

SEPTEMBER 8, 1995

The Hearing Officer, Manatee County, Florida, convened a REGULAR HEARING in the Administrative Center, 1112 Manatee Avenue West, Bradenton, Florida, Friday, September 8, 1995, at 3:25 p.m.

Presiding was: James Paulmann

Also present were:

Mark Barnebey, Assistant County Attorney
Susan G. Romine, Deputy Clerk, representing
R. B. Shore, Clerk of Circuit Court

All witnesses/staff giving testimony were duly sworn.

MINUTES

Mr. Paulmann approved the minutes of July 6, 1995.

SPECIAL PERMITS

Mr. Paulmann announced that the court reporter had been delayed. He stated the public hearings could be held without a court reporter if it was acceptable to both parties, using the audio tape as a transcript of the proceedings.

Mike Pendley, Planning, Permitting and Inspections, and the representative for SP-94-18, First National Bank, agreed to proceed without a ~~the~~ court reporter.

(Court Reporter not present)

Public hearing (Notice in the Bradenton Herald 8/29/95) was opened to consider

SP-94-18 FIRST NATIONAL BANK - MOTOR VEHICLE SALES, RENTAL/LEASING

Request: Special Permit to allow a 4,072 square foot motor vehicle sale, rental or leasing establishment as a conditional use in the GC zoning district on 1.24 acres located on the west side of 15th Street East, 860 feet south of SR 70.

If approved, staff recommended 14 Conditions.

RECORD HO1-3

Misty Servia, Planning, Permitting and Inspections, submitted a revision to the Growth Management staff comments and a recommended Condition 15:

15. This Special Permit shall be null and void if conditions 4, 6, 8, 9, and 10 are not accomplished within 90 days.

She reviewed the site plan and the recommended conditions. She stated the draft final order will reflect additional Condition 15 as well as changes to all references from 60 days to 90 days.

Mr. Paulmann questioned whether it is the applicant's intent to use only the eastern portion of the site under the special permit. Ms. Servia stated the legal description covers only that portion for which they are seeking conditional approval and it is the applicant's intent to use only that portion along 15th Street East.

Mr. Paulmann questioned the legality of conditioning the sale of the property as stated in Condition 11. Mark Barnebey, Assistant County Attorney, advised that the stipulation should address **development** of the site rather than the **sale** of the site.

Ms. Servia stated the only access is along 15th Street East. Discussion followed.

Mr. Barnebey recommended amending Condition 3 to include, "An area along the property line may be opened up upon the establishment of a conforming general commercial use on the rear of the property."

Richard Yravedra, representing First National Bank, stated he agreed with all the conditions except for requiring a six-foot fence on the western boundary (Condition 6). He submitted a copy of photographs (5) of the site. He pointed out the trees at the west end provide adequate screening and that the area does not warrant, nor is it feasible, to install a fence, which would close off the rear lot.

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Ms. Servia stated eliminating the requirement for the six-foot fence would be acceptable since the applicant has given his assurance he will not use the rear of the property and the existing trees provide substantial screening.

Mr. Paulmann closed the public hearing.

Mr. Barnebey submitted a recommended order for consideration noting that Condition C (3) on page 3 relates to the required fencing, Condition K (11) should be modified based on comments relating to development rather than sale of the site, Condition O (15) should reference conditions D, F, H, I, and J instead of 4, 6, 8, 9, and 10.

Mr. Paulmann advised he will issue a Notice of Intent within 21 days indicating findings of fact, conclusions of law, and proposed action.

Recess/Reconvene

(Joanne Zeck, Court Reporter, present)

Hearing was reopened (from July 6, 1995) to consider

SP-94-20 JAMES AND VIVIAN REYNOLDS - CHURCH

Request: Special Permit to allow a 5,000 square-foot church on 3.65 acres zoned A-1 located at the terminus of 45th Avenue Drive East, 1,400 feet east of Caruso Road.

If approved, staff recommended the following Conditions:

1. This special permit shall not be effective until it has been recorded in the Public Records of Manatee County, Florida, by the applicant and a copy of the recorded order is received by the Planning, Permitting and Inspections Department.
2. The Preliminary Site Plan submitted with this application shall be part of this approval.
3. Signage shall be limited to the 4 x 8-foot ground sign shown on the site plan.
4. Screening pursuant to Section 715.5.2 shall be provided along all property lines prior to issuance of Certificate of Occupancy.

Mr. Paulmann advised that following the July 6, 1995, public hearing, questions arose concerning adequate public notice and he sought a legal opinion from an independent third party. He determined adequate notice was provided; however, upon receipt of correspondence and a review of the record, he determined further clarification was warranted relative to traffic.

Hugh McGuire, attorney representing the applicant, stated his client objected to reopening of the hearing. He submitted a copy of letter (8/1/95) to the Planning Director from D. Turner Matthews, attorney, and objected to Mr. Matthews' comments relating to hours of operation. In addition, he expressed concern regarding the scope of the hearing if it includes other than traffic issues.

Norm Luppino, Planning, Permitting and Inspections, reviewed the request and site plan (shown 7/6/95). He pointed out staff had concerns regarding compatibility with the surrounding area and increased traffic.

Mr. Paulmann outlined his concerns regarding peak hour traffic, parking accommodations, allowed uses under present zoning, etc.

Mr. Luppino explained that the entire area is zoned A-1 and the future land use category is RES-3. He stated it is doubtful the applicant would be able to increase density in the future above one unit per acre. He stated the density for the adjacent subdivision is one unit per acre. He reviewed a map (Exhibit 1) showing land uses.

Husham Abdulsatter, Planning, Permitting and Inspections Department, responded to traffic impact questions. He reviewed a table of traffic statistics from the Institute of Transportation Engineers Manual (ITE) for a single-family dwelling and a church. He stated that a complete traffic study did not appear to be necessary.

Michael Pendley, Planning, Permitting and Inspections, clarified that the tables submitted by Dr. Abdulsatter should reference "single-family detached and 3 du/acre" and a "1,000 and 5,000 square foot church". He addressed the traffic compatibility with the surrounding neighborhood and the health, safety and welfare of the residents.

Mr. Luppino stated that overflow parking would not create a problem on adjacent residential streets since they have the capacity to provide grass parking on their own site. He reviewed a site plan (Exhibit 2) and an aerial of the site (Exhibit 3) to indicate parking areas.

Mr. McGuire stated he would stand on the record of the previous hearing. He questioned if the table submitted addressed this specific request for a special permit and emphasized that the church does not hold services on Sunday.

Jim Farr, land planner representing the applicant, stated the traffic generated by the intended land use (Islamic Mosque with services at 1:00 p.m. on Fridays) is not an issue germane to a traffic study. He stated peak hour traffic will not conflict with this use, not even when the church meets for one month for one hour at sundown (Ramadan).

Randy Alley, traffic engineer representing the applicant, stated this mosque will operate during the weekday so the calculations listed on the table for Saturday and Sunday are not applicable to this case. He noted the trip generation rate of 47 trips on a weekday would be applicable to the peak hours of the church versus 183 trips on Sunday. He stated the mosque meets the level of service conditions required by the County.

Discussion: Whether the ITE statistics include other activities associated with mosque; whether statistics for Sunday of 183 trips should be applied to this request rather than the 47 listed for weekday; why holding services on Sunday generates 183 trips and holding services on Friday only generates 47; trips generated by homes on the street versus the mosque; etc.

Dr. Abdulsatter stated the traffic study for churches consisted of seven separate studies. He advised there is not a separate study for a mosque, however, he submitted and reviewed an ITE study for a synagogue. He responded to questions from Paul Bangel, Assistant County Attorney, relating to how the studies were conducted.

Greg Sheppard, 6106 44th Avenue Drive East, spoke in opposition to the request due to traffic concerns, reduction in property value, and negative change in character of neighborhood. He submitted four letters from his neighbors in opposition.

Turner Matthews, attorney representing property owners Louise Gilley, Alice Miller, Jeff Lemon, and Debbie and Rick Wren, spoke in opposition to the request based upon traffic concerns. He also noted that ownership of access to the site is in dispute and addressed parking and stormwater runoff.

Robert Anderson, 6221 45th Avenue Drive East, stated his property is located one lot away from the proposed church at the end of the road. He advised that he contracted to have the dirt road built and that his deed indicates one-half ownership; the other half of the road is owned by John Zglinicki, adjacent property owner. He submitted a copy of his 1994 property assessment indicating taxes assessed for that road. He stated he deeded an easement to an adjacent lot. He opposed the request.

Diane Zglinicki, 6218 45th Avenue Drive East, submitted an opinion letter (9/7/95) from William A. Saba, attorney, stating she owns the road/access to the site and pointed out she pays taxes on the road. She opposed the request stating a church should be on a collector facility road.

Also speaking in opposition were: Shawn Smith, 6105 45th Avenue Drive East; Howard Gilley, 6215 45th Avenue Northeast; William Scarbrough, 45th Avenue Drive; Verne Suttle, 6323 47th Avenue East; and John Zglinicki, 6218 45th Avenue Drive East.

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Chris Mowbry, Planning, Permitting and Inspections, addressed the stormwater criteria and concurrency related issues. He reported that the area appears to be poorly drained.

Others speaking in opposition: Christina Angus, 6411 47th Avenue East, commented on drainage problems; Lisa Kelly, 6011 45th Avenue Drive East; Rick Miller, 4527 60th Street East; Mary Sheppard, 3120 38th Avenue East; Albert Farmer, 6110 45th Avenue Drive East; and Jeff Lemon, 6223 47th Avenue East. They opposed the project due to drainage, traffic, compatibility and safety.

Mr. Pendley entered a letter from William W. Campbell, 5504 41st Avenue East, in opposition to the request.

Mr. McGuire did not rebut; he stated the applicant stood on the record.

Discussion: Safety of children who must use the road, which does not have sidewalks or swales; school buses stop on Caruso Road; compatibility; staff originally recommended denial; criteria in Land Development Code; ownership of access road; etc.

Darenda Marvin, Planning, Permitting and Inspections, submitted copies of documents from the Property Appraiser's office for lots 4A, 5A, and 18A, which indicate ownership of a portion of the access road. She stated that right-of-way for 45th Avenue Drive East was dedicated with the final plat for Dude Ranch Acres and it is her understanding that by maintaining it, the County has accepted that right-of-way. She submitted a copy of a quit-claim deed and two warranty deeds for that property.

Turner Matthews stated the County has not maintained the right-of-way and does not own it. He suggested that an evidentiary hearing needs to be held on that issue to determine ownership.

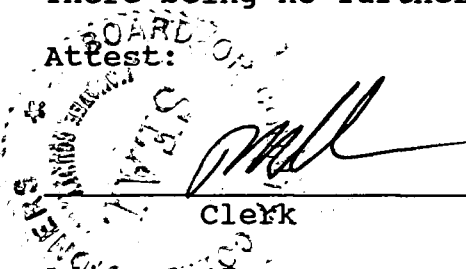
Mr. McGuire suggested the Hearing Officer allow a period of time for the appropriate parties to provide a briefing to him in order to preclude holding another hearing.

Mr. Paulmann continued the hearing to September 20, 1995, at 3:00 p.m.

HEARING ADJOURNED

There being no further business, the hearing was adjourned.

Attest:


Clerk
Adj: 6:45 p.m.
/eml

APPROVED:


Hearing Officer 11/2/95