the drive-through. He stated that the petitioner has a right to build and the public will need to find compelling evidence to prove that this cannot happen. He went on to say that some of the residents mentioned their concerns with traffic, however as stated by the petitioner the drive-through stacking solves the potential traffic issue. Mr. Angier stated that he does not know about the other issues the neighborhood may face, he is only aware of what is to be decided on this evening, which is the drive-through and the stacking conditions. He said not one person spoke about the alleyway, and he agrees with Commission Schwartz on the resident's concern of whether or not the restaurant should be there; and that concern should be addressed in front of the City Commission on July 3rd. Mr. Angier then asked staff what the recommendation of the alleyway was for this project. Mr. Saunders (City Attorney) wanted to clarify that the decision to be made this evening is to approve, approve with conditions, deny, or to request a continuance. Mr. Massarelli replied to the question posed by Mr. Angier on the alleyway, stating that it is recommended that the alleyway be maintained

by the City of Margate in a one-way direction to the south and be verified by the City of Margate Public Works Department.

Mr. Angier made a motion to approve with the 6 recommendations with the condition for the alleyway as recommended by staff: alleyway be maintained by the City of Margate in a one-way direction to the south and be verified by the City of Margate Public Works Department.

Motion died for lack of a second.

Ms. Van Der Meulen stated that after listening to the residents she would like to make a motion to deny.

Mr. Zucchini stated that the motion to deny will be based on the issue of the drive-through which is a special exception.

Ms. Van Der Meulen made the following motion, seconded by Mr. Reiner:

MOTION: RECOMMENDATION OF DENIAL TO THE CITY COMMISSION

ROLL CALL: Mr. Fritz, Yes; Mr. Angier, No; Ms. Van Der Meulen, Yes; Mr. Reiner, Yes; Mr. Zucchini, Yes. The motion passed with a 4-1 vote.

ID 2019-279

2B) PARLIAMENTARY PROCEDURE

Mr. Reiner made the following motion, seconded by Ms. Van Der Meulen:

MOTION: TO TABLE UNTIL THE NEXT REGULAR SCHEDULED PLANNING AND ZONING MEETING.

ROLL CALL: Mr. Fritz, Yes; Mr. Angier, Yes; Ms. Van Der Meulen, Yes; Mr. Reiner, Yes; Mr. Zucchini, Yes. The motion passed with a 5-0 vote.

ID 2019-280

2C) INTRODUCTION TO LAND DEVELOPMENT REGULATIONS

Mr. Robert Massarelli, Development Services Director gave a PowerPoint Presentation on Land Development Regulations. He discussed the "police powers", Chapter 163.3202 FS (Florida Statutes), City of Margate Code, and the Margate Zoning Code.

ID 2019-282

2D) REVIEW OF COMMERCIAL REDEVELOPMENT APPROVAL PROCESS

Mr. Robert Massarelli, Development Services Director gave a PowerPoint Presentation on Commercial Redevelopment Approval Process. He explained in detail the procedures and the change of occupancy triggers for the Development Review Committee (DRC) approval process. He defined and discussed each trigger giving its current requirements, issues, intent considerations, as well as recommendations for each.

Public Discussion:

Armand Daiguillon, 711 NW 71st Avenue, introduced himself and spoke about both the change of occupancy and the DRC process. He asked the city attorney about the verbiage on the proposed change. Mr. Saunders stated that he is not prepared to render a legal opinion on proposed land development changes without the opportunity to research the code provisions. He then explained the process to amending the code, saying that it would need to be publicly noticed. Mr. Zucchini asked if this could be tabled until the next meeting? Mr. Saunders replied that he will review this with staff and possibly work towards the next meeting.

Mr. Angier commented that he needs time to review this process further. He stated that if the attorney is not prepared to render a legal decision then neither should the board be ready to offer their opinion.

Mr. Reiner made the following motion, seconded by Ms. Van Der Meulen:

MOTION: TO TABLE UNTIL THE NEXT REGULAR SCHEDULED PLANNING AND ZONING MEETING.

ROLL CALL: Mr. Fritz, Yes; Mr. Angier, Yes; Ms. Van Der Meulen, Yes; Mr. Reiner, Yes; Mr. Zucchini, Yes. The motion passed with a 5-0 vote.

3) DIRECTOR'S REPORT

Mr. Massarelli gave an update on the recent and upcoming Neighborhood Community Meetings.

4) GENERAL DISCUSSION

Richard Zucchini discussed holding upcoming Special Planning and Zoning Meetings, with outside experts. He stated that he would like to schedule the first one on either June 10th or June 13th to discuss transportation, as well as a future meeting with South Florida Water Management District. He concluded by asking for a motion to adjourn the meeting.

Mr. Reiner made the following motion, seconded by Ms. Van Der Meulen:

MOTION: TO ADJOURN THE MEETING.

ROLL CALL: Mr. Fritz, Yes; Mr. Angier, Yes; Ms. Van Der Meulen, Yes; Mr. Reiner, Yes; Mr. Zucchini, Yes. The motion passed with a 5-0 vote.

Meeting adjourned at 11:29 p.m.

Respectfully submitted,

Prepared by Melissa M. Miller

Richard Zucchini, Chair