CITY OF COCOA
BOARD OF ADJUSTMENT
MEETING MINUTES
November 5, 2018

A special meeting of the Board of Adjustment of the City of Cocoa was held on Monday, November 5, 2018 in the Council Chambers at 65 Stone Street, Cocoa, as publicly noticed.

I. OPENING MATTERS:

Vice Chairwoman Elliot called the meeting to order at 6:04 P.M. The Board Secretary called the roll.

MEMBERS PRESENT:

Nancy Elliott	Vice Chairwoman
Bruce Gilmore	Board Member
Alex (James) Goins	Board Member
Connie Harvey	Board Member
Jane Jollay	Board Member
Rip Dyal	Alternate Member
Brenda Warner	Board Liaison

MEMBERS ABSENT:

Robert Frey	Chairman
Matthew Ford	Board Member

OTHERS PRESENT:

Dodie Selig	Planning and Zoning Manager
Robert Loring	City Planner
Kristin Eick	Assistant City Attorney
Monica Arsenault	Board Secretary

II. APPROVAL OF AGENDA & MINUTES:

Approval of Agenda: November 5, 2018.

Approval of Meeting Minutes: October 25, 2018

Motion by Alternate member Dyal, seconded by Board member Jollay, to approve the agenda and the minutes as written. Vote on the motion carried unanimously.

III. OLD BUSINESS:

None.

IV. NEW BUSINESS:

A. PZ-18-00000005 – Special Exception (409 Delannoy Ave)

A request for a Special Exception from Appendix A, Zoning, Article XI, Section 13 (C)(19) of the City of Cocoa Code to allow for outdoor sales kiosks in the CBD-CVO (Central Business District - Cocoa Village Overlay) Zoning District. The property is identified as 409 Delannoy Avenue, Cocoa, Florida. (Parcel ID: 24-36-33-39-B-3)

Ms. Selig provided a presentation[1]. She noted that the requested action is for the Board to consider a Special Exception from Appendix A, Zoning, Article XI, Section 13 (C)(19) of the City of Cocoa Code to allow for outdoor sales kiosks in the CBD-CVO (Central Business District- Cocoa Village Overlay) Zoning District.

She provided a map of the subject property's location and a site layout plan. She explained that the property owner, Mr. Troy Stephan, is proposing to operate twelve outdoor sales kiosks as part of an existing site known as "The Village German Bier Garten Restaurant". The site is .26 acres with an existing 2,500 square foot restaurant and bar constructed in 2016. The twelve kiosks are in four free-standing kiosk structures along with an elevated, covered, open air stage. In 2016 Mr. Stephan received approval from the Board of Adjustment for a Variance request related to the building height and frontage buildout percentage requirements. The plans submitted with the Variance application showed three of the current four kiosk buildings. Kiosk numbers eight and nine were added to the site after the 2016 Board of Adjustment meeting.

Additionally, Ms. Selig shared that Mr. Stephan has stated that some of the kiosks are being used for the existing German restaurant. He would like to be able to rent out the remaining kiosks to other businesses. Mr. Stephan is proposing that the kiosks may be rented on a short- or long-term basis with rental periods as short as a single day, weekly, monthly or annually. She shared that there have been concerns expressed to staff by the local merchants regarding the lease time permitted. Staff would like to amend the list of conditions to include a limit of the lease time to a minimum of thirty (30) days. Staff has provided a number of conditions related to this use, one of which states that the kiosks would be leased for the sale of retail items only. Staff would like to amend that condition to "the sale of retail items available in the kiosks only, not for merchandise located elsewhere". In addition, each kiosk vendor would be required to obtain a Local Business Tax Receipt from the City prior to opening for business.

Ms. Selig presented several photos of the subject property. She stated that staff recommends approval of the Special Exception in accordance with Appendix A, Zoning, Article XI, Section 13 (C)(19) of the City of Cocoa Code to allow for outdoor sales kiosks in the CBD-CVO (Central Business District- Cocoa Village Overlay) Zoning District, with the following conditions:

1. The Special Exception shall not be effective until the applicant has secured all the permits and approvals necessary for any development related to the Special Exception, specifically including satisfaction of any outstanding conditions or

[1] BOA Power Point Presentation 11/05/18

building code requirements of the Temporary Certificate of Occupancy issued by the City on January 25, 2018. Such permits shall be obtained within six (6) months of the Board's approval.

2. Each kiosk vendor shall obtain a Business Tax Receipt in the City of Cocoa for the location.

3. Kiosks shall be for the sale of retail items only. No other type of business use, such as personal or business services, are allowed from the kiosks.

4. The kiosks can be used for the sale and serving of food but may not be used for the preparation of food.

5. Kiosk hours of operation shall be limited to no earlier or later than the restaurant in order to provide access to the restaurant's restroom facilities.

6. The property, including the kiosks, shall remain a unified parcel under common ownership. The kiosks shall remain an accessory use to a German bier garten restaurant. Any change in the use of the principal structure, including to a different type of restaurant, shall result in the expiration of the special exception; a new special exception to operate the kiosks would be required.

7. The owner of the property shall be required to provide adequate trash receptacles for both the individual kiosks and for the operation of the site as a whole, including the kiosks and restaurant.

8. Signage on the property shall be limited to the following:

   (a) Freestanding signs. In addition to the freestanding sign for the restaurant, one additional freestanding sign upon which kiosk operators may advertise is permissible on the property (not in the right-of-way). The freestanding sign may host a collection of smaller signs, with no more than one collection sign per each kiosk (twelve total). A collection sign may not be larger than ten inches in height by twenty-four inches in width. The freestanding sign may have two arms, with up to six collection signs on each arm.

   (b) Temporary Signs. To ensure pedestrian and traffic safety, the property as a whole may have a maximum of two temporary signs, which may be used to advertise the restaurant, one or more of the kiosk operators or both.

   (c) Attached/Wall Signs. Each kiosk operator may have one attached sign. Attached signs shall in no case exceed twenty percent of the total surface area of the kiosk wall to which it is attached.

Alternate member Dyal asked for clarification regarding the Occupational License. He asked if a State of Florida Tax Receipt would be required as well. In response, Ms. Selig clarified that it is a Business Tax Receipt and confirmed that a State of Florida Tax Receipt would be required as well as it is required in order to obtain the Business Tax Receipt from the City.

Alternate member Dyal asked about the required Certificate of Occupancy. In response, Ms. Selig explained that the C.O. is required by the Building Department.

Board member Goins asked what the purpose is of the thirty-day lease. In response, Ms. Selig explained that the surrounding merchants who operate "brick and mortar" businesses must pay a mortgage or lease in addition to other costs such as property taxes whereas the kiosk vendors do not. She explained that this creates a disparity issue and in order to address it staff is recommending a minimal lease period.

Ms. Selig also added that the thirty day lease will require applicants to plan ahead in order to allow staff time to review and complete Business Tax Receipt applications before they can open their business.

Board member Harvey inquired about trash disposal. She explained that she had noticed that trash receptacles are located within the kiosks, however an overabundance of garbage has already proven to be an issue in that area as the dumpsters tend to be consistently full. She asked where this trash will be going and if the dumpster that is already on the site is handling the existing business. In response, Ms. Selig explained that if necessary, another dumpster will need to be added to the site. She noted that there is a dumpster currently on the property but is not sure how it is handling the current business.

Vice Chairwoman Elliott asked where on the property signage would be installed. In response, Ms. Selig shared a photo of the property and pointed out two locations that were being considered. She pointed out that the applicant would still need to apply for a sign permit and so the preferred location would be examined at that time.

In regards to Board member Harvey's previous question regarding trash disposal, Ms. Hamilton pointed out that in the staff report, under Section C, staff acknowledges the space limitations to the site and acknowledges that there may not be sufficient room to handle trash so that is why staff is requiring that the applicant makes sure that trash is adequately handled for that site. She further clarified that all trash on that property, just as any other business, needs to be handled in a responsible manner.

Board member Gilmore asked for clarification as to whether the Special Exception is warranted due to outdoor sales or if it is due to the kiosks being rented. In response, Ms. Selig explained that the applicant is asking for a Special Exception because of outdoor sales.

Board member Gilmore asked if the initial building permit that was issued included the kiosks. In response, Ms. Hamilton stated that there were two separate permits. The first permit included the restaurant and a few kiosks, and the second permit included the remaining kiosks. She shared that at that time, a temporary C.O. was issued, and the restaurant was able to open after enough of the conditions were satisfied. It was agreed that a few of the kiosks were operational as they related to the restaurant itself. Ms. Hamilton clarified that it is the remaining kiosks that the applicant is seeking to rent out that need the Special Exception.

Board member Gilmore asked staff to clarify if this was included in the Board of Adjustment's decision back in 2016. In response, Ms. Selig replied that it was not.

Board member Gilmore clarified that whether the applicant decides to lease the kiosks or not is not for the Board to consider. In response, Ms. Selig agreed with Board member Gilmore.

Ms. Eick clarified that the outdoor sales is the Special Exception that is being applied for, however, the Board still needs to determine the impacts of what this use might generate, and to identify impacts that need to be conditioned so there are no negative effects to the surrounding area.

Board member Gilmore clarified that whether the applicant chooses to rent or lease is not of concern to the Board. In response, Ms. Eick explained that it is a concern if the Board believes, as staff does, that there is an impact that is generated by the use that the applicant is proposing. This would be the opportunity to condition the impact. She added that the use that was proposed by the applicant includes lease terms as short as a single day.

Board member Gilmore asked if the applicant ultimately decides not to lease or rent, will the Board be giving him approval to operate the kiosks under the umbrella of the business. In response, Ms. Eick explained that the proposed condition addresses the lease period should the applicant decide to rent the kiosks. She clarified that the condition does not require the applicant to rent the kiosks.

Troy Stephan, 409 Delannoy Ave., Cocoa, approached the Board to share a history of the project. He shared that he does not feel these conditions are fair and stated that whether or not he needs a Special Exception is a question in of itself. He shared that he does not feel it is fair to limit him to a lease term and he also feels that it is not fair to limit the type of vendors that wish to rent a kiosk.

Board member Gilmore shared that he concurs with Mr. Stephan, however, he feels that whether or not Mr. Stephan leases or rents is not the concern of the Board as it places limitations that have not been placed on the other store owners in the Village, which would not be fair.

Alternate member Dyal asked if Mr. Stephan will allow any type of vendor to rent a kiosk, such as a garage sale, for a certain amount of time. In response, Mr. Stephan stated no, that he is looking to act in the best interest of the City.

Board member Gilmore mentioned a statement made by the Assistant City Attorney, which was in regard to the kiosks being under the umbrella of the restaurant and bar and if those kiosks could still function under that umbrella. In response, Mr. Stephan explained that originally, when he received the permit, the kiosks were used to sell clothes and other items. He shared that he did not see the difference between using the kiosks to sell items himself or someone else utilizing them for the same function.

Mr. Stephan noted that there is a dumpster with two scheduled weekly pickups as of right now. He shared that he feels this is an important issue and will schedule additional pickups if needed.
Aleck Greenwood, 640 Brevard Ave., Cocoa, stated that he feels many great points were addressed this evening. He added that Mr. Stephan has not only fenced in the dumpster but has added landscaping as well and is more than willing to schedule additional trash pickups if needed. He stated that he feels that after spending the amount of money that he has on this project, Mr. Stephan will not put his business in jeopardy by allowing anything that will cause issues. He is hopeful that this project will encourage additional business growth in the area. He stated that he does not believe Mr. Stephan is trying to circumvent any rules or regulations and that he is only trying to build on his pre-existing business. He asked that the Board provide their support to this.

Ms. Hamilton added that the Planning and Zoning Board was the Board that originally approved this project. She noted that regardless of the kiosks being rented, the subject of the outdoor sales still needs to be addressed by the Board. She added that the Certificate of Occupancy is provided by the Building Department, and while Mr. Stephan has a C.O. for the restaurant, he has not received one for the kiosks yet.

Jan Etts, 216 Brevard Ave., Cocoa, expressed concerns regarding the Business Tax Receipt. She pointed out that it may not be worth it for a vendor to wait a week or two to receive a Business Tax Receipt to only rent a kiosk for one day. Additionally, she asked what would stop a vendor from opening up on a Saturday and leaving on Sunday when City staff is not around. She also pointed out that signage, trash, and parking has proven to be major issues in the Village. Lastly, she mentioned that she feels that the focus should be on filling existing vacant store fronts before focusing on renting out kiosks.

Brad Whitmore, stated that his wife owns a business across the street and they are not fond of the idea of what could potentially become a "flea market" scene in the Village. He reiterated concerns of vendors coming in on weekends or when there is an event going on such as the Art & Craft Fair, to make their money for a day or two and then packing up and leaving without obtaining a Business Tax Receipt from the City. He noted that he feels a minimum of a thirty-day lease should be considered and that the lease should be considered at "market value". He also asked who is going to be responsible for enforcing the rules and regulations of these kiosks.

Alternate member Dyal asked to speak on several issues. He pointed out that as long as he has been a Board member he has never heard of an applicant not being provided the information prior to the meeting and feels that Mr. Stephan has not been allotted enough time to review the changes made by staff. He also has an issue with the verbiage of the staff report. He stated that he feels the item should be tabled and the language should be rewritten as it is very confusing.

Board member Jollay reiterated her concern that she did not feel it was fair that Mr. Stephan had not been provided the amended staff report prior to the meeting this evening. She also feels that it is not sensible for a vendor who is renting a kiosk for a day to obtain a Business Tax Receipt that could take weeks to obtain.

Mr. Stephan explained that he has not only one store front, but thirty to worry about. He explained that he is trying to bring business back into the Village as a lot of commercial businesses are going out of business due to websites such as Amazon.

Board member Harvey spoke regarding the length of the lease terms. She noted that if Mr. Stephan wished to put a sign up on the property portraying which vendors are open than it may not be worth it for daily vendors to put a sign up as a sign should depict more permanent vendors. In response, Mr. Stephan agreed and noted that he would not be adding any vendors to the sign that would not be on a monthly, biannual, or yearly basis.

Alternate member Dyal asked about food vendors being allowed. Mr. Stephan stated that he would not allow that as he does not wish to have businesses competing against each other.

Board member Jollay asked what will happen to the kiosks that may not necessarily be open. Mr. Stephan stated that he will not board up vacant kiosks as part of the planning process was to beautify them so even if they are vacant, they are still presentable.

Board member Gilmore made a motion to postpone the item and allow Mr. Stephan to continue with his plan under his business umbrella.

Ms. Hamilton pointed out that if the motion is made than Mr. Stephan will still not be able to utilize his kiosks other than the ones that were previously approved.

The motion was denied as there was no second to the motion.

Motion by Board member Gilmore, seconded by Alternate member Dyal to approve a Special Exception, to include the original recommended conditions as written by staff, from Appendix A, Zoning, Article XI, Section 13(C)(19) of the City of Cocoa Code to allow for outdoor sales kiosks in the CBD-CVO Zoning District.

Board member Harvey asked to make an amended motion to include a minimum rental period of fifteen days.

Motion by Board member Harvey; seconded by Vice Chairwoman Elliott to amend the original motion to include a condition of a minimum rental period of fifteen days.

The Board Secretary called the roll.

AYES: Elliott, Dyal, Gilmore, Goins, Harvey, Jollay
NAYS: None.

A consensus was made by the Board to approve the amended motion for a Special Exception, to include the original recommended conditions as written by staff in addition to a condition of a minimum rental period of fifteen days, as recommended by the Board, from Appendix A, Zoning, Article XI, Section 13(C)(19) of the City of Cocoa Code to allow for outdoor sales kiosks in the CBD-CVO Zoning District.

The Board Secretary called the roll.

AYES: Elliott, Dyal, Gilmore, Goins, Harvey, Jollay
NAYS: None.

V. OTHER BUSINESS:

None.

VI. NEXT MEETING DATE:

The Board members established that the next meeting would be held on December 19, 2018.

VII. ADJOURNMENT:

Motion by Board member Goins, seconded by Board member Harvey to adjourn the regular meeting of November 5, 2018. Vote on the motion carried unanimously.

There being no further business the meeting adjourned at 7:49 P.M.

Approved on this 17 day of April, 2019.

Nancy Elliott

Nancy Elliott, Vice Chairwoman

Monica Arsenault, Board Secretary