

CHARLOTTE COUNTY PLANNING AND ZONING BOARD
REGULAR MEETING

Administration Center, 18500 Murdock Circle, Room 119, Port Charlotte, Florida

Board Members

Michael Gravesen, Chair
Paul Bigness, Vice-Chair
Stephen Vieira, Secretary
Don McCormick
Clint Baker



District

District V
District III
District I
District II
District IV

MINUTES
REGULAR MEETING

December 11, 2023, at 1:30 P.M.

Call to Order

Chair Gravesen called the meeting to order at 1:30 pm

Roll Call

Upon the roll being called it was determined a quorum was present.

Approval of Minutes – October 9, 2023 and November 13, 2023, Regular Meeting

The October 9, 2023, and November 13, 2023 minutes were approved as circulated.

Announcements

The oath was provided by Recording Secretary Heather Bennett for those wishing to provide testimony.

PETITIONS

1.) SV-23-06-05

Legislative

Commission District V

The applicant, Bruce Schafer, is requesting to vacate a portion of the Haverhill Waterway Right-of-Way behind their property located at 21271 Cottonwood Avenue, to bring an existing shed into compliance with the required setbacks of the zoning district. The site contains 2,809.46± square feet, being an extension of lot 51 of Port Charlotte Subdivision Section 28, as shown on Plat Book 5, Pages 21A through 21B, of the Public Records of Charlotte County, Florida and generally located south of Cottonwood Avenue, west of Dewitt Street, north of Haverhill Waterway, east of Morningstar Waterway, within the Port Charlotte area, and located in Commission District V.

Jenny Shao, Project Coordinator, provided the findings and analysis for Petition **SV-23-06-05** is consistent with the County's Comprehensive Plan and the County's code of laws and ordinances and other applicable guidelines.

Questions for Staff

Mr. Baker commented this particular one seems like this may be a way to avoid a variance, that would possibly be denied? **Shaun Cullinan, Planning and Zoning official**, commented yes and no. You can't get a variance to put something that's not on your property. So yes, you would need a variance but it's also partially off of their property and within the platted right-of-way. **Mr. Baker** could the rest of the property owners come in after another and do the same thing? Why would we vacate that area and not give all the residence the property? **Mr. Cullinan** replied it would be on a case by case basis. Whether it's denying access to the general public, there are a number of factors that we look into when these canal vacations come in. You have approved some and have also denied some as well. This is just part of the process. Could the other residents come in; yes. We do not do blanket because it's fact and site based. **Mr. Baker** asked if the public could have access to that area? **Mr. Cullinan** replied if this is approved by the Commissioners the owners are able to fence it pursuant to the code. This is only a partial vacate, so the public will still have access to that section of the land. Yes, this would now become part of the property owner's land. Essentially this is a legislative discretion by the board that this portion of the right-of-way and drainage is no longer needed by the county for our purposes.

Mr. Bigness inquired if the shed is permitted? **Ms. Shao** replied that the shed currently has an after the fact permit in review, awaiting revisions. The zoning review was rejected due to encroaching onto that right-of-way. That's why the applicant decided to pursue a canal vacation. **Mr. Bigness** asked if there were any issues from the county's standpoint? **Mr. Cullinan** replied that's why one of the conditions is that an easement be granted back to the county for a portion of it. Right now, as right-of-way there's unfettered access into that area and the easements are on the 20 feet of uplands past the property line. The maintenance easement will be moved down to the bottom closer the water as well as the side drainage easement, if approved.

Applicant

Bruce Schafer, the applicant, comments that Ms. Shao did a great job. He's going through all of this to keep his shed where it currently stands and doesn't want to move his shed closer to the pool cage.

Public Input

None offered.

- **Mr. Bigness** moved to close the public comment, second by **Mr. Vieira**, with a unanimous vote.

Comments

Mr. Gravesen mentioned if the shed was moved just a little bit back onto the property could it have a variance? Is it because of the canal maintenance that's creating the issue? **Mr. Cullinan** replied there are a number of issues part of it is there's specific standards for variances. One of which is it has to be unique to the property, another one is that it can't be created by the person who has current interest in the property. As this would be self-created it would not qualify. The setback for accessory structure such as this is 20 feet from the property line or the mean-high-waterline.

Mr. Vieira inquired would it be staff's recommendation that it would not be approved at the Board of Zoning Appeals (BZA)? **Mr. Cullinan** replied staff's recommendation would most likely be that it does not meet the requirements for a variance because it is self-created and was installed after 2020 and the permit is an after the fact permit.

Mr. Gravesen commented that this is a potential flood way, and this can create issues. He has an issue with letting this be vacated and also there was a mentioning of a cottage in the survey, is this a cottage or a shed?

Mr. Baker comments that he thinks this is a very dangerous precedent. To give up the right-of-way for the county to have it would seem then it would be fair for everyone else in the area to ask for the land because he got it. That's his objection to this.

Ms. Shao mentioned that this petition was sent over to the Floodplain Coordinator, and they determined that no rise certificate would not be needed in this case, and it would be evaluated again with the shed permit.

Mr. Gravesen commented that this is a legislative so it's debatable and just because the county staff says we don't have a problem with doesn't mean it has to be approved.

Recommendation

Mr. Bigness moved that **SV-23-06-05**, be sent to the Board of County Commissioners with a recommendation of Denial, based on the findings and analysis in the staff report dated **November 26, 2023**, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. Baker**; the motion passed with a 3yays- (Mr. Gravesen, Mr. Baker and Mr. Bigness) - 2 nays (Mr. Vieira and Mr. McCormick).

2.) PP-23-07-08

Quasi-judicial

Commission District I

Babcock Property Holdings, L.L.C. is requesting Preliminary Plat approval for a commercial subdivision to be named, Babcock Ranch Community Shoppes at Yellow Pine, being a replat of Tract E-18 and a portion of Tract I-41, Babcock Ranch Community Cypress Parkway, as recorded in Plat Book 23, Page 15A through 15K and consisting of one lot. This site contains 16.08± acres and is generally located north of Cypress Parkway, east of SR 31, west of Curry Preserve Drive, and south of Lake Babcock Drive, in the boundary of the Babcock Ranch Community Development of Regional Impact (DRI) Increment 1, within the East County area, and in Commission District I.

Jenny Shao, Project Coordinator, provided the findings and analysis for Petition PP-23-07-08 is consistent the County's Comprehensive Plan and the County's code of laws and ordinances and other applicable guidelines.

Questions for Staff

None offered.

Applicant

Robert Berntsson, Big W Law on behalf of the applicant, comments they join in the staff report and accepts Ms. Shao as an expert. This will be a commercial portion of development that's right across the street from the existing commercial right off of State Road 31. He is happy to answer any questions.

Public Input

None offered.

- **Mr. Baker** moved to close the public comment, second by **Mr. Bigness**, with a unanimous vote.

Discussion

None offered.

Recommendation

Mr. Vieira moved that PP-23-07-08, be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff report dated **November 23, 2023**, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. McCormick**; and carried by a unanimous vote.

2.) PP-23-08-09

Quasi-judicial

Commission District II

Zemel Land Partners, LLC, is requesting Preliminary Plat approval for a residential subdivision to be named, Firelight – Phase I, consisting of 219 single-family lots and 23 tracts. This site contains 332.69± acres and is located at 26000 Zemel Road, in the Punta Gorda area, within the boundary of the Burnt Store Area Plan area, and in Commission District II.

Jenny Shao, Project Coordinator, provided the findings and analysis for Petition PP-23-08-09 is consistent the County's Comprehensive Plan and the County's code of laws and ordinances and other applicable guidelines.

Questions for Staff

Mr. McCormick commented that Zemel Road is a questionable highway is there any burden on any of developers to bring that road to speck? **Mr. Cullinan** replied there will be some off-site improvements required and the engineer of record would be best to speak to those. Yes, the county is evaluating Burnt Store Road and Zemel Road. They are talking right now about combing this with a PD to the south which may draft some other improvements. However, I will defer that the engineer of record.

Applicant

Rob Berntsson, Big W Law on behalf of the applicant, comments that he has been sworn and the project engineer, Todd Rebol, is here as well. They accept Ms. Shao as an expert. This is a subdivision of a portion of a property that the center part has already been zoned Planned Development (PD). We will be submitting a updated PD application for including those two parcels on the left side into the PD as well. Separately we will be applying

simultaneously for another PD for the property to the south. All of the traffic and off-site impacts are reviewed during the PD rezoning process. This is simply cutting up what's already been approved. They join in the staff report and are happy to answer any questions.

Questions for Applicant

Mr. Vieira asked to hear from the engineer on the road improvements. **Todd Rebol with Banks Engineering**, Zemel Rd currently has had some improvements made by the county several years ago. Which has met all the standards as far as width for access. There is some discussion as **Mr. Cullinan** commented about considerations as far as zoning. However, during the rezoning the process nothing was brought up as the applicant's responsibility for any off-site improvements. Unless it was site specific for turn lanes and things of that nature.

Public Input

None offered.

- **Mr. Bigness** moved to close the public comment, second by **Mr. Vieira**, with a unanimous vote.

Discussion

None offered.

Recommendation

Mr. McCormick moved that **PP-23-08-09**, be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff report dated **November 24, 2023**, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. Vieira**; and carried by a unanimous vote.

4.) PAS-23-00002

Legislative

Commission District IV

Pursuant to Section 163.3187, Florida Statutes, adopt a Small Scale Plan Amendment to change Charlotte County FLUM Series Map #1: 2030 Future Land Use, from Low Density Residential (LDR) to Commercial (COM), for property, containing 15 platted lots, located at 13343, 13377, 13385, 13393, 13401, and 13405 S Access Road, 6937 Pinedale Drive, 13420, 13410, 13402, 13394, 13386, 13378, 13370, and 13362 Hopkinton Avenue, in the West County area, containing 3.52± acres; Commission District IV; Petition No. PAS-22-00011; Applicant: Casto JBCC Hwy 70 LLC; providing an effective date.

5.) PD-23-00004

Quasi-Judicial

Commission District IV

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Residential Single-family 3.5 (RSF-3.5) to Planned Development (PD), and adopting its associated General PD Concept Plan, in order to allow for commercial development; for property, containing 15 platted lots, located at 13343, 13377, 13385, 13393, 13401, and 13405 S Access Road, 6937 Pinedale Drive, 13420, 13410, 13402, 13394, 13386, 13378, 13370, and 13362 Hopkinton Avenue, in the West County area, containing 3.52± acres; Commission District IV; Application No. PD-23-00004; Applicant: Casto JBCC Hwy 70 LLC; providing an effective date.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PAS-23-00002** is consistent the County's Comprehensive Plan and the County's code of laws and ordinances and other applicable guidelines.

Jie Shao, Principal Planner, provided the findings and analysis for Petition **PD-23-00004** is consistent the County's Comprehensive Plan and the County's code of laws and ordinances and other applicable guidelines.

Questions for Staff

Mr. Bigness asked how tall is the buffer wall? **Ms. Shao** responded six feet. **Mr. Bigness** asked if SWIFT MUD approval required for the wetland? **Ms. Shao** yes, they will have impact so they will not preserve that on site 0.15 acres of the onsite wetland.

Mr. Vieira is the application of a type C buffer with a six-foot opaque fence a compromise as opposed to using a type D? Ms. Shao responded no this is a general commercial. Our commercial code 3-9-100, you are required a type C buffer. Ms. Shao gave detail of the code requirements and explained that the applicant is providing more than what the code is requiring by going with the type C buffer.

Applicant

Rob Berntsson, Big W Law on behalf of the applicant, comments that he is here to speak on behalf of both items 4 and 5. He accepts Ms. Shao as an expert. This is an opportunity to reduce density further in west county. It would be 15 residential lots that would no longer be developed as single-family homes. The sites been designed so that the storm water is at the far western end, so it provides additional buffering to the existing single-family home that was a former model home on that site. There's an addition to that enhanced buffering. There is a six-foot opaque wall that runs down the entire western boundary across the entire southern boundary and then wraps around to cover the back of the dumpster. So that all the development is inside the wall from the residential sides. Across the street there is a shopping plaza with Publix with banks, fast foods, etc. This is an extension of that commercial area, and it is an appropriate area for commercial. With that we join in the staff report and the conditions that contain therein. This is a very limited use; this PD is approving what you see in front of it. It is specific for what the end users are, and we respectfully ask for your approval.

Public Input

William Heilig, lives next to site, commented that he's concerned about this intruding on his family's lively hood with this purposed plan. The biggest compliant they have is the quality of living and what it will be beside that carwash. Carwashes are loud with people blaring music while cleaning out their car, what's my quality of life going to be or even property value going to be after this development? They've lived in the area for four years and love where they live. If we chose to sell this house, no one will want to buy it next a carwash. Other concerns are, there will be a pond right by their house. During the hurricane they did not flood, and their flood zone was upgraded to a 500-year flood event. With this pond next to them, will this effect that? Also, the traffic, from Pinedale turning right onto South Access Road to this plaza, it's currently already hard to turn onto. He's concerned about how that will be with this carwash being developed. He's not sure if anyone has looked into this, but him and his family are devastated with this purposed development.

- **Mr. Baker** moved to close the public comment, second by **Mr. Vieira**, with a unanimous vote.

Comments

Mr. Gravesen recommended to the homeowner to prepare to speak in front of the Board of County Commissioners on January 23rd, 2024, and to speak to Mr. Berntsson.

Rebuttal

Mr. Berntsson commented that there is a six-foot wall with landscaping outside of the wall. Adjacent to the single-family home would be the landscaping buffer with the wall. Not much different if a single-family home was built on the next lot. The carwash is designed that the openings are on the north and south and all the vacuum area is on the eastern side of that carwash. The carwash provides additional buffering to the home to the west. Again, we have an enhanced buffer, we have the wall, we have very specific uses. There would be nothing to stop someone from building a single-family home that has renters playing music all night along with other things. With that he respectfully asks for the board's recommendation of approval.

Discussion

Mr. Baker comments that he agrees that the family should work with Mr. Berntsson and the representatives. That pond and the buffer that's going and the six-foot traditional wall can be negotiated. This is a fairly large commercial change; with buffers and vegetation you can make it to where that carwash is not visible and a lot of sound barriers in place. He understands that car washes are busy, but if you get the right buffers and they negotiate with you, as to preparation for the commission; He suggests doing that. It does work and their usually reasonable.

Mr. Gravesen comments that he does have empathy for the homeowners. Unfortunately, some where along the line someone purchased a model home that was there for a sales purpose on 776. It's a problem that we've had here in Port Charlotte all the way up and down where you have residential up against commercial and we've created the overlay. The overlay isn't on 776 however, this is one of those areas right here where it's almost an overlay area that you could expect commercial to encroach.

Recommendation

Mr. Baker moved that **PAS-23-00002**, be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff report dated **November 10, 2023**, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. McCormick**; and carried by a unanimous vote.

Recommendation

Mr. Baker moved that **PD-23-00004, with conditions "a" through "k"** be sent to the Board of County Commissioners with a recommendation of Approval, based on the findings and analysis in the staff report dated **November 9, 2023**, Charlotte County's Comprehensive Plan, and the evidence and testimony presented at the public hearing before the Planning and Zoning Board, second by **Mr. McCormick**; and carried by a unanimous vote.

ADJOURNMENT

The meeting was adjourned at 2:29 p.m.

Accepted on behalf of the Charlotte County
Planning and Zoning Board



Michael Gravesen, Chair