

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida
Minutes of Regular Meeting
January 9, 2012 @ 1:30 p.m.

Call to Order

Chair Hess called the meeting to order at 1:30 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

Roll Call

PRESENT

Paula Hess
Michael Gravesen
Michael Brown
James Marshall
Brenda Bossman

ABSENT

ATTENDING

Derek Rooney, Assistant County Attorney
Gayle Moore, Recording Secretary

APPROVAL OF MINUTES

The minutes of December 12, 2011 were approved as circulated.

ANNOUNCEMENTS

The Chair announced that the election of officers would follow the meeting agenda items. The oath was administered, whereupon the meeting commenced.

PETITIONS

SV-11-11-01

Legislative

Commission District I

Roger E. Tetrault has applied to vacate portions of Second Avenue (aka Bagley Avenue), Third Avenue (aka Carrington), Fourth Avenue (aka Dale Avenue), and Second Street (aka Beechwood Street), a total of 1.32 acres, more or less, in the North Cleveland Subdivision, as recorded in Plat Book 1, Page 22, located in Section 26, Township 40 South, Range 23 East, in Commission District I.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition with a recommendation of *Approval with seven conditions*, based on the reasons stated in the staff report dated December 6, 2011 and the evidence presented at the public hearing on the application. **Mr. Ellis** clarified that one of the streets does not show on the aerial maps, but is still a viable right-of-way. He also noted that while six of the conditions of approval would be standard Environmental conditions, the seventh was a specific covenant regarding limits on development with regard to the density gained from the vacation.

Questions for Staff

Mr. Marshall asked about whether removal of exotics was part of the conditions; **Mr. Ellis** responded that such a condition would normally happen at the time of development, and suggested that condition number 5, which concerns site clearing, alludes to it. **Ms. Bossman**

asked if the restrictive covenant would run with the land, in the event the property was sold, and asked how any prospective purchaser would know. **Assistant County Attorney Derek Rooney** said the covenant would be recorded in the public records and would show up there in a typical title search.

Applicant's Presentation

Geri L. Waksler, Esq., applicant's agent, made the presentation in support of the petition. She noted, among other points, that all streets in question are undeveloped "paper" streets, and noted that the same sort of vacations had been common in the area before now, stating that nothing material will change for residents, and that all access conditions will remain as they are now. **Ms. Waksler** confirmed that the applicant accepted all conditions, and she had already drafted the restrictive covenants document and furnished it for review by the County Attorney's office.

Ms. Bossman asked for background on the foundation and the project; she also asked about access to the wetlands, and **Ms. Waksler** responded that as the project is for a public gardens, limited access would be part of the goal with the wetlands being enhanced and made part of the gardens. **Ms. Waksler** also responded to a question from Ms. Bossman about the titleholder of the property, and what would happen if the project never comes to fruition, noting that most 501(c)3's provide for such an eventuality. Some further discussion ensued on this and the subject of wetlands, with reference to the aerial maps as **Ms. Waksler** discussed the wetlands access points.

Public Input

Mr. Frank Price, resident of the property immediately adjacent at the corner of Beechwood and Eddy. **Mr. Price** identified himself as a long-time opponent of the project, calling it a commercial activity in a residential area; since the vacation of the streets would facilitate the development, he stated that he objects to the vacation, and specifically the impacts on the wetlands. He referenced DEP/SWFWMD comments on the application which calls such impacts minimal and **Mr. Price** asked that the Board focus on the fact of impact, not the amount. He also stated that his access to the wetlands would be reduced in theory, but agreed with Ms. Bossman that he would still have access.

Ms. Bossman asked that there be a response to the statements by Mr. Price concerning the property ownership by Charlotte County and the leaseback to the Tetrault Foundation; **Mr. Rooney** responded that the County is in the process of concluding that ownership/leaseback arrangement.

Mr. Paul Calkins, resident of Riverside Dr., and owner of a property next to the subject property, spoke to the subject of the covenant; he also commented about impacts to him on account of the project. His objections include the claim of extensive financial impact based on the failure to sell his property which he said was due to the prospective buyer not wanting to live next to the project. In response to a question from Ms. Bossman, he described the Riverside Land Trust deed restrictions which are the basis of his complaints that the gift to the county and lease-back was a ruse to evade the existing deed restrictions. He also complained that although the Foundation agreed nearly two years ago to turn the property over to the County, it has so far failed to do so, and he questioned the intentions of the Foundation. **Chair Hess** reminded the speaker that only the proposed vacation of streets was being considered at the present meeting, and reviewed the criteria for approving or denying a street vacation. Further discussion ensued on the subject of continued access to the wetlands; **Mr. Ellis**

referred to the staff comments from Comprehensive Planning which addressed this issue, and **Mr. Rooney** also attempted to clarify the issue for Mr. Calkins.

Ms. Waksler responded, pointing out that the reason the property hasn't been transferred from the Foundation to the County is that Mr. Calkins filed suit over the deed restriction issue, creating a cloud on the title, which prevents the County from accepting the property. She noted that there would likely be an admission fee, as that would be one of the only ways to generate the revenue necessary to maintain the property; if this were to be a public property, that revenue would be in the form of taxes. **Ms. Waksler** also indicated that Mr. Calkins himself had received benefit from a street vacation in the past, affecting the property he owns there; she noted that this applicant is merely seeking the same sort of benefit for streets entirely within the boundary of the property that they own.

Ms. Waksler reiterated that the project has been through many County processes, most involving public hearings, in order to receive the project approvals that this street vacation would support; today's hearing is not about revisiting those prior approvals but merely considering the street vacation request.

Mr. Marshall asked if the vacation request was premature given the lawsuit; **Ms. Waksler** responded that the roads in the street vacation request are not subject to the lawsuit, which is only with regard to the deed-restricted property.

- **Mr. Marshall** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

Discussion

None.

Recommendation

Mr. Brown moved that application **SV-11-11-01** be forwarded to the Board of County Commissioners with a recommendation of *Approval with seven conditions*, based on the findings and analysis in the staff report dated December 6, 2011, along with the evidence presented at today's meeting, second by **Ms. Bossman** and carried by a unanimous vote.

SVAR-2011-001

Quasi-judicial

Commission District II

Gary and Roxana Sloan have applied for a Subdivision Variance to Section 3-7-105(e) of the Charlotte County Subdivision Regulations, requesting to allow a Land Split that would otherwise be denied for lack of road frontage. The subject property consists of 2.5 acres, more or less, and is located south of Leatherwood Circle, north of Roanoke Circle, east of Wheeler Place, and west of I-75, in Section 27, Township 41 South, Range 23 East, in Commission District II.

Staff Presentation

Steven Ellis, Planner II, presented the findings and analysis of the petition with a recommendation of *Denial*, based on the reasons stated in the staff report dated December 16, 2011 and the evidence presented at the public hearing on the application. **Mr. Ellis** gave some background on subdivision variances, which are a rare process and quoted the governing laws indicating when such a variance would be appropriate. He gave details of the application history and the applicant's intention, with reference to the aerial maps as well as state and local law, highlighting the lack of road frontage or access, and contrasting this requirement for road frontage with the ingress/egress agreement applicants have with their neighbors.

Applicant's Presentation

Mr. Gary Sloan, applicant, gave his view of the events, noting that his request is in support of his goal to put two separate homes on the property for members of his family. He noted that he was given different information at different points in the process of researching his options with County staff. **Chair Hess** asked if he had some kind of covenant with the road-frontage parcel people; **Mr. Ellis** noted that the existing access down the side of the properties was the result of such a covenant. **Chair Hess** asked if the applicant's desire to build two homes on the property would constitute a hardship; **Mr. Ellis** referred again to the requirement in the Charlotte County Code that all newly-created lots must abut a public or private road for a distance of not less than fifty feet. **Mr. Sloan** argued that in giving up the 60-foot easement out of his portion of the property, he was providing an option to that requirement.

Questions for Staff

Chair Hess asked Mr. Rooney whether this question revolved around the interpretation of "hardship" and whether there appeared to be a hardship here. **Mr. Rooney** responded that he didn't think staff had issues with the request, but that it was a matter of what the Code required. Further discussion ensued on the nature of the applicant's hardship. **Mr. Gravesen** asked if Mr. Sloan couldn't build two structures on the same property without the lot split; it was determined that the density would support a house and guest house arrangement without a lot split, and this would only impact a possible future desire to sell the property as separate lots. **Chair Hess** said that this seemed to be a reasonable solution: just put two structures on the single lot. **Mr. Sloan** next mentioned a hardship because of the necessity to get approval for a well and septic; **Ms. Bossman** suggested that review was based on overall square footage of the property, so it wouldn't matter if there was a lot split. Further discussion ensued on this subject.

Public Input

Mr. Robert H. Berntsson, Esq., as a member of the audience with knowledge, indicated that in the MHS you can't have a guest house; **Chair Hess** recognized that would constitute the hardship, that he has to split the lot to have two structures.

- **Mr. Marshall** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

Discussion

Chair Hess commented that there seemed to be many valid reasons to give the applicant the benefit of the doubt as to the hardship. **Mr. Gravesen** spoke in support of allowing the variance, saying that it wouldn't become a precedent. **Mr. Brown** said he thought this matter should more properly be before the BZA rather than this Board; **Mr. Ellis** and **Chair Hess** pointed out that it is here due to the Subdivision Regulations which are separate from the Zoning Code. **Ms. Bossman** noted she had no objection.

Recommendation

Mr. Gravesen moved that application **SVAR-2011-001** be forwarded to the Board of County Commissioners with a recommendation of *Approval*, based on the findings and analysis in the staff report dated December 16, 2011, along with the evidence presented at today's meeting, including evidence of the hardship, second by **Mr. Marshall** and carried by a unanimous vote.

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas. The rezoning is from Planned Development (PD) to PD. This is a major modification of an existing PD to add a new site plan and conditions of approval; for property located at 3358 and 3362 Tamiami Trail (U.S. 41), in the Port Charlotte area, containing 1.35± acres; Commission District V; Petition No. Z-11-11-23; Applicant: James W. Herston/Save It All Self Storage LLC; providing an effective date.

Staff Presentation

Jie Shao, Planner III, presented the findings and analysis of the petition with a recommendation of *Denial*, based on the reasons stated in the staff report dated December 16, 2011 and the evidence presented at the public hearing on the application. She provided a brief history of the project, and showed a short video clip of the property's current condition; she also discussed the elements of the application that led to staff's recommendation of denial.

Questions for Staff

Ms. Bossman asked whether the applicant has the option of CG uses, especially in view of the economy; **Ms. Shao** responded that rezoning to CD was an option which the applicant rejected, and also rejected CI uses coupled with a time limit on the use.

Applicant's Presentation

Robert H. Berntsson, Esq., applicant's agent, gave the applicant's version of events. He mentioned that the proposed Planned Development would have been for a document storage facility rather than a 'mini-warehouse' noting it was aimed at storing medical records, and clarifying that financing difficulties and an inability to get commitments from prospective users had temporarily halted that project. **Mr. Berntsson** stated that the Zoning Official worked with the applicant to permit a tenant to move into the office/retail space on the northern portion of the lot, but because the gas station portion of the property had been vacant for so long, it was determined that no use could be placed on that property now without a Planned Development major modification.

Mr. Berntsson suggested that the current economy does not allow for major renovations to the property, leaving the alternative that the property must sit vacant. He complained that the Planning staff was insisting on a specific time frame for any interim use approval without being able themselves to accurately predict when the economy will turn around, financing will once again be available, and potential customers will be ready to spend on the proposed service. Concerning staff's proposal of a five-year time horizon for an interim use, **Mr. Berntsson** that while he and his client hoped that economic circumstances would have improved in that time frame, his client did not want to have to spend money on this same process again in the future if those hopes fail to materialize.

Mr. Berntsson then said that he found it odd Planning staff would allow auto sales / boat sales, but not commercial general sales. He stated that the applicant feels it is more appropriate to have all the uses available in item 13 of the December 22nd concept review conditions, which he then listed.

Chair Hess asked, with regard to an interim use, without a specific time limitation on interim uses, how would the applicant be encouraged to do the original project; **Mr. Berntsson** acknowledged that Planning staff had offered the option of returning the property to Commercial General, but he felt that would mean all the time and money so far expended would have been wasted; he suggested that the uses specified in condition 13 as mentioned previously, plus auto or boat sales, would be functionally the same as rezoning back to CG.

Chair Hess continued to suggest the option to set a time limit in order to have a truly *interim* development while indicating the Board was sympathetic to the economic hardship issues.

Ms. Bossman asked whether there wasn't some renewal mechanism for the applicant that would save them the time and expense of a new rezoning, if they ran out of the time limit set for the interim use; **Mr. Rooney** stated that because it is a PD, which is a negotiated agreement, any options could be considered, though not necessarily concluded here at this meeting. **Ms. Bossman** asked staff to explain why there were limitations placed on the business options available to the applicant; **Ms. Shao** said that the applicant had not provided any indication of the specific uses they contemplated, as required by the PD process, but these two uses were proposed by the applicant during a meeting. **Ms. Bossman** asked if it couldn't be specified as any commercial general uses plus auto or boat sales; **Ms. Shao** responded that the applicant had requested all CI uses, which goes against the US 41 Overlay Code; one intention of that Code was to minimize that type of impact.

Public Input

None.

- **Chair Hess** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

Chair Hess asked staff what objections there were to the possible uses listed in condition 13; **Mr. Berntsson** indicated that he and staff had meetings where he felt there was not enough flexibility to let the applicant get whatever viable business was available into the property, and applicant's response was to leave the request as a request for CI uses even though there is no intention to look at any CI uses other than auto or boat sales. He stated that there is currently a potential tenant who proposes to do car sales. **Ms. Bossman** asked if they intended to do longer than a five-year lease with any tenant; **Mr. Berntsson** stated the arrangements would more likely be year-to-year. Based on that, **Ms. Bossman** asked if he would be satisfied with the type of expedited renewal process that had already been discussed; **Mr. Berntsson** replied that would not be acceptable, based on the assumption that his client would have to spend the money for legal representation to come through a hearing process again and argue that the extension was still deserved.

Further discussion ensued with **Chair Hess** attempting to identify an acceptable way to proceed; she asked Mr. Berntsson to specify which of the items in condition 13 were actually desirable, noting they included such uses as bars. **Mr. Berntsson** said it was important to have available all the listed uses, as the applicant has no idea what sort of tenant they will find who can use the structure without modification or improvement. **Mr. Gravesen** sought to clarify issues, specifically which of the staff's six conditions were objectionable to applicant – was it only condition three and would it be acceptable if that were replaced with condition 13 from the site plan process? **Mr. Berntsson** also pointed to another condition, the one that refers to providing a clock tower, which applicant does not intend to do to the existing building; he said the applicant would be willing to put in landscaping. **Mr. Gravesen** asked for clarification that no improvements would be made; it would be leased 'as is' and it would be agreed that doing any redevelopment would require that the site has to be developed to the PD. Further discussion to clarify these matters ensued.

Ms. Bossman offered one more comment regarding the \$85 extension fee, stating that the fee did not seem excessive; **Mr. Berntsson** pointed out that's for extending the concept plan. **Ms. Bossman** suggested that something similar could be put in place for the extension. There

followed a considerable discussion about what criteria would be applied if the applicant came back in. **Ms. Bossman** remained opposed to an open-ended arrangement. **Mr. Gravesen** stated he didn't have similar concerns, noting the terrible appearance of the site which currently has only location to recommend it; he stated his belief that the applicant would hasten to complete the project once the economy approves.

Discussion

None.

Recommendation

Mr. Gravesen moved that application **Z-11-11-23** be forwarded to the Board of County Commissioners with a recommendation of *Approval with six conditions (five from the staff report, condition 3 to be replaced with condition 13 from the concept review report)*, based on the findings and analysis in the staff report dated December 16, 2011, along with the evidence presented at today's meeting and the Board's desire to take current economic conditions into account, second by **Mr. Marshall** and carried by a vote of 4 to 1.

The Board was polled:

Chair Hess - aye
Michael Gravesen - aye
Brenda Bossman - nay
Michael Brown - aye
James Marshall - aye.

Chair Hess next introduced the election of officers and passed the gavel to Assistant County Attorney Derek Rooney as Chairman pro tem, to conduct the election.

Mr. Gravesen moved that the Board maintain the current assignment of officers; **Mr. Marshall** seconded the motion and there were no additional nominations. **Mr. Rooney** called the question and the motion passed unanimously.

There being no further business to come before the Board, meeting was adjourned at 3:00 p.m.