

CITY OF ST. AUGUSTINE

Planning and Zoning Board Regular Meeting May 7, 2019

The Planning and Zoning Board met in formal session Tuesday, May 7, 2019, at 2:00 p.m. in the Alcazar Room at City Hall. The meeting was called to order by Grant Misterly, Chairperson and the following were present:

1. Roll Call:
Grant Misterly, Chairperson
Karen Zander, Vice Chairperson
Sarah Ryan
Carl Blow
Jon DePreter
Christina Opsahl

Absent: Maurice Morrisette

City Staff: David Birchim, Director, Planning & Building Department
David Harrell, Senior Development Review Planner
John Cary, City Attorney
Candice Seymour, Recording Secretary

2. General Public Comment for Items Not on the Agenda

The Board heard from the following members of the public:

- B.J. Kalaidi
- Bruce Norman
- Kit Cooper

After Ms. Kalaidi's comments, there was discussion regarding the Fish Island application which had been withdrawn.

3. Approval of Minutes

(None)

4. Conservation Overlay Zone Development

4. (a) 2018-0167 – Ryan Carter, Carter Environmental Services, Inc. – Applicant
Fish Island Development, LLC – Owner
PIN#: 1622100016 (Area roughly
bounded by Plantation Island Drive S.

projected to the Matanzas River,
Matanzas River, State Road 312, then
Plantation Island Drive S.)

To approve removal of significant trees (Oaks & Cedars) for a linear retention pond to serve the neighboring parcel locate at PIN#: 1622100021.

Application was withdrawn prior to the meeting.

4. (b) 2019-0026 – Coastal Living Home Builders – Applicant
Solano Avenue Land Trust – Owner
PIN#:2208800030 (Lot immediately north
of 9 Solano Avenue)

To approve removal of more than fifty (50) percent of the tree canopy, including three (3) preserved (significant) trees (Cedars) within Conservation Overlay Zone 3.

Mr. Harrell read the staff report and said based on a review of Section 11-29 and without the support of evidence to the

contrary, staff finds that the Board can **APPROVE** removal of one (1) significant tree (Cedar) within Conservation Overlay Zone 3 with the following conditions:

- Permeable driveway pavers, grass pavers, or gravel to be used on the driveway construction and type/method shown on future building plans.

Paul Hoffman reviewed the application with changes that included moving the Comcast pole and saving two out of the three trees originally requested for removal.

The Board provided their ex parte communications.

Public hearing was opened.

Eric Smith was only in favor of the application if the applicant utilized stem-wall construction rather than fill-dirt which would negatively impact neighboring properties.

Bruce Norman spoke in favor of the application, but expressed concern for the neighboring property owner who was elderly and disabled and would be negatively impacted if flooding should arise from fill dirt.

Effie Antonatos was also opposed to the use of fill dirt.

Public hearing was closed.

The Board discussed:

- Stem wall construction would be utilized on all three lots
- Tree root protection for the tree closest to the road
- No existing code limitations to types of slab construction
- Permeable pavement for the driveway
- Tree protection areas

- Making stem wall construction a condition of approval, connecting it to storm water and ground stabilization

MOTION

Ms. Ryan MOVED to APPROVE application 2019-0026 to approve removal of one significant tree (Cedar) within Conservation Overlay Zone 3, with the condition that the two trees which the applicant agreed to preserve are staying because there would be no fill and stem wall construction utilized to satisfy criteria (d) and (f), and that the applicant would comply with tree protection criteria.

There was discussion regarding whether a condition to utilize a specific type of construction was within the authority of the PZB. Staff advised that the PZB could not mandate the type of construction, but could condition that the trees proposed to be saved had to be preserved regardless of the type of construction used.

Ms. Ryan MODIFIED the motion to APPROVE application 2019-0026, 9 Solano Avenue, to remove Cedar tree numbered one with the condition that the applicant use a permeable driveway surface for the driveway construction per staff recommendation with the type/method shown on the building plan and also that the construction techniques used on the houses would save the existing trees on the property. The motion was SECONDED by Mr. Blow.

VOTE ON MOTION:

AYES: Ryan, Blow, Opsahl, DePreter, Zander, Misterly

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

4. (c) 2019-0040 – Daniel C. Meissner – Applicant
Daniel & Gail Meissner – Owner

**PIN#1590800000 & Lew Boulevard
Right-of-Way (Lot located at the SW
corner of Lew
Boulevard and Flamingo Drive)**

To approve removal of more than fifty (50) percent of the tree canopy, including one (1) significant tree (Cedar) within Conservation Overlay Zone 3.

Mr. Harrell read the staff report and said based on a review of Section 11-29 and without the support of evidence to the contrary, staff finds that the Board can **APPROVE** removal of more than fifty (50) percent of the tree canopy, including one (1) preserved tree (Cedar) within Conservation Overlay Zone 3 located at **PIN#1590800000 and Lew Boulevard right-of-way.**

Dan Meissner reviewed the application.

The Board provided their ex parte communications.

16 certified notices were sent, 1 was returned in favor.

Public hearing was opened.

James Farrell was concerned with unintentional destruction of trees on the property during construction.

Kristina Harvey asked that the trees being saved were protected during construction.

Public hearing was closed.
The Board discussed:

- Necessary installation of septic tank and drain field
- Tree number 72 in the right-of-way for potential preservation
- No intent from the applicant to bring in fill, but the need had not been determined
- Driveway sight-lines addressed further in the permitting process

- Plans to run sewer into the Lighthouse Park area were not in the near future
- Tree numbered 74 requested for removal based on the proximity of the driveway
- Efforts of applicant to save as many trees as possible
- Possibility of altering driveway to save a grove of trees

MOTION

Mr. Blow MOVED to APPROVE Conservation Overlay Zone Development application 2019-0040 with the condition that tree numbered 72 will be retained. The motion was SECONDED by Ms. Opsahl.

VOTE ON MOTION:

AYES: Blow, Opsahl, DePreter, Ryan, Zander, Misterly

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

5. Variance

**5. (a) 2019-0037 – Peachtree Development of Atlanta LLC – Applicant and Owner
9 Rohde Avenue**

To approve a variance to decrease the minimum side yard building setback for a proposed single family home addition.

Mr. Harrell read the staff report and said based on a review of Section 28-29 and without the support of evidence to the contrary, staff finds that the Board may be able to **APPROVE** a Variance to decrease the side setback from ten (10) feet to one point six seven (1.67) feet for a single family home addition at **9 Rohde Avenue.**

The applicant was not present; however, a member of the public did say that the applicant did not realize that he needed to

be present for the meeting. There was discussion on how to proceed.

MOTION

Mr. DePreter MOVED to CONTINUE the Variance application 2019-0037 to the July 2, 2019 meeting to allow the applicant an opportunity to be present at the hearing. The motion was SECONDED by Ms. Ryan.

VOTE ON MOTION:

AYES: DePreter, Ryan, Opsahl, Blow, Misterly

NAYES: Zander

MOTION CARRIED 5/1¹

6. Use by Exception

6. (a) 2019-0039– Columbia Care Florida – Applicant

J & BFLP Ltd. – Owner
160 King Street

To waive the one (1) year waiting period to reapply for a use by exception; to approve a use by exception allowing a 3,500 square foot medical marijuana dispensary.

Mr. Birchim explained that the application was two-fold and the Board must first consider and vote upon waiver of the one year waiting period prior to considering the exception.

James Whitehouse, representing the applicant, reviewed the portion of the application regarding waiving the one year waiting period.

Public hearing was opened.

B.J. Kalaidi felt there was no injustice and the time-period should not be waived. She believed the next step should have been an appeal to the City Commission.

Charles Pappis did not feel that there was injustice at the last meeting to require the waiting period to be waived.

Public hearing was closed.

Mr. Whitehouse responded to public comment noting that the reason for the one year waiting period was to prevent applicants from continuously burdening meeting agendas with applications that could not be approved by the Board; however, he believed, in this case there was reason to believe that a single conditioning element could have changed the outcome of the last hearing.

The Board discussed:

- Lack of injustice at the previous hearing
- Desire that the applicant receive due process
- Concern for vacant state of the subject property as a hindrance to City Development
- Prior motion predicated on appearance and proximity to an already existing site with at least one member of the Board voicing concern for sales of legalized recreational marijuana if such a law were passed in the future
- Concern for setting a precedent of applicants asking for waivers

MOTION

Mr. Blow MOVED to WAIVE the one year waiting period and allow the applicant to present the exception again. The motion was SECONDED by Mr. DePreter.

VOTE ON MOTION

AYES: Blow, DePreter, Opsahl, Ryan

NAYES: Zander, Misterly

MOTION PASSED 4/2

Hearing for the Exception was opened.

¹ Brief recess from 3:18p.m. to 3:27p.m.

Mr. Harrell read the staff report and said based on a review of Section 28-19, if the Board **CAN** find there is a need and justification for the special exception due to the number, area, location, or relation to the neighborhood and that it would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare, then the Board **CAN APPROVE** of the Special Exception located at **160 King Street**; however, if the Board **CANNOT** find there is a need and justification for the special exception due to the number, area, location, or relation to the neighborhood and that it would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare, then the Board **CANNOT APPROVE** of the Special Exception located at **160 King Street**.

James Whitehouse reviewed the application regarding the exception with a presentation.²

The Board provided their ex parte communications.

7 certified notices were sent; however, none were returned.

Public hearing was opened.

B.J. Kalaidi felt that the applicant would come back for the sale of legal recreational marijuana if the application were approved. She spoke in opposition to the application and felt that the business would have a negative impact on the area.

Charles Pappis felt that the application was confusing and that the public may have misconstrued the application as one to waive the waiting period, with a secondary application and noticing for a subsequent meeting. He felt that the location was inconvenient and the use may be too intense for the property.

² Attached to original minutes

Public hearing was closed.

Mr. Whitehouse responded to public comment, providing the language for the new condition that medical marijuana only would be sold. He also referenced state statute that medical marijuana dispensaries were to be treated as a pharmacy use.

The Board discussed:

- Lack of enforceability for any condition relating to future marijuana legislation
- Continuing discussion regarding potential conditions to attach to the exception including:
 - Sale of low THC products, which was infeasible for the business
 - Complaint-driven condition to return for review as applied to other exceptions
 - Hours of operation
- Summary of existing Medical Marijuana ordinance including:
 - Requirement for direct public access to US1 to allow for police access
 - Dispensaries as a Use by Exception
- Safety concerns at location
- Close proximity to existing dispensary
- Staff report which outlined the documents submitted to staff
- City Attorney's fiduciary duty to the Board
- Availability of medical marijuana cards and prescriptions
- Intensification of the site would trigger a return to the Board for approval
- High costs of owning a medical marijuana business
- Other uses allowed per code on the subject property that may be less appealing

MOTION

Mr. Misterly MOVED to DENY Use by Exception application 2019-0039 for a medical marijuana dispensary based upon the applicant's close proximity to the previously approved medical marijuana dispensary on US1. The motion was SECONDED by Ms. Zander.

VOTE ON MOTION:

AYES: Misterly, Zander

NAYES: Opsahl, DePreter, Blow, Ryan

MOTION FAILED 2/4

MOTION

Mr. Blow MOVED to APPROVE Use by Exception application 2019-0039 because it meets all the criteria for an exception and including the language supplied by the applicant: "This site is approved for the use by exception specifically for a facility for the sale and distribution for medical marijuana as approved by Florida Statute and the Board hereby conditions this approval upon the caveat that any other use on this property related to any future legalization of the recreational use of marijuana is not approved by this action and would have to come back to the Board for future review if such ever becomes applicable," and including a condition that if there were three or more written complaints found to be violations by Code Enforcement or Law Enforcement within one calendar year of opening, then the applicant would have to return before the Board for review of the exception. The motion was SECONDED by Mr. DePreter.

Mr. Misterly clarified that he was voting against the application based upon the location's close proximity to a previously approved similar use.

VOTE ON MOTION:

AYES: Blow, DePreter, Opsahl, Ryan

NAYES: Zander, Misterly

MOTION CARRIED 4/2

6. (b) 2019-0038 – McCrory's Sunny Hill Nursery LLC – Applicant
R & B Property V LLC – Owner
105 S. Ponce De Leon Boulevard

To approve a use by exception allowing a 5,400 square foot medical marijuana dispensary.

Mr. Harrell read the staff report and said based on a review of Section 28-19, if the Bard **CAN** find there is a need and justification for the special exception due to the number, area, location, or relation to the neighborhood and that it would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare, then the Board **CAN APPROVE** of the Special Exception located at **105 S. Ponce de Leon Boulevard**; however, if the Bard **CANNOT** find there is a need and justification for the special exception due to the number, area, location, or relation to the neighborhood and that it would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare, then the Board **CANNOT APPROVE** of the Special Exception located at **105 S. Ponce de Leon Boulevard**.

There was a brief discussion clarifying updated documentation provided by the applicant.

Lara Diettrich, Brian Gresha, Daniel Deets, and Matt Jurney reviewed the application.

There was discussion regarding close proximity of this application to the one previously approved by the Board.

The Board provided their ex parte communications.

8 certified notices were sent and 1 was returned opposed.

Public hearing was opened.

Charles Pappis felt that there was no legal way to say no to the application after approval of the previous application.

B.J. Kalaidi felt that the applicant did not care about the neighborhood. She spoke in opposition to the application citing that the application did not meet the criteria for approval.

Public hearing was closed.

The Board discussed:

- Vehicular ingress and egress to US1 and Lewis Boulevard addressed by Matt Journey
- Location too close in proximity to previously approved application
- Parking required cars to back up into right-of-ways on Lewis Boulevard and US1 and could cause safety concerns
- Nearby Sunshine bus-stop location, routes, and times
- Requested use was more intense than previous uses on the property and traffic was a concern³

The applicant responded to Board concerns regarding parking and traffic stating that the flow of traffic through the location would consist of approximately 3-6 patients per hour or 60 transactions a day with approximately 10 hours in operation per day.

Board discussion continued with the following additional topics:

- Limitation of the medical marijuana use to the US1 corridor may cause future conflict
- Traffic and parking safety concerns
- Recommendation of a location further south along US1
- Similar business in the area had higher patient traffic

³ Brief recess from 5:51p.m. to 5:55p.m.

MOTION

Ms. Zander MOVED to DENY Use by Exception application 2019-0038 for McCrory's Sunny Hill Nursery LLC at 105 S Ponce de Leon Boulevard for a Use by Exception allowing a 5,400 square foot medical marijuana dispensary based on the number of nearby medical marijuana dispensaries in the US1 corridor, area, location, and relation the neighborhood which would not promote the public safety and site ingress and egress and the negative effect of the comfort, safety, and convenience in relation to the adjacent neighborhood. The motion was SECONDED by Ms. Opsahl.

VOTE ON MOTION:

AYES: Zander, Opsahl, DePreter, Blow, Ryan, Misterly

NAYES: NONE

MOTION CARRIED UNANIMOUSLY

Other Business

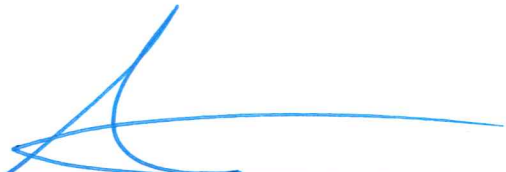
Mr. Cary noted that Ms. Ryan had voted on an item at a previous meeting and later realized that she was indirectly tied to the applicant through a separate project she was working on. He explained that an informal recommendation from the Commission on Ethics advised that Ms. Ryan fill out a recusal form for the item which would be attached to the minutes for that item.

Ms. Ryan read the recusal form into the record.

There was brief discussion regarding splitting two-part agenda items either into separate applications on the same agenda to clarify the agenda for the public including charging a fee for the separate application of a conditional hearing. Staff agreed to develop language for the Board's review at a subsequent meeting.

7. Adjournment

Having no further business, Mr. Misterly adjourned the meeting at 6:09 P.M.⁴



Grant Misterly, Chairperson

⁴ Transcribed by Candice Seymour