



Board of Planning and Appeals

BOPA Regular Meeting

~ Minutes ~

1065 Ridgewood Ave
Holly Hill, FL 32117
www.hollyhillfl.org

Thomas Harowski
386-248-9424

Monday, June 1, 2015

6:30 PM

City Commission Chamber

1. Call to Order

Roll Call

Attendee Name	Title	Status	Arrived
Mike Myer	Chairman	Present	
Christopher Via	Vice Chairman	Present	
Edward H Perkins	Board Member	Present	
Dorothy Featherston	Board Member	Present	
Jim Legary	Board Member	Present	

Invocation

Mr. Myer delivered the Invocation.

Pledge of Allegiance to the Flag

Mr. Myer led the Pledge of Allegiance.

2. Minutes

Monday, March 02, 2015

Agenda Item 2015-30

Minutes Monday, March 02, 2015

ATTACHMENTS:

- Minutes Monday, March 02, 2015 (PDF)

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jim Legary, Board Member
SECONDER:	Edward H Perkins, Board Member
AYES:	Myer, Via, Perkins, Featherston, Legary

3. New Business

1. Agenda Item 2015-31

1585 Garden Avenue Rezoning An Application from the Property Owner, Miro Lakic, to Rezone the Parcel at 1585 Garden Avenue from R-3 Medium Density Single-Family Residential to CC-1 Commercial Corridor District

INTRODUCTION: The applicant is requesting rezoning of a 0.11 acre (5,000 square feet) parcel from R-3 Medium Density Single-Family Residential to CC-1 Commercial Corridor District to permit the property to be used for business use in place of the former residential use. The property is located on the east side of Garden Avenue approximately 200 feet south of the intersection of Garden Avenue and Flomich Street.

BACKGROUND: The property in question is a single-family residential lot with a home that was built in 1947 according to the property appraiser records. The lot is located in an area that has been transitioning from residential use to industrial and heavy commercial use. This transition has been recognized by the City's comprehensive plan has designated the property as Wholesale Commercial and Industrial on the future land use map. The zoning has remained R-3 Medium Density Single Family Residential until such time as the property owner desired to convert the property to non-residential use.

The applicant has submitted the required application and lot survey along with addition information describing the property. A copy of this application packet is attached. The applicant proposes to utilize the property for the sale of ornamental yard decorations, however, should the rezoning is approved, the property may be used for any permitted use allowed by the CC-1 zoning classification.

DISCUSSION: The Holly Hill Comprehensive Plan has designated an area which runs north and south from Walker Street to Flomich Street and from the FEC Railroad generally west to the north-south canal as an area transitioning from residential use to heavy commercial and industrial use. The future land use map (refer to copy attached) shows this general area as designated for Wholesale Commercial and Industrial Development indicating this is the desired development pattern for this area in the future. When the future land use was approved for the area, there were still a number of residential units located along Garden Avenue and Pine Avenue within the area proposed for non-residential development. Over time some of these residential sites have transitioned to other uses, but some residential units remain. The current zoning map shows where R-3 zoning has been retained indicating the continued presence of residential units.

The applicant is requesting rezoning of his parcel at 1585 Garden Avenue from the current R-3 residential zoning to CC-1 Commercial Corridor. This rezoning is consistent with the future land use map and the planned development of the area as discussed above. Policy 1.1.3 of the Future Land Use Element identifies zoning classification which are consistent with the various land use categories. For the Wholesale Commercial and Industrial land use classification the zoning categories are CC-1, I-1 and I-2. The proposed CC-1 zoning is consistent with the comprehensive plan. All of the non-residential properties between 15th Street and Flomich Street west of the FEC Railroad are zoned CC-1, so therefore the CC-1 zoning is most consistent with the existing development pattern in the area.

RECOMMENDATION: As the requested rezoning is consistent with City of Holly Hill Future Land Use Plan and the requested CC-1 zoning is consistent with the zoning pattern in the area, staff is recommending the Board of Planning and Appeals recommend the City Commission approve the rezoning.

COMMENTS - Current Meeting:

Mr. Harowski gave a detailed description as it pertains to 1585 Garden Avenue rezoning, an application from the property owner, Miro Lakic, to rezone the parcel at 1585 Garden Avenue from R-3 medium density single-family residential to CC-1 commercial corridor district.

Mr. Legary stated he felt the rezoning request is consistent with the surrounding area's zoning.

Mr. Myer opened public discussion.

Miro Lakic, owner of 1585 Garden Avenue stated the current zoning of his property does not allow for the type of business he wants to open.

Mr. Perkins asked Mr. Lakic what type of business he wanted to open.

Mr. Lakic stated it would be mineral/gem sales (general commercial use).

Mr. Perkins asked why staff was not purposing to rezone the property to an industrial use.

Mr. Harowski stated the CC-1 zoning district includes light industrial and is consistent with the surrounding zoning classifications.

Mr. Harowski stated he received a phone call from the lady who lives adjacent and to the north of 1585 Garden Avenue. She was inquiring about the nature of the rezoning request but stated she would not be in attendance tonight to either support or oppose the request.

Mr. Myer asked the Board to make a motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jim Legary, Board Member
SECONDER:	Edward H Perkins, Board Member
AYES:	Myer, Via, Perkins, Featherston, Legary

2. Agenda Item 2015-32

V-2015-02 792 Lakewood Request for a Variance of 10 Feet from the Required Rear Yard Setback of 20 Feet to Allow Construction of a Screened Patio Within the Required Rear Yard Setback.

INTRODUCTION: The applicant is requesting a variance of 10 feet from the required rear yard setback of 20 feet to allow a screened patio to be built 10 feet from the rear property line. The applicant has submitted an application which is attached as part of the agenda packet. Public notice has been provided as required by the code.

BACKGROUND: The property is located at 792 Lakewood Drive. The site is in the R-2 Single-Family zoning classification. This zone requires a minimum 75 foot by 100 foot lot with setbacks being 30 feet on the front, 20 feet in the rear and 8 feet on each side.

The application package includes a survey which shows the lot and building setbacks meet or exceed the minimum dimensions in the zoning district.

According to the survey the house currently has covered patio area of 6.5 feet by approximately 13.5 feet that is even with the rear wall of the house. There is an existing patio of approximately 12 feet by 16 feet which the applicant proposes to enclose with a screened structure. The patio is allowed to extend to within five feet of the rear property line, but once a structure is proposed it becomes part of the principal structure and must meet the required setbacks. The proposed enclosure will extend to within 10 feet of the rear property line, thus triggering the requirement for a variance to allow construction within the first 10 feet of the required setback.

One item of note with regard to the Aston Green Subdivision, where the house is located, there is a common area that runs behind all of the houses fronting Lakewood Drive. The area is designated as Tract A Stormwater Management and Common Area. At the point where the applicant's property is located, Tract A is approximately 58 feet deep. Any house to the west of the subject property would be nearly 80 feet from the 792 Lakewood rear property line and nearly 90 feet from the proposed structure. There are some trees along both edges of the common area behind the applicant house. A copy of the plat is provided to identify the common area.

In their application, the applicants note that there is a home nearby which has a pool enclosure that extends closer than 20 feet to the rear property line. Section 114-742 D allows swimming pool decks to extend to within five feet of a rear or side property line, and the City has allowed pool enclosures to be built to these dimensions. As noted above, a screen enclosure without a pool is considered part of the principal structure and is required to meet the standard rear yard setback.

DISCUSSION: The criteria for granting a variance require that there be a hardship imposed upon development of a parcel by the regulations that is unique to the property and general to all similarly zoned properties. The condition cannot be created by the applicant, and granting of the variance cannot grant a privilege to the property that other similar properties do not have. We are asked to determine that a variance if granted would not be detrimental to the public welfare; would not violate the comprehensive plan; and would contribute to harmonious development of the city. A variance is also to provide the minimum relief needed to allow the requested development to proceed.

The existing conditions on the property, the zoning rules, and the information provided by the applicant yield a number of findings as follows:

- The purpose of a setback is to place buildings on a parcel so that impacts to adjacent properties are minimized for factors such as light and air, views, and privacy. In the particular circumstances at 792 Lakewood, there is common area behind the lot which we can expect to remain free of structures as the land is dedicated to stormwater retention and open space. Negative impacts that might accrue to a property due to a reduction in the required setback will be mitigated

by the 55-60 foot common area separating the subject property from houses to the rear.

- The proposed development will not be visible from the front of the structure and the structure will be setback from the side property lines by a distance much greater than the required side yard setback.
- The applicant has indicated a need to provide a screened outdoor area to help with health issues. The survey indicates a covered patio is existing, but does not indicate whether the patio is screened or could be screened to achieve the desired health benefits.
- The applicant states that there are similar enclosures in the neighborhood that enclose swimming pools and are within the required rear yard setback. As noted above, the rule for a swimming pool enclosure is different, allowing the pool deck and enclosure to be as close as five feet to the rear property line. Staff acknowledges that the impacts to adjacent property of an enclosed pool and a screened patio area would likely be similar.
- There does not appear to be unique condition affecting this property when other properties within the Aston Green Subdivision are considered. The presence of a common area separating a home from the property to the rear is not common within the City zoned R-2 areas.
- The proposed patio area would require a variance equal to 50% of the required setback for the width of the patio.

RECOMMENDATION: In order to grant the variance, the Board must determine that the presence of the large common area buffering the applicant's property from the other properties to the rear of the lot is sufficient to create a unique condition applicable to this property and determine that denial of the permit to create the screen enclosure is a hardship that requires relief from the code.

The findings of fact in this case indicate that there should be little if any impact to the overall neighborhood. A similar structure can be erected if the screen enclosure is covering a pool, so it would be possible to have a screened area on other lots within the subdivision. The difference in the two circumstances is the use contained within the screened area.

COMMENTS - Current Meeting:

Mr. Harowski gave a detailed description as it pertains to 792 Lakewood Drive, request for a variance of 10 feet from the required rear yard setback of 20 feet to allow construction of a screened patio within the required rear yard setback.

Mr. Myer asked what was located in the common area abutting the parcel in question.

Mr. Harowski stated it was a stormwater management common area with a fringe of trees and a large grass area.

Mr. Myer asked Mr. Harowski if stormwater management was the current use of the common area.

Mr. Harowski stated yes.

Mr. Myer opened public discussion.

Christine Hetrick, owner of the property located at 792 Lakewood Drive addressed the Board and expressed her need for the variance.

Mr. Legary stated he went to the site and discussed the variance request with the president of the Home Owner Association (HOA) who indicated the HOA had no issues with the request being granted.

Mrs. Hetrick entered photos into evidence for the Board's review.

Mr. Myer asked Mr. Harowski if staff had any comments from the adjacent property owners.

Mr. Harowski stated he did not hear from any of the adjacent property owners.

Mr. Myer stated this was a unique situation and due to the fact the property backed a common area it was not impacting the surrounding neighbors.

Mr. Myer asked the Board to make a motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Dorothy Featherston, Board Member
SECONDER:	Christopher Via, Vice Chairman
AYES:	Myer, Via, Perkins, Featherston, Legary

3. Agenda Item 2015-33

Restaurant Special Exception Rule Discussion of the Special Exception Provisions for Restaurants in the City of Holly Hill Commercial Zoning Districts to Determine If Changes to the Regulations Should be Considered.

INTRODUCTION: In addressing an issue with regard to a proposed restaurant on US 1, the staff and the applicant encountered a condition in the land development regulations which we believe needs to be discussed to determine if any code revisions should be made. This item is being brought before the Board of Planning and Appeals to initiate this discussion process. Should the Board wish to make a recommendation, staff can carry that recommendation to the City Commission for their consideration.

BACKGROUND: Our commercial districts including B-2 Shopping Center, B-4 Highway Business, B-5 General Commercial, and CC-1 Commercial Corridor allow restaurants as a permitted use so long as the proposed site does not abut residentially zoned property. If the site abuts residential property, then the restaurant may be permitted only as a special exception use meeting the conditions of 114-690. This section sets forth the following conditions:

Sec. 114-690. Restaurants on parcel abutting residential district.

Restaurants, Type A and B, when such uses are located on a parcel abutting any R-1 through R-9 zoned property, are permitted as special exceptions, provided:

- (1) For restaurants open for business between 9 p.m. and 9 a.m., the restaurant building, or portion of a multi-occupancy building occupied by a restaurant, shall be setback a minimum of 50 feet from any R-1 through R-9 zoned property.
 - (2) For restaurants open for business between 9 p.m. and 9 a.m., no parking shall be permitted in the area between the restaurant building and any abutting R-1 through R-9 zoned property.
 - (3) For restaurants open for business between 9 p.m. and 9 a.m., no customer entrance or customer service area, including take-out windows and customer seating areas, shall be permitted on the side of the restaurant building adjacent to any abutting R-1 through R-9 zoned property.
 - (4) For restaurants open for business between 9 p.m. and 9 a.m., a six-foot high concrete block or other solid masonry wall shall be constructed on all property lines abutting any R-1 through R-9 zoned property.
 - (5) No outside sound amplification equipment shall be permitted.
 - (6) All exterior lighting shall be directed away from any abutting R-1 through R-9 zoned property.
- (Ord. No. 2352, § 2(5.6.1.AC), 7-13-93; Ord. No. 2571, § 1, 11-9-99)

The locations in the City where the special exception provision would apply include the east side of US 1 through the length of the city; the Winn Dixie shopping center at LPGA and Nova Road, and a number of locations along the east side of Nova Road. This is not an exhaustive list of impact areas, but simply provides an idea of the scope of impact of the regulation.

We recently had an instance where a site developed with a restaurant style building on US 1 which had been used as a restaurant for many years, converted to another retail business. The site now has a prospective tenant who is interested in opening a restaurant on the site, but the site now requires a special exception approval to allow the use. The existing development of the site is such that all of the provisions of the special exception cannot be met since much of the required parking is located between the building and the residentially zoned property. This case raised the question of whether the rule as currently constituted should be reviewed.

DISCUSSION: The purpose of the rule is to protect adjacent residential uses from the potential negative impacts of noise, glare, and outside activity that might disturb the nearby homes. This rule applies to all restaurants open between 9:00 PM and 9:00 AM so that any typical breakfast and lunch restaurant falls in the category as would a fine dining restaurant that might be open later in the evening. Typically the most difficult issue is the requirement to construct a wall along the property line between the commercial and residential properties. Occasionally the provision about excluding parking between the restaurant building and the residential has been an issue as in the case site above and in the case of the Winn Dixie shopping center. In most cases the other provisions can be met.

When we have commercial development adjacent to residentially zoned land, the residential development does deserve some level of protection against the nuisances that can be generated by commercial development. The question for discussion is whether the current level of protection is appropriate given the character of development

in the community. Should the current rule be modified or should it be retained in its current form.

In order to initiate the discussion, the following items are offered for consideration:

- Restaurants are considered appropriate uses in most of our commercial zoning districts.
- We have existing restaurants in these zoning districts which have been operating for many years and which do not have the elements required by the special exception standards.
- In recent years, complaints from residential neighborhoods about impacts from restaurant operations have been minimal, if any.
- Other commercial uses may have site activities such as parking, delivery and shipping areas, and general business access adjacent to residentially zoned areas without the requirements imposed on restaurant use. Note however, that hours of operation may be different for many of these uses in falling outside of the 9:00 PM to 9:00 AM time period.
- The city has a very close physical relationship between its commercial and residential areas. Impacts that might be more of a nuisance in a more suburban setting, are less likely to cause an issue when residents are used to having business operations close at hand.
- The current rule has the effect of limiting restaurant development to existing restaurant sites as these non-conforming sites may continue to be used as restaurants with the current site conditions so long as there is no change to another type of use. The issue with the former restaurant site noted above is that there was an intervening retail use that ended the non-conforming status.
- There is a similar rule for non-residential development under our buffer regulations. Non-residential development abutting residential zoning is required to provide a significant buffer. The code provides options ranging from a wall to increased building setback and a range of landscaping improvements. The developer has options to consider where the restaurant rule does not offer a similar range of options. (The Family Dollar Store on US 1 and the General Dollar store on Nova Road both constructed screening walls with their new buildings.)

RECOMMENDATION: If the Board would like to make a recommendation to the City Commission on this issue, there are a range of options to consider.

1. One option is always the no action option of leaving the rule as it is currently constituted.
2. A second option is to eliminate the provision entirely and allow restaurants as a permitted use without limitation.

3. A third option is to consider a modification of the current rule which might allow some more freedom to locate restaurants in our commercial areas while still providing an adequate measure of protection for adjacent and nearby residential development. Two ideas staff can offer for consideration include:
 - Changing the hours of operation triggering the special exception requirement. If the exclusion hours were 10:00 PM to 6:00 AM we would allow for a typical breakfast/lunch restaurant and provide a little more serving time for chain restaurant or fine dining restaurant while still preserving a reasonable quiet time for nearby residences during the overnight hours.
 - An option to allow a property owner to proposed increased landscaping and other screening techniques in place of the mandatory block wall may offer a more cost effective option for restaurant site development.

Our residential neighborhoods do deserve to have protection from the potential nuisance that can come from adjacent commercial development, but the question to be considered here is whether the code is providing a reasonable level of protection in comparison to the potential limitation on commercial property development. Clearly there has been some issue in the past which caused the City to consider amending the current rule into the code, but recent code history has not identified a significant ongoing problem. The code also includes an identical rule for bars and nightclubs, and the staff does not see this rule as providing an excessive level of protection. In the case of a bar or nightclub, we can expect late night activity where the patrons may noisy and boisterous as they enter and especially leave the premises. We are not suggesting a similar change to the provision for bars and nightclubs.

COMMENTS - Current Meeting:

Mr. Harowski gave a detailed description as it pertains to Restaurant Special Exception Rule, discussion of the special exception provisions for restaurants in the City of Holly Hill commercial zoning districts to determine if changes to the regulations should be considered. This discussion is needed to address an issue with regards to a proposed restaurant on US 1. The staff and the applicant encountered a condition in the land development regulations which needs to be discussed to determine if any code revisions should be made. This item is being brought before the Board of Planning and Appeals to initiate this discussion process. Should the Board wish to make a recommendation, staff can carry that recommendation to the City Commission for their consideration.

Mr. Myer asked Mr. Harowski if the purpose of the mandatory wall required as part of the special exception is to buffer noise.

Mr. Harowski stated he believes so but he was not sure when this provision was put in the Land Development Code and what issues were evident at the time that caused this buffering requirement.

Mr. Harowski stated the buffering regulations are not applied to existing structures maintaining the same use but towards changes of use in an existing structure and new construction.

Mr. Perkins asked what prompted the need to discuss modifying the buffer regulations.

Mr. Harowski stated is was as a result of not being able to accommodate a restaurant looking to go in to the old Denny's building as well as a restaurant looking to go in to the Winn Dixie shopping center due to the current buffering requirements.

Ms. Featherston stated she felt restricting restaurants was a bad idea and was in favor of eliminating the provisions entirely with the exception of the 50 foot buffering regulation.

Mr. Myer asked Ms. Featherston if she is suggesting the restaurant layer be removed but leave the commercial layer as is.

Ms. Featherston stated that is what she is suggesting.

Mr. Simpson stated this is a use restriction not a building restriction and suggests the Board consider keeping the overlay and changing the criteria.

Mr. Via stated the current provisions are applicable to all restaurants not just the old Denny's building and if the provisions were removed altogether it could cause problems for residents when a new restaurant came in.

Mr. Legary stated he felt the buffering requirements should increase when the hours of operation are extended. Basically the later the restaurant is open the more intensive the buffering should be.

Mr. Perkins stated he agreed with modifying the special exception criteria for restaurants as opposed to repealing it and would like to see if staff could come up with a way for it to be handled on an individual basis.

Mr. Simpson stated the current special exception criteria for restaurants is turning potential restaurant owners off.

Ms. Featherston asked Mr. Simpson if she is being asked to look at the current criteria and amend it.

Mr. Simpson stated yes.

Mr. Harowski stated the special exception process is pretty quick in terms of getting an answer. The special exception request goes in front of City Commission who has criteria to reference as well as looking at the site to determine if the special exception request meets or does not meet the criteria set forth by the code.

Mr. Harowski further stated the challenge the City Commission faces is the way the code is written. Right now they are unable to consider any alternatives to the special exception requirements for restaurants.

Mr. Via asked Mr. Harowski if the Board was to consider changing the hours specified in the special exception criteria to 10:00 pm and 6:00 am would the Denny's property be able to be used as a restaurant.

Mr. Harowski stated he did not know as he did not discuss the hours of operation with the potential tenant of the old Denny's building.

Mr. Myer stated his suggestion is to tie the setback requirements to the buffer requirements as well as changing the hours of operation that triggers the special exception requirement.

Mr. Myer also suggested to tie the parking requirements to the setback/buffer requirements and to tie the buffer material to the setback; meaning the closer you park to a residential area the more intensive the screening material should be.

Mr. Legary asked Mr. Harowski what he thought was the most effective in terms of buffers.

Mr. Harowski stated a wall was the most effective type of buffer.

Mr. Myer stated the Board would recommend to the City Commission to consider amending the following:

-hours of operations

-buffer requirements so that the closer you get to residential the more intensive the buffering requirements should be (sliding scale)

-modest outdoor music

Mr. Myer opened public discussion.

A representative for the property owner of 841 Ridgewood Avenue stated the main question he receives is the permitted use of the property. The property owner normally has anyone interested in the property speak to the City about the permitted uses and the answers given by the City is usually pretty vague. He also stated he met with the City Manager, the Mayor and a code enforcement officer and was told a tenant could apply for restaurant use and just not open past 9:00 pm until they get the special exception. The gentleman stated he felt that would be a bad business plan and felt he was in a grey area where he really didn't know what to tell folks in terms of permitted uses for the building.

Mr. Legary asked if the restaurant equipment was still in tact.

The representative for the property owner of 841 Ridgewood Avenue stated that yes the restaurant equipment was left intact and fully operational.

Mr. Simpson stated the consensus of the Board is to lessen the restrictions to encourage businesses while still protecting the residential properties.

RESULT:	RECOMMENDATION
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4. Old Business

None.

5. Communications

None.

6. Adjournment

The meeting adjourned around 8:00pm.