

CITY OF COCOA
BOARD OF ADJUSTMENT
MEETING MINUTES
May 15, 2024

A Regular meeting of the Board of Adjustment of the City of Cocoa was held on Wednesday, May 15, 2024 in the Council Chambers at 65 Stone Street, Cocoa, as publicly noticed.

I. OPENING MATTERS:

Chairperson Shaia called the meeting to order at 6:00pm.

The Recording Secretary called the roll.

ROLL CALL:

Pam Shaia	Chairperson
Patricia Weeks	Vice Chairperson
Kaitlyn Aliano	Board Member
Robert Dyar	Board Member
Dan Quattrocchi	Board Member
Robert Butler	Board Member
James Green	Board Member
Kristin Eick	Assistant City Attorney

MEMBERS PRESENT:

Pam Shaia	Chairperson
Patricia Weeks	Vice Chairperson
Robert Dyar	Board Member
Dan Quattrocchi	Board Member
Robert Butler	Board Member

MEMBERS ABSENT:

Kaitlyn Aliano	Board Member
James Green	Board Member

OTHERS PRESENT:

Luci Ribeiro	City Planner
Jennifer Webster	City Planner
Kristin Eick	Assistant City Attorney
Lori Chabot	Recording Secretary
Abigail Bass	Assistant City Clerk

II. APPROVAL OF AGENDA & MINUTES:

- * **Motion by Vice Chairperson Weeks; Seconded by Board Member Quattrocchi to approve the May 15, 2024 Agenda as written.**

Ayes: Shaia, Weeks, Dyar, Quattrocchi, Butler

Motion Passed Unanimously (5-0).

- * **Motion by Board Member Quattrocchi; Seconded by Board Member Butler, to approve the April 17, 2024 Minutes as written.**

Ayes: Shaia, Weeks, Dyar, Quattrocchi, Butler

Motion Passed Unanimously (5-0).

III. OLD BUSINESS:

None.

IV. NEW BUSINESS:

A. **PZ 24-0040001– Zoning Verification Letter Appeal (430 Cox Rd.)**

An appeal relating to a zoning verification letter issued for a vacant lot in the Manufacturing and Industrial District (M-1), particularly related to a proposed regional trucking and parking facility. The 9.8-acre property is identified as 430 Cox Road, Cocoa, Florida. Tax Parcel ID: 24-35-26-00-757. **-Postpone to next meeting**

Luci Ribeiro presented the item and requested the Board pass a motion to postpone to the June 19, 2024 meeting.

- * **Motion by Vice Chairperson Weeks; Seconded by Board Member Dyar to postpone the item to the June 19, 2024 meeting at 6:00 PM at Cocoa City Hall.**

Ayes: Shaia, Weeks, Dyar, Quattrocchi, Butler

Motion Passed Unanimously (5-0).

B. **PZ 24-00000009– Special Exception (638 Brevard Ave.)**

Consideration of a Special Exception request pursuant to Appendix A, Zoning, Article XI, Sec 13 (c)(6) and Section 22 (F) of the Cocoa Village Subdistrict of the Cocoa Waterfront Overlay of the City of Cocoa Code to allow for a “bar or lounge, with or without a package store” to operate a beer and wine bar. The property is identified as 638 Brevard Ave, Cocoa, Florida. Tax Parcel ID: 24-36-33-85-* -A.

Luci Ribeiro, City Planner, presented the item via PowerPoint.¹

Chris Hyskell, 638 Brevard Ave, Cocoa, the applicant, presented a small video to the board. The video included testimonials from citizens of Cocoa and included a decibel reader video to show the noise in his establishment does not go over the noise ordinance that is currently in place.

Chairperson Shaia had everyone who planned on speaking stand and be sworn in all together.

Cydney Maksymow, Cay Civil Engineering, and civil engineer for the project, made the board aware she was available to answer any questions as she did the planning for the establishment.

Candance Rogers, 93 Delannoy, Cocoa asked the board about the parking situation and was confused as to why he was referring to the parking he had listed that was available for extra parking as that is currently under discussion to be sold. She believed it should not be included in this item. She asked for more information to be provided in reference to the parking and why parking and square footing would need to be changed. She pointed out that when it used to be the barber shop that it worked for them for all those years. She also made mention of the noise and said someone should go in and actually review the noise and where it travels.

She wanted to know if the applicant checked with the city before proceeding with his plans or if he did construction without any approval from the city.

Ms. Ribeiro reminded the board that when the application was analyzed they reviewed the use of the location and what is needed. She said due to the new use of the establishment he would need a waiver for parking due to the new business that is being proposed. She advised Ms. Rogers that Mr. Hyskell did submit plans to the city before doing anything on the property and had two meetings discussing changes.

Chairperson Shaia reminded everyone that we were not yet discussing the item pertaining to the parking situation.

Pat Chambers, 37 Derby Street, Cocoa, asked why he would provide anything to the city when he already did what he wanted. She also asked about restrooms and about building a wall for privacy and wanted to know how they had people attend before the open house. She said that was putting the cart before the horse and the board should look at how the applicant is doing things before approval. She advised the board she is not in favor of the noise that will be affecting her house as the establishment is across from her house.

Attorney Eick re-explained that the Board of Adjustment is required to make decisions based on competent and substantial evidence. She advised that “competent” evidence

¹ Exhibit A Board of Adjustment Special Exception 24-271- 638 Brevard Ave

means evidence provided by an individual qualified to testify on that subject. Florida law requires expert testimony regarding the potential impacts of noise.

Gwenette Sinclair, 640 Brevard Ave., Cocoa, asked the board about the bathrooms being handicap accessible and asked about security and how it would affect where she lives. She informed the board that on the day of the open house she could hear the music in her house and she is on an interior apartment with her windows closed. She advised she works from home and wants to know if the noise is going to affect her working capability.

Alex Greenwood, 640 Brevard Ave., Cocoa, informed the board that this project does not fit in with the City of Cocoa. He said the issue is they have experienced this before and all the things that could go wrong. He spoke on behalf of two other people who were not able to attend. He advised that for 40 years Cocoa Village has seen nothing but growth up until recently. He said the new applicants are bringing negativity into Cocoa Village. He stated the decibel reader is not accurate as other places in Cocoa Village have music that already shakes the floors and windows and stated during the open house, he was experiencing that.

He provided a packet to council to show that the noise ordinance is not being enforced. He said he worries if the owner sells after the variance is set it could be sold to someone who does not respect the laws of Cocoa and could not be a family-oriented company. He advised to council that in two years we will have a hotel and other large multi-million-dollar businesses. He said this could cause issues for the new way Cocoa is heading.

Board Member Quattrocchi asked if the variance and special exception stays with the land even if ownership changes.

Attorney Eick advised that is correct. She informed the board that if it is granted even if ownership changes the new owners get to keep the variance and special exceptions granted to it.

Charles Steinberg, 640 Brevard Ave., Cocoa, advised the board that a special exception request needs to be proven that it is needed before asking for one. He said the applicant shouldn't assume it is their right but he said them opening before approval already shows they believe it is their right. He advised you have to accept what you have when you bought it as is instead of changing zoning. He stated that they should not be open and operating without approval and this should not be allowed.

Tom Wasdin, 29 Riverside Dr., Cocoa, said this new business is just north of his current business. He has over 30 residential units. He said this business affects people sleeping and their well-being. He said he doesn't have a problem with the business just a problem with the location.

Nancy Maloney, 1167 N. Indian River Drive, Cocoa said she is a property owner in cocoa village for over 20 years. She said she is flat out opposed to this business and said it is completely wrong for the community. She said it is a very serious issue and related the

business to a marriage saying that is easier to ask forgiveness than permission as the owner has moved forward with whatever he wanted instead of asking for permission. She said value will be lost in the surrounding properties.

Attorney Eick asked Mr. Greenwood for clarification on whether his letter should be considered for the special exception or another agenda item. He explained it was related to the issue of noise. Attorney Eick asked Mr. Greenwood about the letter, specifically that it was dated June 2022. Ms. Eick clarified that the letter did not specifically address this special exception application or the proposed business.

Alex Greenwood advised the board that the letter he provided has 45 signatures saying that other members of the community are against this business. He advised it covers noise and other issues from previous issues but it still pertains to today's issue at hand.

Chris Hyskell said he understands other bars in the area do exceed the noise ordinance and does not think he should be punished due to others' faults. He said everyone started in his position and is just asking for fairness to be granted to him. He stated he doesn't want to work against the community but with the community.

Chairperson Shaia asked about licensing and about the open house having beverages without any licenses.

The applicant said nothing was sold everything provided was free.

Chairperson Weeks asked if some of the noise could have come from the craft fair since the day this happened was the same day as the craft fair.

The applicant advised a lot of the noise and traffic that day was coming from the craft fair and that would not be a normal day to day basis.

Attorney Eick touched on the public comments and explained to the board that special exception uses are permitted uses and that the burden of proof is not upon the applicant but would be upon the City or based on competent testimony presented to demonstrate that adverse impacts will result from the proposed use in order to deny the application. She also stated competent evidence requires expert testimony for subjects such as traffic impacts, property value impacts, noise and light pollution.

Alex Greenwood said the craft fair was not causing the noise and said his location is less than 300 ft from the church and alcohol should not be allowed to be sold.

Charles Steinburg said in the article 17 in zoning code what it stated in the burden of proof and that the board needed to make a written finding before they can grant special exception.

Attorney Eick said the burden of proof she stated is supported by case law and she would be happy to provide that to him if he would like.

- * **Motion by Vice Chairperson Weeks; Seconded by Board Member Dyar to approve the Special Exception in accordance with Appendix A, Zoning, Article XI, Section 13(C) (6) and Section 22(F) of the City of Cocoa Code to allow for “a bar or lounge, with or without a package store” to operate a beer and wine bar, to incorporate the 6 written staff recommendations and to include findings from staff given in the staff report.**

Ayes: Weeks, Dyar, Quattrocchi, Butler

Nayes: Shaia

Motion Passed (4-1).

C. PZ 24-00700001– Waiver (638 Brevard Ave.)

Consideration of a waiver from Appendix A, Zoning, Article XII, Section 1 (D)(8) of the City Code, regarding off-street parking, for approximately 6 parking spaces for an existing barber shop on one parcel in the CBD-CVO (Central Business District - Cocoa Village Overlay) Zoning District. The property is identified as 638 Brevard Ave, Cocoa, Florida. Tax Parcel ID: 24-36-33-85-*-A.

Luci Ribeiro presented the item via PowerPoint.²

Chris Hyskell, the applicant, clarified that the salons and barber shops downtown do not have parking and said a lot of the traffic is from foot traffic because there is not a lot of available parking options. He advised he would try to give bike ride transportation to customers.

Ms. Ribeiro advised the board that the bike transportation was not mentioned in his application and that it was not a part of the item as it was her first time hearing of this.

Chairperson Shaia asked that when the property was bought in 2021 was the intended use to be a bar.

Mr. Hyskell advised this was not the intended use and due to the nature of the inside of the building he had to brainstorm and come up with a new concept for the space.

Mr. Greenwood said it was a previous doctors office at that location. He advised that the statement that was said that it couldn't be made a parking lot was incorrect. He added that it could have been graded and changed.

² Exhibit B 24-269 Parking Waiver

Mr. Steinburg said they applied for a waiver to turn the parking lot into their business instead of using the actual establishment. He stated he is concerned by the city and board's focus without taking the citizens concern into consideration.

Ms. Sinclair said she owns a business near the location and the parking lot in discussion has been used for parking for 15 years and doesn't see an issue with why it can't be used anymore as a parking lot. She also wanted clarification on how it's going to be used as a dog park.

Cydney Maksymow, engineer for the project, said the gravel in the parking lot would cause issues with parking requirements. She also touched on how many feet are required for driveway entrances for parking and said under the code it was not feasible.

Chairperson Shaia said it was already used as a parking lot and asked why zoning would have to change.

Ms. Ribeiro said if the use of the building would have stayed a barber shop it would have been fine but since the use of the building changed a new permit would be required for the parking lot.

Mr. Wasdin asked for clarification of what exactly is being proposed in the item and how much parking is needed for 49 people which is allowed in the establishment.

Mr. Steinburg wanted to clarify the application he read and said the waiver stated parking needed to be eliminated by approving it to a patio to make another business. He said he doesn't think it's being made in good faith as he's relying on a lot down the street for parking when he had perfectly good parking.

Attorney Eick clarified if the choice was to close the barber shop since the board already approved the bar and lounge, meaning that there would be no need for parking. She re-explained what exactly was being asked in the item.

- * **Motion by Vice Chairperson Weeks; Seconded by Board member Dyar to approve the requested Waiver from the City of Cocoa Code, Article XII, Section 1 (D)(8) of the City Code, regarding off-street parking, for approximately 6 parking spaces to incorporate the 3 written staff recommendations and to include findings from staff given in the staff report.**

Ayes: Weeks, Dyar, Quattrocchi

Nays: Shaia, Butler

Motion Passed (3-2).

- D. PZ-23-00800002 – Variance (638 Brevard Ave)**

Consideration of a variance from Appendix A, Zoning, Article XI, Section 22 (I) of the City Code, Design Districts and Building Types, to allow for an 8-foot reduction to the required 10-foot side yard setback and 3.6-foot reduction to the required 10-foot rear yard setback for an accessory structure in the Cocoa Waterfront Overlay District. Tax Parcel ID: 24-36-33-85-*-A.

Ms. Ribeiro presented the item via PowerPoint.³

Mr. Hyskell explained that they had to build or lose the property. He said they were receiving false information from outside sources. He said he attempted to call the Mayor and everyone he could to receive help and guidance in what he needed to do. He presented a presentation to the board.⁴

Mr. Greenwood said he's been in the building construction business for 40 years and the precedence being set here is not appropriate. He stated you can't build it then go back without permission. He stated he opposes this completely.

Mr. Steinburg stated this is a classic case of trying to get their way around getting a permit. He said this makes another unpermitted property being permitted after they already went ahead and did what they wanted first. He stated the applicant created the problem then asked for a variance to fix a problem he created.

Vice Chairperson Weeks addressed the applicant and stated modifications could be made to accommodate the posts and keep the green turf.

* **Motion by Chairperson Shaia; Seconded by Board Member Butler to Deny the Variance request from Appendix A, Zoning, Article XI, Section 22 (I), Design Districts and Building Types, to allow for an 8-foot reduction to the required 10-foot side yard setback and 3.6-foot reduction to the required 10-foot rear yard setback for an accessory structure on a single-story commercial building lot in the Cocoa Waterfront Overlay District based on staff recommendations and to include staff findings.**

Ayes: Shaia, Weeks, Dyar, Quattrocchi, Butler

Motion Passed Unanimously (5-0).

E. PZ 24-00700001– Waiver (638 Brevard Ave.)

³ Exhibit C Board of Adjustment Variance 24-270-638 Brevard Ave

⁴ Exhibit 4 Board of Adjustment Visuals

A waiver request from Appendix A, Zoning Article XIII, Sec. 19 (1) of the City of Cocoa Code to waive the requirements to provide stormwater retention facilities to retain the runoff of water resulting from a ten-year storm event. The property is identified as 638 Brevard Ave, Cocoa, Florida. Tax Parcel ID: 24-36-33-85-*-A. **WITHDRAWN**

F. PZ 24-00800001 – Variance (3071 Oxbow Circle)

Consideration of two variance requests pursuant to Appendix A, Zoning, Article XI, Section 19(F) (2) to allow for a 10-foot reduction to the required 25-foot front yard setback. The properties are identified as 3071 Oxbow Circle. Tax Parcel ID: 24-35-12-25-*-8.

Ms. Ribeiro presented the item via PowerPoint.⁵

Joseph Scales, the applicant, provided a presentation via PowerPoint.⁶ He showed his plans and why the setback reduction would actually be beneficial to the location. He stated it would allow more spaces for small businesses.

Chairperson Shaia wanted clarifications on the parking and if it was being moved to the back.

Mr. Scales advised the parking will be in the middle and it allows more room for emergency vehicles to turn around in the back and have trash moved to the back.

* **Motion by Vice Chairperson Weeks; Seconded by Board Member Quattrocchi to approve the modification to a 25ft setback to a 15ft setback on lots 7 & 8.**

Ayes: Shaia, Weeks, Dyar, Quattrocchi, Butler

Motion Passed Unanimously (5-0).

G. PZ 24-00800001 – Variance (3081 Oxbow Circle)

Consideration of two variance requests pursuant to Appendix A, Zoning, Article XI, Section 19(F) (2) to allow for a 10-foot reduction to the required 25-foot front yard setback. The properties are identified as 3081 Oxbow Circle. Tax Parcel ID: 24-35-12-25-*-7.

V. OTHER BUSINESS:

Board of Adjustment Open Discussion

VI. NEXT MEETING DATE:

⁵ Exhibit 5 Board of Adjustment Variance 24-272-3071 Oxbow Circle

⁶ Exhibit 6 Grissom Ridge Commerce Park Grissom Work Bays Lots 7 & 8

The next meeting date for the Board of Adjustment is June 19, 2024.

VII. ADJOURNMENT:

- * **Motion by Chairperson Shaia; Seconded by Vice Chairperson Weeks to adjourn the April 17, 2024 meeting.**

Motion Passed Unanimously (5-0).

Ayes: Shaia, Weeks, Dyar, Quattrocchi, Butler

There being no further business the meeting adjourned at 9:10 P.M.

Pam Shaia, Chairperson

Abigail Bass, Assistant City Clerk