



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: November 17, 2020

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Appeal of P&Z Approval of Special Exception for Wallace Field

Background: The P&Z Board's decision to grant a special exception for active recreation on Wallace Field is being appealed by the property owners who live near the park. The City applied for a special exception as Wallace Field is zoned Open Space. The BIMC states that Open Space is primarily intended to help protect environmentally sensitive natural systems, preserve major open spaces, and provide for passive recreational needs of the city. Permitted uses are restricted to those with low-intensity characteristics, designed to protect open tracts of land that are owned by municipal, state, or federal governments. (BIMC Sec. 54-94). Permitted Uses in OS are: (1) Passive recreational uses; (2) Noncommercial agriculture or horticulture such as community gardens; and, (3) Customary accessory uses in support of the primary uses listed in 1 and 2 above.

Passive use involves casual activities and pursuit of hobbies, with no adverse impact to the natural habitat. Examples of passive recreation include, but are not limited to, walking and jogging, hiking and nature walks, community gardens, painting, photography, kite flying, picnicking, Frisbee, fishing, and outdoor theaters.

The Special Exception for Wallace Field is for Active Use, which includes active sports or organized events. Examples of active recreation include, but are not limited to, sports fields, ball fields, playgrounds, skateparks, swimming pools, gymnasiums, and outdoor theaters.

For Cornerstone Charter Academy (CCA) to use the field for practice of football, soccer, or any other active sports, a special exception needs to be granted.

In the past, CCA has been allowed to use Wallace Field for practice with few, or no, problems with the neighbors.

According to the BIMC, Sec. 42-63. - Special exceptions: The board shall hear and make decisions concerning special exceptions as allowed under the terms of the Land Development Code. The board shall make decisions concerning such questions as are involved in determining whether special exceptions should be granted, and shall render a decision regarding the granting or denying of special exceptions with such conditions and safeguards as are appropriate to ensure compliance with the Land Development Code. The board shall

deny special exceptions when not in harmony with the purpose and intent of the Land Development Code.

(1) Criteria. A special exception shall not be approved by the board unless and until:

a. A written application for a special exception is submitted to the city manager or designee indicating the section of the Land Development Code under which the special exception is sought and stating the grounds on which it is requested. The city manager shall refer the application to the board.

b. Notice as required for hearings before the board by this chapter.

c. The public hearing shall be held. Any party may appear in person or by agent or attorney.

d. The board shall make a finding that it is empowered under the section of the Land Development Code described in the application to grant, with or without conditions, the special exception, and that the granting of the special exception shall not adversely affect the public interest.

e. It is determined that the public health, safety, comfort, order, convenience, prosperity, morals or general welfare is promoted, protected or improved.

The appeal states that the P&Z Board erred on several issues; however the staff believes that P&Z Board did not err as described by the Appellants' Attorney. In reviewing the Criteria for a Special Exception, a written application was filed; proper notice was provided (letters mailed; the property was posted); a public hearing was held; the public was allowed to speak at the public hearing; the Board made a decision, without conditions, and granted the special exception because it would not affect the public interest, and the public health, safety and general welfare of the public is improved by allowing active recreation on Wallace Field.

If the Council feels that the P&Z Board erred then I believe the Council can remand this issue back to the P&Z for them to look at it again.

The City Council is also allowed to exempt the City from the Land Development Code. Section 41-3 states: The purpose of this section is to provide the city council with the means by which to exempt the city from certain provisions of the Land Development Code. The city council may, by a super majority vote (a majority plus one), exempt the city from any requirement of the Land Development Code, except as otherwise prohibited by the city Charter or Code of Ordinances. Such exemptions shall be determined to be in the best interest of the citizens and not be detrimental to the public health, safety and welfare.

Staff Recommendation: Deny the appeal

Suggested Motion: I move that we deny the appeal.

Alternatives: Approve the appeal. Remand the issue back to the P&Z Board

Fiscal Impact: TBD

Attachments: Appeal Letter

Notice of Appeal - Public Hearing Case #2020-09-007

1 message

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Tue, Oct 6, 2020 at 3:47 PM

Ms. Quiceno,

Pursuant to Section 42-71 of the Belle Isle City Code, please consider this the Notice of Appeal of the Belle Isle Planning and Zoning Board's ("Board") decision granting the Special Exception to allow active recreational uses on property zoned Open Space District for Wallace Park Improvements, submitted by Applicant City of Belle Isle, located at East Wallace Street, Belle Isle, Florida 32809 also known as Parcel # 24-23-29-8977-00-021 from the Board's meeting on September 22, 2020.

This appeal is being filed on behalf of Walter Meloon, Ardis Meloon, Donella Altice, Jeff Maull, Hillary Maull, James Koonce, Caroline Koonce, and Jim McRae, who are aggrieved by the decision of the Board.

The basis of the appeal includes, but is not limited to, the Board erring by: not basing its decision on competent substantial evidence; not making a finding of fact that it is empowered under the section of the Land Development Code described in the application to grant, with or without conditions, the special exception, and that the granting of the special exception shall not adversely affect the public interest; not making a finding of fact that the public health, safety, comfort, order, convenience, prosperity, morals or general welfare is promoted, protected or improved; not providing the public with due process and a meaningful opportunity to provide testimony and a right to be heard by the Board during the virtual hearing; not providing the details of any ex parte communications or site visits that the members of the Board made; not swearing in witnesses who were providing testimony; not conducting or scheduling separate quasi-judicial hearings on the site plan and the special exception; not allowing affected parties to cross examine witnesses.

Please advise as to when the de novo hearing in front of City Council will be held so that I may make appropriate arrangements with my schedule along with my clients schedule.

Sincerely,

Nathan Meloon



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