

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, May 11, 2011 – 9 a.m. – Room 119
Charlotte County Administration Center
18500 Murdock Circle
Port Charlotte, FL 33948-1094

(These minutes are not official until they have been approved by the Charlotte County Board of Zoning Appeals)

Members Present

Tom Thornberry, *Chairman*
Michael Brown, *Vice-Chairman*
Bill Truex, *Secretary*
Katherine Ariens
Blair McVety

Staff Present

Derek Rooney, *Assistant County Attorney*
Nicole C. E. Dozier, *Zoning Official*
Ken Quillen, *AICP, Planner III*
Diane Clim, *Recorder*

I. Call to Order

Chairman Thornberry called the May 11, 2011 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Chairman Thornberry led the members and the audience in reciting the Pledge of Allegiance.

III. Roll Call

Roll call was taken; a quorum was present.

IV. Swearing In of Those Giving Testimony

Diane Clim swore in all persons who wished to provide testimony.

V. Approval of Minutes

ACTION: A motion was presented by Mr. Truex and seconded by Mr. Brown to approve the minutes of the March 9, 2011 meeting of the Board of Zoning Appeals, motion passed with a unanimous vote.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the May 11, 2011 Board of Zoning Appeals meeting were submitted. Blair McVety submitted a Voting Conflict Form (Form 8-B) for file number SE-11-04 and announced that he would recuse himself from that agenda item.

VII. Introduction of Staff/Comments

Chairman Thornberry introduced staff. Nicole Dozier, Zoning Official, Attorney Derek Rooney, and Chair Thornberry made introductory remarks regarding the types of requests that the Board of Zoning Appeals would be reviewing and the standards which must be met, the notification process and how the Board of Zoning Appeals makes its decision.

VIII. New Business

**The following petitions were advertised on April 26, 2011: VAR-11-01; VAR-11-02
SE-11-03; SE-11-04; SE-11-05; SE-11-06; and SE-08-13(TE-1)**

Petition #VAR-11-01

Robert Bertsson, agent for Progressive Investments, Inc., is requesting a variance to allow 25' finger docks in a man-made canal instead of the permitted 10' finger docks in a Commercial Intensive (CI) and Residential Multifamily-12 zoning districts. The property address is 15001 Gasparilla Road, Placida and is described as Parcel P22, located in Section 12, Township 42 South, Range 20 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Robert Bertsson, Esq., BigW Law Firm, represented the applicant. Mr. Bertsson said the applicant is requesting a variance to allow their existing dock lengths to be applied to a relocated dock. Gasparilla Marina is one of the few large scale mixed use marinas in the County. It has direct access to Lemon Bay and the Gulf of Mexico. He discussed the development as it is today. This canal is considered a 3 sided basin. He discussed the Aingler's Club and the canal. Presently, there is construction of a new seawall. He handed out documents to show the proposed finger docks. He showed the current situation with the new seawall and existing dock. A second sheet showed what the Code allows without a variance, angled boat slips. The third sheet showed another configuration without a variance, straight in boat slips. The fourth sheet showed what they are requesting, going out 20 feet from the new seawall. At the time of the application, the new seawall had not been done, so the application shows 25 feet. The applicant has obtained their DEP permit, for 26 slips in the finger dock configuration, with 2 parallel slips at the end for fire and police boats. This request meets the 7 criteria for granting the Variance. He discussed the 7 criteria.

Mr. Quillen showed some recent pictures he took of the site. There was discussion about the boat parking.

Mr. Bertsson said he did not limit the application to 26 finger docks because if the DEP rules changes and we can come back in, he does not want to come back in for another special exception. They are only at this time, constructing 26 finger dock spots.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Roger Miller, representing the Ainglers Club, said the Association consists of 51 units and approximately 100 or so residents. The development was completed approximately 2007 and the association owns its side of the canal in question. The association has a linear dock similar to the one across the canal, for its residents to use. The association also has a navigational easement over the boat basin and canal. The association agrees with the staff determination that the applicant has failed to satisfy those criteria. The most glaring deficiency, is the lack of an undue hardship. Currently, the applicant has a linear dock, extending along the length of the canal, which is permitted for 28

slips. The proposed variance seeks finger docks to accommodate 26 slips, reducing the availability of slips. There are still 2 available on a linear basis, but it is not increasing the amount of dockage available. Economic disadvantage and mere inconvenience, do not satisfy the test for undue hardship. The Association would like a condition if this Board does approve this variance, to be put on that "any structure shall be no further than 20 feet from their seawall". This would include the pilings for the boatlifts.

Gordon Schiff, owner and resident at Angler's Club, unit 112, said he is a land use and real estate attorney, and also a boater. He thinks there is some confusion that needs to be cleared up first. There is no real site plan drawn by an engineer. He believes a site plan should be handed in, not a hand drawn plan, which would lead to problems in the future. He discussed some of the application handed in, and referred to an easement. It is a large easement agreement and handed out a copy of that easement. He explained the easement agreement and some pages he had marked with a tab. The existing dock is within an area where a navigation easement is granted. If this Board grants this variance, we still have the easement issue to work on with the applicant. He also discussed parking and maintenance issues.

Richard Bossey, owner of All American Covered Boat Storage, said he lives directly across from this waterway, and the petitioner has built an amazing facility in an area that is desperately needed. The crisis of water access in this state is unbelievable. From hurricane damage to the boom times of condos taking over every piece of waterfront property, to burdensome regulations where no marina can ever touch a mangrove to touch a new piece of property, the water county of Charlotte County is losing its greatest asset. I support the petitioner and would request to allow them to build and develop their facilities to accommodate our community. We have lost 17 marinas in the past 5 years in Lee and Charlotte County. This is called a lay along dock. If they have 28 slips, and the furthest out they are going to go is the edge of the lay along dock, the boat is encased within the finger pier. Right now you have boats outside of that lay along slip, which further encroaches the waterway. That would be gone if I am understanding this correctly. You are actually giving them more navigable waterway.

David Lindenbam, President of the Property Owners Association at the Angler's Club, said they are in support of the staff's findings. However, if this body is inclined to approve, all we are asking is a limitation of structures, no greater than 20 feet from the seawall. That would include pilings and finger docks.

James Williams, 11736 Angler's Club Dr., said the application has a lot of loose ends in it. The engineering work should be handed in. There is discussion about the docks, but nothing about the remaining 800 feet.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Mr. Brown. The public hearing was closed with a unanimous vote.

Rebuttal

Robert Bernisson, Esq. said he believes they have shown all 7 criteria have been met. There is a hardship with the existing condition. They cannot lift those boats out of the water. If you try to put lifts in, you would greatly impede the number of slips that are

along the linear dock, or the lay along dock. 28 boats tied to that linear dock, one trying to come and go, it is virtually impossible to use that dock. What we are trying to do in a commercial marina setting, is provide a marina facility that is usable to the customers in a safe and efficient manner. This improvement does not affect parking or any other improvements brought up before you. The Zoning Code has an interesting statement in it – Form of Ownership – this Chapter shall be construed and applied with the regard to the use of property without regard to the form of ownership. Because the strip was sold to the residential side, to allow them to have ownership and control of their dock, it changed everything. It is no longer a 3 sided basin. If the County still looked at it as a private 3 sided basin, we would not have had to come before you. We could have gone without any regulation. We are complying with every regulation.

Mr. Thornberry asked, your 13 finger angled docks, stop well before the end of the seawall. Is that a navigational thing that you're just not going to build anymore?

Mr. Berntsson said the intension is actually the 13 docks would be at the eastern end of the canal. There would be a linear dock that would still allow for people to disembark and embark if it is coming into dry storage and things of that nature.

Ms. Ariens asked the opposing side on the Angler's Club Drive, if they were to put in the same thing that you want to put in now, is there going to be an issue now, that every boat is out so many feet and you cannot have navigable water?

Mr. Berntsson said they cannot do that because they only own 12 feet of the canal. We own the entire rest of the canal. They can put finger slips in, but they can only come out 12 feet.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Mr. Berntsson said he just wanted to clarify for the record, condition #1, the change that was made is perfectly acceptable, 20 feet from the new seawall. We agree with that. As to condition #2, I just want the record to be clear, we are not limiting this application to the 13 finger docks for 26 slips. We are saying, whatever made sense for the 13, would make sense for any further ones to go in there, so I don't want #2 to be read that the current DEP permit was for 13 finger docks only. I want the application to be clear, that if we ever in the future had the ability to put additional finger docks with the same dimensions, that the 20 foot dock would be allowed for any future ones as well.

There was some discussion about the finger docks and having 13.

Board Member Comments and Questions

Ms. Ariens asked staff, given the fact you have been given new information, does that change your recommendation?

Mr. Quillen said our recommendation is based on our findings of fact, which were specifically #2 and #5. We still do not feel they have been met.

ACTION: A motion was presented by Bill Truex and seconded by Blair McVety that Petition VAR-11-01 be APPROVED based on the Growth Management Staff Report dated May 3, 2011, the evidence presented at the hearing, and finding the applicant HAS MET the required criteria for the granting of the variance subject to the 5 conditions set forth by staff, also noting the variance application is a footage/setback and would like that to be reflected.

Mr. Rooney, Asst. Co. Attorney said so you would like to incorporate only condition #1 and #3.

Mr. Truex said correct.

Mr. Thornberry said by eliminating condition #2, the applicant through their due diligence would have to do everything through DEP, if they have only applied for 13, and that is what they have now. It is not stopping them from applying for the remainder.

Mr. Truex said they can only get 13 right now with the DEP, that is all that is allowed at the State level.

Mr. Bernisson said as to condition #2, you could say this variance extends only to the man-made canal identified in this application. That way it is clear it is only for this portion of the marina.

Mr. Truex said he would amend to reflect that information.

Mr. McVety amended his second.

Motion was approved with a 4 to 1 vote. (Ms. Ariens voted no/against) with the following conditions:

1. The variance as approved by the Board of Zoning Appeals is to increase the distance finger docks may project into this man-made canal from 10.55' to 25', as measured from the existing seawall, to allow a number of finger docks to replace the existing linear dock.
2. This variance extends only to the man-made canal identified in this application.
3. All other marine structures related to the docks approved in this application shall comply with all other code requirements, including section 3-9-70.

Petition #VAR-11-2

Emil and Teddie Dameff are requesting a variance to allow a guest home for an existing single-family residence on a 16.4 acre lot, instead of the required 20 acre minimum lot size, located outside the Urban Service Area, in an Agriculture Estates (AE) zoning district. The property address is 3162 Willow Road, Punta Gorda, Florida and is described as Parcel P3-2, located in Section 19, Township 40 South, Range 24 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Emil Dameff, Applicant, said as he understands it, he does not meet the 7 criteria. He explained why he is asking for this variance. They have been residents since 1977. They built their home in 1998. It is a 2 story structure. There is only one bedroom on the ground floor of that home. His father has been living with them and he resides in the ground floor bedroom. Unfortunately, his mother-in-law has recently been diagnosed with Alzheimer's disease. It is difficult for her to live independently. They have tried to look at all options to bring her into their home, but she cannot do steps for an upstairs bedroom. They wanted to build this cottage for her to live in. He is a physician and his wife is a nurse. His wife currently does not work, so she would be there to take care of her mother. They do not need a stove in this cottage. All cooking would be taken care of in his house.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Robert Bernisson, Esq., said just for the record, he would like to put into evidence that the applicant does meet the 7 required criteria.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Mr. Brown. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Bill Truex and seconded by Katherine Ariens that Petition VAR-11-02 be APPROVED, based on the Growth Management Staff Report dated May 3, 2011, the evidence presented at the hearing, and finding the applicant HAS MET the required criteria for the granting of the variance with 4 conditions.

Motion was approved with a unanimous vote with the following conditions:

1. The variance as approved by the Board of Zoning Appeals is to reduce the minimum lot size requirement to the size of the parcel as it is currently existing (16.5-acres) for the existing single-family residence and to allow a "guest home" as shown on the **Survey Sketch** (Exhibit A) and **Site Plan** (Exhibit B) submitted by the applicants.
2. This parcel shall not be further reduced in size unless it is in compliance with all applicable County Codes in existence at that time.
3. The guest house may not be constructed with a complete kitchen. This means that the guest house may not have a stove, or electrical or gas facilities to accommodate a stove of any type.
4. If the guest house is ever removed or replaced all future redevelopment must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

Petition #SE-11-03

Chris and Amy McCann are requesting a special exception to allow a mobile home, to be used as a residence, in an Agriculture General (AG) zoning district. The property address is 15901 Hughes Black Road, Punta Gorda, Florida and is described as P1-2-4, located in Section 20, Township 42 South, Range 25 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Chris McCann, applicant, said he agrees with the staff report and the 4 stipulations. He will answer any questions.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Keith Coolie, neighbor who lives at 15681 Hughes Black Road, said he does not have any objection to this request. He is the only neighbor within site of this property.

There being no further requests to speak for or against the petition, Mr. Brown moved to close the public hearing, seconded by Mr. Truex. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Michael Brown and seconded by Blair McVety that Petition SE-11-03 be APPROVED based on the Growth Management Staff Report dated May 3, 2011, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception with the 4 conditions:

Motion was unanimously approved with the following conditions:

1. The special exception as approved by the Board of Zoning Appeals is for a single mobile home to be used as a residence.
2. This special exception extends only to the land included in the Site Plan and legal description submitted with this application. Any modification, alteration or revision of this use may require a modification of the special exception.
3. The site plan submitted by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the erection and operation of the proposed mobile home.
4. The mobile home erected on this property must be rated for the appropriate wind loads by HUD (or DCA) as evidenced by the Data Plate supplied by the manufacturer.

Mr. McVety recused himself from participation in this agenda item – SE-11-04

Petition #SE-11-04

Zac Extejt, agent for Grande Preserve on Lemon Bay Condominium Homeowners Association, is requesting a special exception to allow a resort marina in a Residential Multifamily-5 (RMF-5) zoning district. The property address is 9203 Griggs Road, Englewood, Florida and is described as part of the common lands in the Condominium Plat of Grande Preserve on Lemon Bay, located in Section 21, Township 41 South, Range 20 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Zac Extejt, agent for Grande Preserve on Lemon Bay Condominium Homeowners Association, said he has been sworn in. He said this is a unique project. Army Corps of Engineers has visited the site and will be issuing a permit. SWFWMD is supposed to be writing the permit as we speak. This project will not move forward without all permits needed. Looking at the site, there is a mangrove island. The preserve owns that mangrove area and the channel. All of this area will be conservation easement in perpetuity. He discussed the area and mangrove preserve. Every slip will have boat lifts. This is better for the environment. He explained where the marina will be located. They are permitted for 38 boat slips. This is a private marina.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Steve Samuels, 9231 Pine Cove Road, lives adjacent to this project, said he is concerned about public safety and the use of Griggs Road. He showed some pictures of a vehicle on Griggs Road and the width of the road, also with another vehicle passing and how they fit on the road.

Mr. Extejt said they can make another entrance temporarily to get into this area.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Mr. Brown. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Bill Truex and seconded by Katherine Ariens that Petition SE-11-04 be APPROVED based on the Growth Management Staff Report dated May 3, 2011, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception with 4 conditions.

Motion was approved with a unanimous vote with the following conditions:

1. This special exception is to allow a private resort marina to serve only the residents and their guests of the dwelling units located on this property extends only to the land included in the Site Plan and legal description submitted with this application.
2. The site plan presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the proposed private resort marina.
3. There shall not be permitted any fueling or sewage pump out stations in connection with this private resort marina or associated docks.
4. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

Petition #SE-11-05

Paul Patton, agent for Morning Star Child Care Center, is requesting a special exception to allow a child day care facility in a Residential Single-family 3.5 (RSF-3.5) zoning district. The property address is 20312 Ladner Avenue, Port Charlotte, Florida and is described as Lots 10, 11 and 12, of Block 907, of Port Charlotte Subdivision, Sub-section 34, located in Section 04, Township 40 South, Range 22 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Paul Patton, agent for Morning Star Child Care Center, said they will comply with all rules and regulations. They agree with the staff report. No one lives at the site. They purchased the house in October of 2010. They are still repairing a few items.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Frank Burke, neighbor who lives at 20325 Ladner Avenue, said his main concern is noise. He said the children coming from the Liberty Elementary school make a lot of noise. They run through his yard. Vehicles on this road exceed the 35 mph speed limit.

Ray Thorburn, neighbor who lives at 20313 Ladner Avenue, said his concern is public safety to the area. He lives across from the site. He does not have a problem with the kids, but the traffic in the area is excessive speeds. There is inadequate drainage in this area. The children are told to walk in the middle of the road on the line. The sidewalks are full of water. He goes out many times and guides the children around the puddles.

There was some discussion about a bus stop on Atwater and Ladner for a different school.

Grace Amodeo, 17079 O'Hara Drive, said she has been sworn in. She asked how many children would be in this day care. She was concerned with the traffic coming to this day care site. She noticed the lot behind this day care is part of the site but wooded.

Mr. Quillen said a parking lot would be on the lot behind the house.

Mr. Patton said there are 2 lots behind the house which are part of this site. One lot will be used for parking and the second vacant lot will partially be used for a place for the children to play.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Ms. Ariens. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Bill Truex and seconded by Mike Brown that Petition SE-11-05 be APPROVED based on the Growth Management Staff Report dated May 3, 2011, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception with 5 conditions.

Motion was approved with a unanimous vote with the following conditions:

1. This special exception, as approved by the Board of Zoning Appeals, is to allow a child care facility to be operated in conformance with all State and County laws and ordinances, including the eight standards of subsection 3-9-32(e)(8).
2. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.
3. The site plan presented by the applicant, as part of the petition, is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the child care facility and proposed parking lot.
4. The circular driveway off of Atwater Street must be designated a one-way drive with adequate signage to manage traffic circulation as determined during the Site Plan review process.
5. Site Plan review and approval is required prior to issuance of the required permit for construction of the proposed new off-street parking lot.

Petition #SE-11-06

Greg Davis, agent for Bank of America, is requesting a special exception to allow an increase in the number of secondary class "A" signs, from two to three wall signs, in a Planned Development (PD) zoning district. The property address is 24051 Veterans Blvd. Port Charlotte, and is described as Lot 9 of Charlotte Commons Subdivision, located in Section 06, Township 40 South, Range 23 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Greg Davis, agent for Bank of America, said he was sworn in. He works for the sign company and agrees with the staff report. This is a new building. Visibility is their primary concern.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Mr. McVety. The public hearing was closed with a unanimous vote.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Blair McVety and seconded by Bill Truex that Petition SE-11-06 be APPROVED based on the Growth Management Staff Report dated May 3, 2011, the evidence presented at the hearing, and finding the applicant HAS MET the required criteria for the granting of the special exception subject to the 4 conditions.

Motion was approved with a unanimous vote with the following conditions:

1. This special exception is to allow three secondary class "A" wall signs, not to exceed 135 square feet, and as identified in the staff report as Signs numbered 1, 2, and 3 at the locations and the sizes specified in the drawings submitted by the applicant with this application.
2. Other signs, such as a primary class "A" sign and directional signs, may be allowed and permitted only if they comply with all other regulations of the sign code.
3. The site plan presented by the applicant as part of this application is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the proposed commercial use and all associated signage.
4. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

Petition #SE-08-13(TE-1)

Geri Waksler, agent for Roger and Linda Tetrault Foundation, is requesting a time extension to extend the expiration date of a previously approved special exception (SE-08-13), from April 9, 2011 to October 1, 2015, allowing a private park in a Residential Single-family 3.5 (RSF-3.5) and a Residential Multifamily-5 (RMF-5) zoning districts. The property address is 5800-5950 Riverside Drive and 5751-5759 Beechwood Street, Punta Gorda, and is described as Lots 2 and 3 and part of Lots 1 and 4 of Block 06; all of Block

07; a part of Lots 1 and 4 of Block 08; all of Block 23; Lots 2 and 3 of Block 24; Lot 3 and part of Lots 1, 2 and 4 of block 33; Lots 3 and 4 and part of Lots 1 and 2 of block 34; Lots 3 and 4 and part of Lots 1 and 2 of block 35; Lots 3 and 4 and part of Lots 1 and 2 of block 36; all in Cleveland North Subdivision, located in Section 26, Township 40 South, Range 23 East.

Ken Quillen presented general information and staff findings for the petition.

Applicant Presentation

Geri Waksler, Esq. for BigW Law Firm, agent for the applicant, said she was sworn in. She said SE-08-13 special exception was granted in 2008 after a lengthy and comprehensive hearing. She said they are here today for the extension of this special exception. Since the original approval of the special exception, the Tetrault Foundation has pursued the permits and approvals necessary to construct and open its planned botanical gardens. Project design began prior to the special exception and has been on-going since the special exception was approved. She explained some of the projects preliminary approvals and phases. Copies of all permits have been included in the extension application. She said after all the plants have been planted, they need time to grow. They cannot build a botanical garden within 3 years. She requested this Board to grant the extension.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Paul Calkins, who lives at 5755 Riverside Drive, adjacent to the project, said he spoke at length at the previous special exception and the issues he has is the special exception was originally granted based on a design that had an alternate entrance and egress based on Beechwood, which I believe all their traffic studies were based on the access to the gardens through Beechwood. They have made a major design change abandoning Beechwood as their entrance and egress points. The property they are planning on using are deed restricted properties. This is why the foundation decided to go into the land use agreement with the County to circumvent the deed restrictions. As of March 4, the good cause of the foundation has not been exercised because the agreement was issued in September. The property has not been turned over to the County. Asking for a 4 and a half year extension is quite long. He feels they should have a new application for this request. This is a completely different design than what was originally designed. He understands a turning lane is planned now.

Frank Price, who lives at 6031 Riverside Drive, said he agrees with Paul. There are significant changes to the original plan. He feels the entrance is a major change not minor. He is closest to the children's playground and fountain. He feels property values have been impacted in this area.

Ms. Ariens asked if a busing tour route was mentioned at the first hearing for the special exception?

Mr. Price said the new access would have to have a rating and entrance for buses. They are planning tour buses. This is a commercial operation, not a private park. If this was a yacht club or country club, they would not be able to have the parking lot within

100 feet of adjacent properties. They are planning to put their parking lot in less than half of that. There are no restrictions.

There being no further requests to speak for or against the petition, Mr. Truex moved to close the public hearing, seconded by Ms. Ariens. The public hearing was closed with a unanimous vote.

Derek Rooney, Asst. County Attorney said this is only a consideration of whether or not there have been good faith efforts on behalf of the applicant to comply with the special exception and move forward. We cannot discuss whether their plans have changed.

Ms. Waksler reiterated what Mr. Rooney said. This is not for a change plan, it is just for a good faith effort for the time extension.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition. Conditions 1-8 are the original conditions from the original special exception. Condition #9 has been added regarding this time extension.

Board Member Comments and Questions

Ms. Ariens asked isn't this already expired April 9?

Ms. Waksler said the Code requires that the extension requests be made prior to the expiration date and we did submit our request for the extension prior to the date of expiration.

ACTION: A motion was presented by Bill Truex and seconded by Mike Brown that Petition SE-08-13(TE-1) be APPROVED based on the Growth Management Staff Report dated May 3, 2011, the evidence presented at the hearing, and finding the applicant HAS MET the required criteria for the granting of the Time Extension subject to the original 8 conditions and condition # 9 regarding the extension date of October 1, 2015.

Motion was approved with a 4 to 1 vote. (Ms. Ariens voted no/against the motion)

1. The special exception as approved by the Board of Zoning Appeals is to allow a "private park" consisting of a botanical and sculpture garden with all the accessory uses as identified on the "Concept Plan".
2. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.
3. The site plan presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the proposed private park and all accessory uses.
4. If the Board of County Commissioners approves the vacation of any streets adjacent to this private park then the special exception shall extend to and include the adjacent street right-of-way to the extent that said streets revert back to the adjacent property owned by this applicant or their successor.

5. The maximum height of all structures permitted in this private park shall be 38' unless a modification of this special exception is approved by the Board of Zoning Appeals.
6. The owner is required to obtain Development Review Committee (DRC) site plan approval for all phases of development of this private park prior to issuance of building permits and construction of each phase of development of this private park.
7. The applicant will make whatever improvement to Beechwood Street as required by the County Engineer and the DRC process.
8. The park operating hours will be from 10:00 a.m. to dusk, with the exception of special events; maintenance activities shall not begin any earlier than 8:00 a.m.
9. A time extension is hereby granted for the establishment of this private park until October 1, 2015.

IX. Public Comments - None

X. Staff Comments -

Derek Rooney, Asst. County Attorney, said he will be giving this Board in small bits at the end of each BZA hearing, little snidbits of the law related to your roll here to help you make your decisions. He discussed personal liability. (sovereign immunity)

XI. Member Comments - None

XII. Next Meeting

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, June 8, 2011, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:50 p.m.

Respectfully submitted,

Diane Clim, Recorder

/dlc



Tom Thornberry, Chairman

Approval Date: 6-8-11