

CITY OF SARASOTA

Planning and Redevelopment Department

MINUTES OF THE REGULAR MEETING OF THE PLANNING BOARD/LOCAL PLANNING AGENCY

September 14, 2005 at 6:00 p.m. in the Sarasota City Commission Chambers

Planning Board Members Present: Chairman Michael Shelton,
Vice Chairman Shannon Snyder,
Members Robert Lindsay; Jennifer Wilson; and Shawn Fulker

City Staff Present: Jane Robinson, Director of Planning;
Robert Fournier, City Attorney;
Allen Parsons, AICP, Senior Planner;
Harvey Hogle, AICP, Senior Planner;
Lori Rivers, Manager Records Retention;
Linda Strange, Planning Technician

I. CALL MEETING TO ORDER AND ROLL CALL

Chairman Shelton called the meeting to order at 6:00p.m. and Director of Planning Robinson called the roll.

II. CHANGES TO THE ORDERS OF THE DAY

There were no changes to the Order of the Day.

Attorney Fournier reviewed quasi-judicial procedures, order of presentation, time limits and Affected Person Status.

The Chairman asked Board Members to disclose any ex-parte communications. PBM Lindsay stated he has been receiving a lot of e-mails, which he did not open or read. He indicated his preference that E-mails go directly to the City so that they are made part of the public record.

Suggested time limits for the Twin Oaks Townhomes petition are 10 minutes for applicant and staff, 3 minutes for citizens and 3 minutes for rebuttal. By consensus Board Members agreed to the time limits.

Salie O'Malley & Philip Cook requested Affected Person Status for Petitions 04-SP-24 and 04-MCU-04 but are not present to speak.

Attorney Fournier administered the oath to all persons intending to speak regarding any petition this evening.

III. LAND USE ADMINISTRATION - PUBLIC HEARINGS

Quasi-Judicial Public Hearings

- 1. Twin Oaks Townhomes (1825 Laurel Street):** Minor Conditional Use Application **04-MCU-04** and Site Plan Application **04-SP-24** request approval to

redevelop an existing 9-unit apartment complex into 8 townhomes on a site zoned Residential Single-Multiple-9 [RSM-9]. [Allen Parsons, AICP, Sr. Planner].

APPLICANT PRESENTATION

Mark Hess, the owner of the Twin Oaks Apartments located at 1825 Laurel Street, presented the petition. The existing apartments and single-family residence was constructed between 1949 and 1957. He is proposing a redevelopment of the motel-style apartment complex of 9-units, which is non-conforming with respect to density, to 8-units of townhome structures.

STAFF PRESENTATION

Allen Parsons presented on behalf of City Planning Staff. He displayed a graphic depicting the location of the project within the Laurel Park neighborhood [RSM-9 zone district] and noted it had 3 street frontages; Laurel St., Osprey Ave., and Hawkins Court. RSM-9 zoning is one of the most tightly prescribed single-family zone districts that exist within the City. There are design guidelines that speak to having front porches facing the street, and garages located behind the building. A minor conditional use approval is required for the project because of the attached dwelling units. Staff does recommend approval.

Neither party spoke in rebuttal. Chairman Shelton closed the public hearing.

MOTION by Vice Chairman Snyder and second PBM Wilson by to find the proposed Site Plan (04-SP-24) and Minor Conditional Use (04-MCU-04) consistent with the *Sarasota City Plan (1998)* and the Tree Protection Ordinance and find that the Standards for Review set forth in Zoning Code Section IV-506 and Section VI-906 have been satisfied; and approve the site plan and approve the minor conditional use subject to the following conditions:

- 1. The development of the rezoned property shall proceed only in conformity with the site plan filed with Application 04-SP-24. The site plan and all related development and construction plans for the new building shall be in compliance with the plans labeled Twin Oaks Townhomes and date stamped August 15, 2005 by the Planning Department. All final building plans shall be subject to full review for compliance with applicable codes and development plans by the Director of building, Zoning and Code Enforcement.**

VOTE: Fulker, yes; Wilson, yes; Lindsay, yes; Snyder, yes; Shelton, yes. The motion to find the proposed Site Plan (04-SP-24) and Minor Conditional Use (04-MCU-04) consistent with the *Sarasota City Plan (1998)* and the Tree Protection Ordinance and find that the Standards for Review set forth in Zoning Code Section IV-506 and Section VI-906 have been satisfied; and approve the site plan and approve the minor conditional use subject to one condition above, carried unanimously. (5-0)

2. **Truvine Missionary Baptist Church Expansion (1931 31st Street):** Major Conditional Use Application **05-CU-03** requests approval to allow expansion of an existing church located in the RMF-2 and RSF-4 zone districts. Site Plan Application **05-SP-09** requests approval for construction of a 8,739 s.f. sanctuary of 342 seats; a 9,119 s.f. administration building / Fellowship Hall; and a 3,135 s.f. education building. The site plan also depicts demolition of existing buildings. Street vacation application **05-SV-05** is a request to vacate a portion of an unimproved right-of-way known as 31st Street between Pershing Avenue and Washington Blvd. [**Harvey Hoglund, AICP, Sr. Planner**].

APPLICANT PRESENTATION

Attorney Brenda Patten, of Kirk Pinkerton law firm, presented on behalf of the applicant. Mr. Mel Pettis, Chairman of the Church Planning & Building Committee, and Mr. Harry Witte, of Carlson Studio Architecture, and members of AM Engineering accompanied Ms. Patten. The church is one of the oldest institutions in the City of Sarasota; was first organized in 1918 and, originally, was located at the intersection of MLK Jr. Way and Orange Avenue. The present day sanctuary on 31st Street was built in 1950. Under the leadership of the church's pastor, Rev. Dr. Gregory Harris, a program entitled "Walk of Faith 2004", raised enough money from church membership to build this expanded campus on the existing site and newly acquired land. Ms. Patten described all the details of the phased construction project.

Chairman Shelton asked about the area of the proposed street vacation and whether it would be paved all the way to US 301. Ms. Patten responded it could not be paved all the way to the US 301 right-of-way since the State owns the grass strip between the Church property and the paved access for US 301. He asked whether there would be right-of-way for the public. Ms. Patten indicated the public would be able to use the vacated right-of-way, and in fact, the Church could give an easement.

STAFF PRESENTATION

Allen Parsons presented on behalf of Planning Staff. He displayed the aerial in the staff report. Regarding providing access from Pershing (a north/south street - 31st Street runs east/west), the right-of-way that is proposed for vacation is between Pershing and the tail-end of Washington Court. Washington Court runs north/south parallel to US 301, but dead-ends before it reaches 31st Street. This portion of 31st Street has never been used by the public. He described fully the details of the petitions. Staff does recommend approval.

Ms. Patten clarified one point in rebuttal regarding the right-of-way and Mr. Parsons declined rebuttal. Chairman Shelton closed the public hearing

DELIBERATION OF THE BOARD

MOTION by PBM Lindsay and second by Vice Chairman Snyder to find Street Vacation 05-SV-05 consistent with the 1998 Sarasota City Plan, and the applicable

Zoning Code standards for review, and recommend that the City Commission approve the vacation of 31st Street between Pershing Avenue and Washington Blvd. subject to receipt of easements guaranteeing perpetual access to existing utilities and public access across the vacated area for pedestrians.

DISCUSSION

PBM Lindsay said he believes it is important to support this institution, one of the most important in this area of town, that has been a long-time provider of help and stability for many families. He believes in this instance the street vacation does serve a public purpose.

VOTE: Fulker, yes; Wilson, yes; Lindsay, yes; Snyder, yes; Shelton, yes. The motion to find Street Vacation 05-SV-05 consistent with the 1998 Sarasota City Plan, and the applicable Zoning Code standards for review, and recommend that the City Commission approve the vacation of 31st Street between Pershing Avenue and Washington Blvd. subject to receipt of easements guaranteeing perpetual access to existing utilities and public access across the vacated area for pedestrians carried unanimously. [5-0]

MOTION by PBM Lindsay and second by Vice Chairman Snyder to find Conditional Use 05-CU-03 and Site Plan 05-SP-09 consistent with the Sarasota City Plan, the Tree Protection ordinance, find that the applications satisfy the applicable Zoning Code standards for review, and adopt the resolution to recommend approval of the major conditional use and site plan subject to the following condition.

- 1. The site plan and all related development and construction plans shall be in compliance with those labeled Truvine Missionary Baptist Church, received by the Planning Department on 16 August 2005. All final construction plan shall be subject to a full review fro compliance with applicable codes and development approvals by the Director of Building, Zoning, and Code Compliance.**

VOTE: Fulker, yes; Wilson, yes; Lindsay, yes; Snyder, yes; Shelton, yes. The motion find Conditional Use 05-CU-03 and Site Plan 05-SP-09 consistent with the Sarasota City Plan, the Tree Protection ordinance, find that the applications satisfy the applicable Zoning Code standards for review, and adopt the resolution to recommend approval of the major conditional use and site plan subject to one condition above, carried unanimously. [5-0]

Chairman Shelton wished the applicant well and noted it was a very good project.

The Planning Board recessed from 6:39 p.m. to 6:51 p.m.

- 3. Sarasota Jungle Gardens (3701 Bay Shore Road): Major Conditional Use Application 05-CU-04 is a request for approval to extend the restricted daylight only**

hours of operation to 9:00 p.m. Sunday through Thursday and to 10:00 p.m. on Friday and Saturday. [Harvey Hoglund, AICP, Sr. Planner].

Attorney Fournier presented time limits for speakers. He recommends that the presentations by the applicant and staff be 15 minutes, persons granted Affected Person Status 4 minutes each, and members of the public 3 minutes. Anyone believing they need more time can request it when their name is called and Board members will consider the request. For rebuttal 5 minutes is recommended for applicant and staff and 3 minutes to persons granted Affected Person Status.

Mr. Fournier noted that the Board's rules were amended a short while ago to encourage aggregation of time and to give a spokesperson for a group a longer period of time than might otherwise have been allowed, albeit a shorter period of time than if a number of people spoke individually. There are 17 requests for Affected Person Status. Four or five of those people have authorized Attorney Dick Ulrich to speak on their behalf. Three of the 17 persons do not qualify, however, and they may speak as citizens. They are:

- Caroline Popper, submitted 09-08-05, untimely submission
- Charles Hegener, submitted 09-09-05, untimely submission
- Nancy Krohngold, indicates she is a designated rep of condo or neighborhood association, but did not submit the required letter of authorization from such association, and she does not own property within 500 ft.

Board members by consensus, denied Affected Person Status to the three individuals, noting they could speak as citizens and granted status to all others.

Attorney Fournier also clarified that the petition is a Major Conditional Use. The Planning Board will vote to recommend approval or denial to the City Commission and the Planning Board's action will be reported to the City Commission. The Commission can either affirm the Planning Board's action without a public hearing or they can decide to hold a second public hearing.

PBM Lindsay stated for the record that his grandfather started the Jungle Gardens in the 1940s, but he sold it about 1957. Since no one in the family has had any connection with the Gardens after 1957, he does not believe it is a conflict of interest. Attorney Fournier agreed.

APPLICANT PRESENTATION

Attorney John Patterson, with the law firm of Livingston, Patterson, and Strickland, represents the applicant. Rose Rinaldi, the General Manager of the Jungle Gardens, Karen Gallagher, the Marketing Manager of the Jungle Gardens, and Nicole Lavick, a representative of the Allen Family [whose mother is president of the Jungle Gardens] join Mr. Patterson.

The Jungle Gardens is a 10-acre property located in a residential area. Mr. Patterson submitted newspaper articles and brochures indicating the history and importance to the Gardens to the area. Photographs indicate the types of functions that have been held at the Gardens. The Jungle Gardens is the oldest, continuously operating historic tourist attraction in the State of Florida. The Jungle Gardens has operated in a remarkable compatibility with the surrounding neighborhood over the years until this application was filed. In the entirety of the history of the Jungle Gardens there has been one complaint and that was relative to hedges. The Jungle Gardens has a rich history and has hosted the Miss Florida pageant, children's events, weddings etc. School children visit the Gardens; education is a big program component including their Jr. Zoo Keeper Club. Mr. Patterson circulated substantiating literature.

Ms. Gallagher stated that the Jungle Gardens has been conducting after hours events for years, probably better than 20 years, during daylight savings time, but has been restricted because of the requirement to close at dark. This approval would allow the same type of events in the winter months when the weather is obviously nicer. Ms. Gallagher pointed out that the ability to hold functions during the winter will financially assist the Gardens as well. Group events that have been hosted in the past are: (1) the Opera Guild, (2) weddings, (3) the announcement for the Allen Education Center. Ms. Gallagher noted that music during those events was very low key. They have requests all the time from arts and civic groups to hold functions at the Gardens. The largest function held was the 'Holiday Lights, Jungle Nights' event that ran 28 days, for which a special permit was obtained. During those 28 days, 9,000 people visited the Gardens. It was extremely well managed. Parking lots were always managed by our staff. The event was also catered on the weekends. During the 28 days, there was not one complaint that came to the Jungle Gardens, the City of Sarasota, or to the Indian Beach/Sapphire Shores Association. Ms. Gallagher believes the 28-day event was a true test of their capabilities.

Mr. Patterson noted that their request is for after hours events but is limited to six events during any calendar month, with the exception of the annual Holiday Lights/Jungle Nights event, which would be Thanksgiving weekend to New Years until 9:00 p.m. Music would be limited as well and the Gardens is submitting tonight an additional proffer statement based on the Sarasota Noise Ordinance.

PBM Lindsay asked where on the grounds would music originate. Ms. Gallagher responded that it would typically be from the open gardens near the gazebo and where the lakes are. A graphic was displayed so that the location could be pointed out.

STAFF PRESENTATION

Allen Parsons, Sr. Planner, presented the petition on behalf of Planning Staff. The special exception initially granted for the Gardens in 1972 had several conditions and one of those was that the facility would only be open to the public during daylight hours, and that is the subject of the amendment this evening. The special exception also initially referred to the Gardens as a botanical garden. In 1998 the Zoning Code was

revised, and this facility is called out as a “legal existing use”, and the Jungle Gardens has the status of a legal conforming use. In Article V of the Zoning Code, in RSF-E [the residential zone district in which the Gardens is located], this type of facility is called a tourist attraction. A conditional use process is one where a use may be allowed, but is not necessarily allowed in every case [i.e. a case-by-case review]. One primary review criteria in the conditional use process is whether negative impacts will be experienced by adjoining residences. The staff analysis reviews the criteria on page 9 of the Staff Report. Note that the Gardens has provided a Good Neighbor Plan. Lastly, Mr. Parsons pointed out that conditional use approvals are revocable; there are opportunities for the City Manager to revoke the approval in the event that the conditions are not adhered to or some other municipal regulation is violated. The closest residence is approximately 200 ft. from the gazebo area to the west, on the north side 300 ft., and 400 ft. from Bay Shore Road. Staff does recommend approval.

PBM Lindsay asked whether the Selby Gardens restrictions [hours etc.] were researched for comparison purposes. Staff will research the issue and inform the Board members.

AFFECTED PERSON PRESENTATION

Persons who requested and were granted Affected Person Status are [with the exception of three persons listed above]:

Requester Name	Address
Don Farr	3301 Bay Shore Road
Gail & Jerrold Kamensky*	3854 Bay Shore Road
Betty Weller*	5030 Bay Shore Road
Peter & Patricia Laughlin*	3731 Indian Beach Place
Jerry Finn*	636 Indian Beach Lane
Barbara Cherry	3907 Bay Shore Road
John Douglas	3925 Chapel Drive
Earlene Simpson*	3800 Bay Shore Road
James Rogers & Joy Norwood*	3838 Bay Shore Road
Thomas McCormack*	1707 Cunliff Lane
Ruth Folit*	650 Indian Beach Lane
Marc Weinberg*	650 Indian Beach Lane
Peter deLisser*	612 Indian Beach Lane
Caroline Popper*	3825 Indian Beach Place
Nancy Krohngold*	1023 Indian Beach Dr.
Charles Hegener	637 40 th Street

*Attny Dick Ulrich will speak on behalf of these persons.

A time limit of 15 minutes, by consensus of the Board, is allotted to speakers representing a group of Affected Persons.

Attorney Dick Ulrich, of the law firm Judd, Shea, Ulrich, Oravec, Wood & Dean, represents approximately 85 homeowners that are located directly around the Jungle Gardens. [Mr. Ulrich presented a map indicating the location of the households opposing this petition.] In addition he represents another 200 people that have signed petitions opposing this application, although these people may not necessarily live directly surrounding the Jungle Gardens. Mr. Alan Garrett, land planner, accompanies Mr. Ulrich. Mr. Ulrich noted that the people that he represents support the Jungle Gardens under its present use and hours. He also noted that the Zoning Code change, that classified the Gardens as a tourist attraction, does not speak to allowing the tourist attraction to conduct banquets or other commercial uses. He believes the expanded [commercial] use requested should not occur in a totally residential neighborhood. Mr. Ulrich stated he believes a Variance or Special Exception petition is the proper vehicle for the Jungle Gardens request and that a Conditional Use petition is an incorrect petition vehicle. Mr. Ulrich believes there is far too little parking if the Gardens were allowed 400 persons at an event even if utilizing parking at the Mennonite Church across the street. He has confirmed there is no parking agreement between the Church and the Gardens. He respectfully requests and the petition be denied, or at the very least, continued.

Mr. Garrett, AICP, Planner spoke regarding the staff report, the previous special exception and current petition. He believes the petition allows a commercial use not just an extension of hours.

PBM Fulker and Lindsay asked Attorney Fournier about the appropriateness of the petition vehicle. Mr. Fournier stated:

The conditional use permit is today's functional equivalent of the former special exception [which the City no longer has]. A variance is not an appropriate route since it is based on hardship. This request is a deviation from the terms of a previously approved resolution that is based on the applicant's ability to satisfy the criteria in the Zoning Code for a conditional use application. Attorney Fournier is satisfied that the petition should be a conditional use application. However, the Code states that only those conditional uses authorized in the residential zone district regulations are to be allowed. In the transitional provisions of the Zoning Code it states that former special exceptions become conditional uses and "any addition to or expansion of a previously approved special exception, which is now considered a conditional use, shall require new conditional use approval in accordance with the procedures and standards set out in Article IV Division 9 of these regulations, but tourist attractions are not listed there.

Attorney Fournier would like more time to study the two Code provisions to reconcile them. A code amendment may be needed to clarify that these two sections of the Code should be read together. He does believe the proper vehicle is the conditional use application, however.

Discussion ensued regarding whether this interpretation needed to be performed prior to continuing the public hearing.

Mr. Tim Litchet, Director of Building, Zoning and Code Compliance, with vested responsibility to make such interpretations of the Zoning Code, offered the following remarks. He stated that he has had discussions regarding this issue with a former member of the City Attorney's office. The use was reclassified in 1998 to a '*lawful existing use*', a term that is used in the Code. It started out as a special exception use and in 1998 it was called a 'tourist attraction lawful existing use'. The differentiation between a 'lawful existing use' and a 'non-conforming use' is that a lawful existing use can expand. A non-conforming use cannot expand. Section V, 102B - Vested rights of lawful existing uses and structures - indicates any expansion of a use or structure regulated herein shall conform to the development requirements of the Zone District in which the structure is located unless otherwise noted below. And the Code goes on to list tourist attractions in the RSF-E zone district.

Attorney Fournier indicated, in view of Mr. Litchet's remarks, there is nothing further for him to do in terms of analysis. The interpretation of the Code has been made and there is a vehicle to appeal Mr. Litchet's determination. Mr. Fournier recommends the public hearing proceed.

Don Farr, 3301 Bay Shore Road, spoke on behalf of the Indian Beach/Sapphire Shores Association. There was unanimous Board agreement that the Jungle Gardens represents irreplaceable and significant recreational, environmental, and educational asset to the neighborhood. On this basis the association worked with the Jungle Gardens to gain an acceptable compromise between the Gardens and neighborhood residents. We support the petition if, and only if, we could come to an agreement whereby we were assured there would be no measurable hardship on any of the neighborhood residents and, most particularly, those who live close by to the Jungle Gardens property.

Many of the concerns voiced by neighbors were carefully considered by the IBSSA Board. Following that consideration many of the concerns were found to be without merit based on hard evidence that was gathered during the 2004 special event - Holiday Lights/Jungle Nights - as well as 30 plus years of the day-to-day operations of the Jungle Gardens and the special events they have held, none of which have presented a problem for the neighborhood. The concerns found to be insignificant concerns were those involving parking, traffic, and alcohol abuse.

The single issue the Board found to be of significant concern was that of noise. They worked with the Jungle Gardens to come up with language to be included in the Conditional Use permit that would reduce the impact of noise on nearby residents and confirm that the provision included in the 1972 special exception would be adhered to and that there would be no measurable noise heard beyond the surrounding streets of the Jungle Gardens property. The Gardens has amended its request several times to address the concerns that the neighborhood Board has expressed to them. They have cut back on the number of events they initially requested, and they have made

provisions for eliminating amplification of musical instruments. The Board consensus is that there are additional changes that could be made to the proposal being presented that would provide additional comfort to the neighbors. Those would include specific elimination or prohibition of instruments such as drums, brass instruments, etc. and would require a representative of Jungle Gardens to be present at every special event that is held. This person would be familiar with the provisions of the conditional use permit, if it is approved. The Board has been given every indication that the Gardens would make those adjustments. If these amendments could be made to the application, the neighborhood association Board would be fully supportive of the Gardens request.

Betty Weller, 5030 Bay Shore Road, spoke in opposition to the application citing traffic – i.e. event trucks, catering trucks. She cited a police study (done on May 10th & 11th this year on the 3000 block of Bay Shore Road) and between 3:00 p.m. and 7:00 p.m. the average number of vehicles on Bay Shore was 107/hour. Special event traffic adds substantially and is an unfair burden to the neighborhood.

Ruth Folit and Marc Weinberg, 650 Indian Beach Lane, spoke in opposition to the Jungle Gardens request to change their hours citing noise from amplified music and narrators and commented on specific incidents of loud noise that resulted in complaints to the IBSSA Board, City Police Department and Jungle Gardens.

Joy Norwood Rogers, 3838 Bay Shore Road, is a member of concerned neighbors in the Indian Beach museum area and spoke in opposition to the application. Her group circulated a petition in opposition to Jungle Gardens application. Most of these neighbors also agree that Jungle Gardens is an asset to the community, however only if the Gardens is in full compliance with the special exception of 1972. She submitted a colored map indicating those in opposition (areas in red) and those who chose not to sign the petition (areas in yellow). The numbers written in by hand indicate the length of property ownership.

Barbara Cherry, 3907 Bay Shore Road, was not present to speak.

John Douglas, 3925 Chapel Drive, was not present to speak

Jerry Finn, 636 Indian Beach Lane, has lived in the affected area for 5 years. He wishes the Board make no mistake about who the applicant is and is not. It is not a public park and it is not a community garden or a zoo. It is a corporation for profit and as such it needs to demonstrate that it wants to be friends with the neighbors. It has chosen as part of its business to have exhibits and shows, and it is permitted under the previous ruling of a similar board and it has a right to exist as a non-conforming use. What is being proposed is a totally foreign use to the expressed use as a zoological exhibition. It is a desire to get the approval of the community to operate nighttime parties featuring music and alcohol.

Chairman Shelton asked if there were any other Affected Persons who wished to speak. There were none.

CITIZEN PRESENTATION

Charles Hegener, 637 40th Street, owns three properties within the affected area. Various generations of his family have lived continuously in approximate locations to the Jungle Gardens. He agrees the Gardens is a significant asset to the community and states that it is a community building asset since families and their children have gathered there for many years. He can count on one hand when he has felt any negative effects from the activities of the Jungle Gardens. The fact is they are asking to continue the activities they have now. They are a good neighbor and have been responsive to us.

Nancy Krohngold, 1023 Indian Beach Drive, stated she and her family have enjoyed the Jungle Gardens for the 49 years they have lived in Sarasota. She has visited the Gardens recently and is still taken with its beauty. Ms. Krohngold, however, is quite concerned about additional traffic, alcohol usage and amplified music at events.

Caroline Popper, 3825 Indian Beach Place, resides in one of the closest houses to the area between the lakes at Jungle Garden. Normal conversation is audible to her inside the front door of her house. She states it is inconceivable that 100 people, let alone 400 people, speaking normally could have their sound shielded from adjacent properties. She is a physician and stated concerns about alcohol and the profound difference in events that provide free drinks and those that have a cash bar. Neighbors should not be asked to accept this.

Kafi Benz, Director of Sarasota Alliance for Historic Preservation and a Director Emeritus of IBSSA, and in that position she was the director that negotiated the change in zoning and land use designation for the Jungle Gardens in 1998. At that time it was a commercial entity and its land designation was commercial. She approached the Gardens and asked if they would be willing to allow a future land use designation to single-family residential so that, if Jungle Gardens ever ceased to exist, it would become part of the single-family neighborhood in which it existed. The Gardens was a very good neighbor in giving up their commercial designation in consideration for the neighborhood. Ms. Benz further believes the Gardens has a significant historical importance in the community as well as a significant cultural effect. The permit sought tonight could be rescinded if there were a breach of contract. Crafting the language of the contract is the real clue.

Pat McDeed, 718 40th Street, has resided in the neighborhood for 30 years. Her experience with the noise is very different from that of Mr. Hegener. She had strong concerns about event parking [108 spaces on-site], catering trucks, limos, and overflow parking at the Mennonite Church [75 spaces] or East West College of Medicine. The college has not been approached this year at all regarding parking.

Virginia Haley, 655 N. Tamiami Trail, is Executive Director of the Sarasota Conventions and Visitors Bureau. Her expertise is in travel and tourism. She wants to share with Board members the importance of a variety of events and programming to today's modern attraction. There is a significant shift in travel and vacation trends and the days

of a passive willingness just to walk through an attraction are over. Guests want a variety of experiences, and this is important for attractions to stay viable. Jungle Gardens has been restricted because of their limited hours of operation, particularly during daylight savings time. We have to allow Jungle Gardens to adapt to the changes experienced in the tourist industry.

Peter Morin, 722 Indian Beach Lane, has grown up in Sarasota and lived here his entire life. He has spent numerous occasions at Jungle Gardens and has a deep appreciation of what they are and what they offer to the community and visitors. He is by no means a person seeking solitude but the recent wedding that had the windows in his home rattling with amplified music was ridiculous. If it is allowed to take place in the future, it will certainly congest the area in the future.

Catherine Zurich, 1334 38th Street, said she and her family have visited the park over the 25 years they have lived here. They renew their membership annually. She described how beautiful their experience is at the Gardens. It provides a sense of what Florida should be and people should never be hindered in their ability to enjoy this landmark. The Gardens needs access to means and ways to help it remain commercially viable on a full-time basis. She noted that there are many other sources of noise in the neighborhood, i.e. from the Bay, citizens driving through the neighborhood late at night with car radios tuned up loudly.

Daniel Shepard, 6620 Conetta Drive, states his support of the application. He has visiting the Gardens for 30 years and still enjoys his visits. His family vacationed in Florida in 1975 for just 2 weeks and traveled across the state. After visiting the Gardens and traveling in Sarasota and Manatee Counties, they decided this was where they wanted to live. His life is much richer as a result of visits to the Gardens, and it is important that his children are taught to respect nature. He sees nothing in their request that would negatively impact the community.

Mary Bowen, 1310 Charlotte Avenue, she agrees with Mr. Shepard's remarks. She has lived here 30 years and said she wants the Jungle Gardens to stay here forever. Her husband was a police officer in Sarasota for 20 years, and he does not recall ever having a call about the Gardens. She urges support of their request.

Steven Dahlquist, 900 Tennessee Lane, is speaking on behalf of himself and his wife and Gladys Lippincott, 5020 Brywill Circle, and Jean Maquire, 4852 Brywill Circle. He also is a 30-year plus resident and has raised a family and been active member in the community. He believes that the Gardens is a national as well as a state and local treasure. Not only does the Gardens offer a unique venue, but their good citizenship has been proven time and time again. Isolated incidents of noise are a part of living in this world. Every effort should be made to allow Jungle Gardens to continue as a viable business and to enhance and build upon what they done for the rich traditions of this city. He hopes the Board approves the petition.

Brenda Terris, 1839 Alta Vista Street, is a mother who has been visiting the Jungle Gardens for more than 10 years. She knows that it is clean, well-run and neighborly in how it conducts its business. As a neighbor to another attraction in the City, she can attest that community events can be well-run during the evening. There are evening events held at Selby Gardens and most of the tourist destinations in Sarasota. These events help the economy by bringing families and tourists to the City. Allowing Sarasota Jungle Gardens to host evening events is a good thing.

Shirley Berk and Andy Rinaldi were not present to speak.

Jean Maguire, 4852 Brywill Circle, stated she certainly would not want a run down facility in their neighborhood. It is vital that the Gardens has enough money to be neat, clean, and do a good job with the animals. If we do not permit them to obtain enough money to supplement their tourist trade, then we'll have to do something similar to what the libraries do, which is to have a "friends of Jungle Gardens" group. We can all become members and support them with our dollars.

Sherri Gardiner, 3940 Bay Shore Road, is an unregistered affected person. She asks Board members to reflect on the things that made them choose their home. She endures noise 7 days a week from crowds, weed blowers, and week whackers which start at 8:00 a.m. If your neighbor did this, and then asked you to comprise further, would you? She urges Board members to consider this issue as if it were occurring in their own neighborhoods.

Walter Verizzo, 1008 Sylvan Drive, has been a resident there for 46 years and has attended many planning board meetings. He will not be affected by this petition, but he believes in helping others, and he agrees with Ms. Gardiner. Everyone enjoys the Gardens, and they should only be allowed to continue under the current restrictions. Then it will be the attraction we have known it to be.

Debbie Muller, 5200 Bay Shore Road, said the Gardens request for a change under their conditional use proposal is understandable. The described proposal is not extreme or excessive. The extended hours of operation seems reasonable and limitations applying to special events are well defined. It appears that the intention of the owner and management is to better accommodate their guests while improving their business and being ever respectful of their neighbors. The conditional use change should not be detrimental to anyone if the provisions set forth are observed. Residents have the assurance that the City may revoke the conditional use for noncompliance.

Peter deLisser, 612 Indian Beach Lane, is a supporter of the Jungle Gardens but is here to speak in opposition to the proposed conditional use. Everyone agrees the Gardens is an asset to the community. The issue is the change that they are suggesting. The 1972 special exception has very specific limitations on it and the purpose of those limitations is very specifically to protect the surrounding neighborhood. To amend, change or remove those limitations requires broad neighborhood consensus.

APPLICANT REBUTTAL

Attorney Patterson referred to all the testimony presented this evening. The issues come down to the concern about noise. Don Farr spoke well to this issue and asked for two things: (1) prohibition of unreasonably loud, but un-amplified musical instruments, and (2) a representative of the Jungle Gardens be present at after hours events, who could monitor the event and who is familiar with the conditions imposed by the application, if granted. The Jungle Gardens agrees to these two conditions and will supply a phone number for residents to call: 359-5701, ext. 306. The Jungle Gardens knows that the petition is a conditional use petition and knows that it can be revoked. The Gardens does not want it to be revoked and does want to be a good neighbor.

Traffic, parking and alcohol are remaining concerns. Traffic issues are addressed by Staff. Alcohol is served at events now, but there have not been riotous parties and there will not be riotous behavior in the future. Parking will be managed by Gardens staff. If the Gardens fails to comply with these conditions, they know that they stand to lose the rights of the conditional use permit. The Gardens is run as a labor of love and community service and will continue to run in this manner.

Chairman Shelton asked if there would be recorded music. Ms. Gallagher said they may very well have recorded music at weddings for example. Mr. Shelton felt that could be classified as amplified music. Jungle Gardens personnel is looking into a sound system heard through rocks. The sound can be heard within 10-20 ft. of each rock and cannot be heard again until reaching the next rock. No one outside the Gardens would be able to hear anything. Chairman Shelton noted that's speculative for the future. Attorney Patterson noted that a stipulation in the Good Neighbor plan states there will be no amplified music that would extend over their boarders. Ms. Gallagher has said they will not allow music to extend into the neighborhood that would disturb them.

PBM Lindsay said perhaps rebuttal should be completed and these issues should be held for the Board's deliberation period to give the Gardens a chance to propose some language and look at the options.

Attorney Patterson referred to the Proffer Statement submitted regarding noise. It states:

"The Sarasota Jungle Gardens property shall be operated and managed after daylight hours so that no sound is made by amplified system (electronic or otherwise) for the transmission of voices or by any non-amplified musical instrument or similar device in such a manner so that is audible beyond the boundaries of the Sarasota Jungle Gardens property and is of such character as to annoy, disturb, injure or endanger the comfort, repose, health or safety of a reasonable person of normal sensibilities that resides in residential properties neighboring the Sarasota Jungle Gardens."

Chairman Shelton agreed with Mr. Lindsay and continued with additional questions. Would the on-site person be a senior level management person? Ms. Gallagher responded, yes. Mr. Shelton asked what happened on May 7th. Ms. Gallagher said a wedding had been booked for almost a year prior to May 7th. It is not unusual to have a wedding at the Gardens but this had a reception with some music attached to it. She does not believe the microscope would have been on this event if the neighborhood workshop had not been held one week prior to the wedding. During the Holiday Lights period, will other events be held? Ms. Gallagher said it will be strictly a lights event until 9:00 p.m. only. The only reason the Gardens has such a broad date for the Holiday Lights event is that the only permit they could obtain last year was for 28-day period. They don't want to run 28 days straight. Chairman Shelton asked about the parking arrangements with the Mennonite Church; all other petitions have formal parking agreements. Ms. Gallagher said the Church had not wanted a formal agreement because it has been a gentleman's agreement since 1945. The Gardens has called the Church again and they said they would do it. Tear down for catered events will be accomplished by the stated hours of closing. Mr. Shelton asked what controls are in place to restrict parking on the streets? Three to four radio'd employees will man the Gardens parking lot [and, with the verbal agreement, parking across the street]. As vehicles enter the lot employees direct them to a particular row and space. Signs have been posted in the past as well. This controls where visitors park.

Chairman Shelton and PBM Lindsay discussed limiting the duration of the permit with renewal options, if the application is approved. Mr. Lindsay suggested a permit that would have to be renewed every two or three years. That way from an enforcement standpoint, because it is not a permanent right, there is a strong incentive to manage it and make it work. Attorney Fournier also noted there is a process for revocation in the Code. Attorney Patterson would suggest at least a 3-year period for renewal, a time period in which the Jungle Gardens could prove they are good neighbors and can make this work and that they deserve to have the permit renewed. Mr. Fournier stated that, if the petition is approved, the Board must adopt a written resolution, which could include the stipulations for renewal.

AFFECTED PERSON REBUTTAL

Attorney Ulrich clarified his clients' positions; they are not against the Jungle Gardens only this change. He noted that Mr. Farr represented IBSSA Board. He was not speaking on behalf of the Board and not the entire membership, and most certainly not 85 of those members. With respect to Ms. Haley's comments, tourists are coming to the Jungle Gardens during the day and are not visiting from 5:00-9:00 or 10:00 at night. The increased hours are not for the benefit of the animals, but are only for the benefit of the owners. To some extent it seems the applicant is saying what they need to say to get this passed. Regarding the renewal period, his clients would like to have this come up every year.

Allan Garrett noted the key issue is compatibility with the neighborhood. In his professional opinion approval of the petition will drastically change the character of a single-family, low density residential district to a commercial district.

PBM Lindsay asked Mr. Ulrich to clarify in writing after the meeting who he represents so the record is complete.

Don Farr stated that the ISBBA Board requested, as an additional proffer by the Jungle Gardens, they address specific instruments that would be prohibited, i.e. brass instruments, drums. Also they do not perceive this petition as a change since the types of events requested have been held at the Gardens under special permits over the years. This is a request for a long-term permission to do the same types of things they have been doing. Neither parking nor trash was a problem with last year's Holidays Lights event.

Ruth Folit stated there has been a lot of discussion about amplified music and she would like to ask about amplified voices. It is unrealistic to think that you can speak to 400 people without speaking into a microphone.

All other Affected Persons were not present for the rebuttal period.

STAFF REBUTTAL

Mr. Parsons indicated that the Good Neighbor Plan would become an exhibit to the resolution approving the petition. The additional proffer submitted does state no amplified music. The applicant appears to agree that the parking arrangements need to be formalized. Also the applicant has agreed that no other events will be held during the Holiday Lights event and that is not currently a condition of approval but should be added.

Mr. Litchet said proffers should be extremely specific about what no-amplified music means for purpose of enforcement. Conditional Use permits that require 15 or 20 conditions to work are always problematic.

Vice Chairman Snyder asked Mr. Litchet about placing a 2-year sunset on this conditional use. In such a case, the burden is put on the petitioner not violate conditions. Is that, in Mr. Litchet's opinion, a good enforcement method. Mr. Litchet indicated yes and the current Code provision for revocation is good as well.

PBM Fulker asked what the last commercial zoning was for this property and discussion indicated residential zoning [even before the first zoning code] may have been residential while the future land use of the property may have been something different.

Chairman Shelton closed the public hearing.

The Planning Board recessed from 9:54 to 10:03 p.m.

Chairman Shelton suggested deliberation of this petition be continued to the next regularly scheduled meeting. He encouraged the parties to continue communication during that period and asked to hear more about a sunset provision from the City Attorney. PBM Lindsay noted, if it is the direction Board members take, the sunset provision be crafted in a manner that application for renewal be set to take into consideration bookings for events may be made 6-months prior to the event date. Discussion ensued regarding the renewal process and time period. Attorney Fournier will prepare a draft resolution to use as a deliberation tool.

DELIBERATION OF THE BOARD

MOTION by Vice Chairman Snyder and second by PBM Fulker to continue deliberation of Petition 05-CU-04 to the October 12th Regular Planning Board meeting.

DISCUSSION

PBM Fulker stated the applicant may wish to think about a sound system that would point noise away from the neighborhood and to address the comment about amplified voices. Perhaps attendance at neighborhood meetings to announce upcoming events would be helpful. Ms. Gallagher said that before the Holiday Lights events planning took place, staff of the Jungle Gardens did approach the ISBBA Board first. There was a letter of recommendation from the Board submitted to the City for the permit application.

VOTE: Fulker, yes; Wilson, yes; Lindsay, yes; Snyder, yes; Shelton, yes. The motion to continue deliberation of Petition 05-CU-04 to the October 12th Regular Planning Board meeting, carried unanimously. (5-0).

IV. CITIZEN'S INPUT

There were no citizens present who wished to speak.

V. PRESENTATION OF TOPICS BY STAFF

1. Boat Docks - Grandfathering [Tim Litchet, Director Building, Zoning & Code Enforcement].

Mr. Lindsay stated he believes a permit for repair of an existing boat dock, which was not built under the current Code standards, cannot be obtained because there is no language in the Code for grandfathering. Docks, however, are in need of constant repair. Also the Code has changed so there now is a substantial number of non-conforming docks. He believes it is appropriate that some sort of grandfathering language be included in the Code to allow repairs.

Mr. Litchet said a dock under the Code is defined as an accessory use, and Section V-107 relates to non-conforming accessory uses and accessory structures. Section D of that

provision does allow non-conforming docks to be repaired. It is the 75% rule regarding destroyed or damaged docks -- when 75% or more of the structure's market value may be repaired or restored only if it meets the standards. That provision works fine for docks, but pilings are considered a separate accessory use. Mr. Litchet agrees that grandfathering language should be added for those since under the current Code you may not be able to replace the piling itself.

Because the Code changed in the '90s regarding how the setback is calculated we are running into a problem, particularly in some cul de sac areas, where some of the docks were built under the old standard and some under the new standard. In the old Code setbacks were taken from riparian rights line that is generally established by a surveyor. The survey is usually done for an entire basin area. The best description, Mr. Litchet states, is generally everyone has an equivalent right to water access based on the frontage. There are about 3 different ways to establish riparian rights, but the most common is to start with a point in the basin and draw a pie shape to each one of the lots. That system is fine when it is used with no other system. In the mid '90s the City code changed and 'extended property lines' were used. You take the property line and extend it straight out and setback either 8 or 25 ft. from that, depending on what zone district the property is within. The current problem exists because both of these systems have been used over time, so when someone has built a dock under the riparian rights line and another has built under extended property lines, certain middle lots that have not previously built docks, have been closed out.

PBM Lindsay noted that we came up with our own scheme and tried to superimpose it on State owned land. In reality the relationship between on what the upland property owner gets to build should be between him and the State. We also did another dumb thing by regulating the maximum height of pilings. All that does is limit the security of large boats by not having pilings tall enough for the boat.

PBM Lindsay asked, in the short-term, is there some action that can solve the immediate need for owners to repair and maintain their docks? In the second phase of a long-term clean up, can we adopt a Code amendment that puts grandfathering language in the Chapter that deals with docks?

Mr. Litchet indicated he would like the Board to suggest Staff look for short-term solutions and later, a good long-term look at the manner in which the City regulates docks.

By consensus Board members requested Staff seek short-term solutions to the Code issues [Code amendment] regularly docks.

Jim Sypret 3401 Flamingo Avenue and Troy Sypret 809 Freeling Drive; and Don Farr, 3301 Bay Shore Road all spoke to the nature of problems experienced with the existing regulations.

VI. PRESENTATION OF TOPICS BY PLANNING BOARD

PBM Lindsay thought the 2-acre requirement for Churches was no longer effective. If someone wanted to start a Church in Downtown Sarasota, they couldn't do it. PBM Snyder said if the subject is to be reviewed, the Federal statutes that have come out in the last 2 -3 years should also be reviewed.

Regarding email messages, City handouts should suggest that Planning Board members should be contacted through the City so the information becomes public record. Communications should not go directly to Planning Board member's homes for that reason.

Chairman Shelton suggested, emails received at the City can be forwarded to members. The correspondence will become part of the public record and members can read them prior to the meeting.

PBM Fulker suggested a City e-mail address for Planning Board members. Records management and accountability would be in place. Mr. Fulker also said he has checked and no one in the National Guard has any support for or knows anything about the National Cemetery co-location. In fact, it is preferred they not be located near a cemetery since they don't want the public driving by regularly.

VII. ADJOURNMENT

The Planning Board adjourned at 10:52 p.m.

Jane Robinson
Director of Planning & Redevelopment
Secretary to the Board

Michael Shelton, Chairman
Planning Board/Local Planning Agency