



The Belle Isle City Council met in a City Council Regular session on November 17, 2020, at 6:30 pm at City Hall 1600 Nela Avenue, Belle Isle, FL 32809.

Present was:

Mayor Nicholas Fouraker
Commissioner Ed Gold
Commissioner Anthony Carugno
Commissioner Karl Shuck
Commissioner Mike Sims
Commissioner Harvey Readey
Commissioner Jim Partin
Commissioner Sue Nielsen

Absent was:

Also present were City Manager Bob Francis, Attorney Ardaman, Chief Houston, and City Clerk Yolanda Quiceno.

CCA STUDENT – Dedicated Ducks Presentation

Kelly West and other CCA Dedicated Ducks presented their “Cards for a Cause community” event. Through gifts of kindness, they have partnered with Seniors First to provide gift cards to seniors. The Dedicated Ducks said they are seeking donations of \$10 gift cards from Wal-Mart or Publix. Their goal is to collect \$2,000 in gift cards by December 1. The donations can be dropped off at City Hall, the Belle Isle Police Department, and Cornerstone Charter Academy.

CALL TO ORDER

Mayor Fouraker opened the meeting at 6:30 pm. Comm Carugno gave the invocation and led the Pledge to the flag. The City Clerk confirmed quorum.

Mayor Fouraker read the Council Rules of Order for the record.

APPEAL OF CASE #2020-10-003

Mayor Fouraker opened the Public Hearing and read the Variance by title:

Pursuant to Belle Isle Code Sec. 50-102 (b) (5), Sec. 50-102 (b) (16) and Sec. 42-64, the Council shall consider and take action on a requested variance to place a fence with gates in the front yard and side yard of a residential property, submitted by applicant Daniel Barnes located at 6838 Seminole Drive, Belle Isle, FL 32812 also known as Parcel #29-23-30-4389-02-090.

Daniel Barnes, the applicant, residing at 6838 Seminole Drive, gave a brief overview of his proposed Variance and addressed the grievances submitted by his neighbor Debra Donham which were

1. Failure to be recognized at the P&Z Board meeting:
 - a. Ms. Donham’s grievance that the P&Z Board did not recognize her is not a valid issue for the Appeal and is not his responsibility to answer.
2. There are no plans to add additional entry gates to access the exterior of the property:
 - a. There are no new gates in the proposed Variance. Datson Fence will update the t Two existing interior gates
3. The property line is not marked clearly, and the placement of the fence is not identified:
 - a. The property line is marked on the survey provided as part of his original plan, including where the fence will be placed. However, the property was not flagged, and he ordered a new survey to identify the property lines for the record completed on Thursday.

Mr. Barnes clarified for the record that his proposed Variance doesn’t include a gate. He referenced the 1999 survey provided by Ms. Dunham. He spoke briefly on Ms. Donham's existing front yard, chain link fence adjacent to his property, and the backhoe currently located on her property. He said the 1999 survey provided by Ms. Dunham shows no fence, and after further research,

he did not find a permit issued for the existing fence. He stated that Ms. Donham had obstructed her swale, causing her flooding. He further added a brief testimony of an additional fence repair in 2018, which moved the fence without a permit. In closing, he briefly showed where his proposed fence would be installed using the site plan he provided.

Mayor Fouraker opened for public comment. There being none, he closed public comment.

Ms. Donham residing at 6904 Seminole Drive, spoke briefly on the comments made by Mr. Barnes as follows,

- She did not present a 1999 survey. The survey provided was from 2010.
- She stated that the gate and wall were permitted and installed in 2000.
- The fence was not moved and highlighted on the survey. In 2017 the fence was not moved, and the proof was provided to Code Enforcement.
- The backhoe was on the property to remove some uprooted trees. Dump (debris) receipts were provided to Code Enforcement.

In response to the Appeal, she noted the following,

- She said that the applicant added dirt and pavers to the swale and made it higher, creating an issue.
- The front fence and side gate are not clearly defined on the plans.
- The only flooding she has in her yard is from his flexible pipe he has running from his gutters running along with the gate. The water runs through her property and down to the lake.

Ms. Donham read a letter to the Council and said she would like to have the Variance postponed until the property lines issue is resolved. She submitted a copy of the 2010 survey showing the wood fence provided by the previous owner. The survey shows the wood fence attached to the fence at the property's front parallel to the street. She has maintained this existing fence for over 20 years, and in 2017, the fence was repaired after Hurricane Irma. The 2010 site plan shows a concrete monument and an iron rod marking the center of the property. She has had numerous encounters with the applicant and has had the Belle Isle Police Department called. She does not have an issue with the applicant or his proposed fence. She would like to keep her fence for privacy, have the property surveyed properly, and revisit the flexible pipe connected to his gutters directing water to enter her property.

Mayor Fouraker opened for public comment.

Greg Oscarson residing at 6904 Seminole Drive, shared his concerns with the trespass warning he received. He has been with Ms. Donham for approximately 21-years and feels he has the right to an opinion.

There being no further comment, Mayor Fouraker closed public comment and opened for Council discussion.

Chief Houston clarified that Mr. Greg Oscarson had trespassed Mr. Barnes property on 10/16, 17 at 242 hours. Mr. Barnes called the Police Department, indicating that Mr. Oscarson trespassed again on 11/16. We allowed Mr. Oscarson to state response, and he said he wasn't trespassing and that Mr. Barnes put the flag where they found it erroneously. We advised Mr. Oscarson if he is found on Mr. Barnes property after the warning, he will be arrested.

Chief Houston said the Belle Isle Police Department (BIPD) does not know anything about a survey company. The BIPD will not be hiring anyone to stand on the property while any fence is taken down; and will not represent or be involved in the civil matter. This is not a criminal matter unless there is a trespass issued.

Comm Nielsen stated that tonight's testimony has nothing to do at all with the Variance under consideration. The survey clearly shows the wood fence on the property line.

The City Attorney recommends the decision of the Council should be to approve the Variance if the criteria have been met, approve with conditions, or deny.

Comm Nielsen motioned to approve the Variance with the stipulation that the existing wood fence will not be moved and will remain in place.

Comm Partin seconded the motion for discussion. Comm Partin asked for clarification of the motion and asked if it includes the staff recommendations as follows,

1. That Mr. Barnes layout the property line based on the survey submitted
2. That ay of Ms. Donham’s fence that may have encroached on Mr. Barnes property be moved within seven days to her property line under the supervision of a third party with Mr. Barnes present.
3. Mr. Barnes gives Ms. Donham or her representative permission to be on his property to move the fence and only when it is coordinated so Mr. Barnes can be present.

Attorney Ardaman said the Council could place conditions on the granting of a variance. Based on what is presented, he recommends the Council considers whether the criteria have been met with the requested Variance and allow the applicants to work out their differences regarding the wooden face.

Chief Houston referred both parties to the Orange County Citizens Dispute Center to mediate the situation.

After discussion, Comm Nielsen withdrew her motion.

Comm Partin seconded.

Comm Carugno motioned to deny the Appeal and approve the Variance with conditions recommended by staff as follows,

1. Provide a current survey with flags with satisfaction by both parties;
2. That Mr. Barnes layout the property line based on the survey submitted;
3. Ms. Donham’s fence that may have encroached on Mr. Barnes property be moved within seven days to her property line under the supervision of a third party with Mr. Barnes present; and
4. Mr. Barnes gives Ms. Donham or her representative permission to be on his property to move the fence and only when it is coordinated so Mr. Barnes can be present.

Comm Partin seconded the motion.

Mayor Fouraker asked if the Council can consider the following conditions in the motion,

1. Parties split the cost of a BIPD officer to be present during the entire process of installation of the fence.
2. The surveyor should have more than ten years of experience and must be agreed upon by both parties
3. If the two parties cannot agree, the City will choose the surveyors.

Comm Carugno agreed to amend his motion to add the three additional conditions to the motion.

Comm Partin seconded the motion, which passed 6:1 upon roll call with Comm Nielsen, nay.

APPEAL OF CASE #2020-09-007

Mayor Fouraker opened the Public Hearing and read the Variance by title:

Pursuant to Belle Isle Code Sec. 42-63 and Sec. 54-84 (D), the Council shall consider and take action on a requested special exception to allow active recreational uses on property zoned open space district and pursuant to Belle Isle Code Sec. 54-84 (G) (2) the Council shall consider and take action on a requested site plan for Wallace Park improvements, submitted by applicant City of Belle Isle, located at E. Wallace Street, Belle Isle, FL 32809 also known as Parcel # 24-23-29-8977-00-021.

City Manager Bob Francis spoke on behalf of the applicant. He said the Planning & Zoning Board granted a special exception to allow for active recreation at Wallace Field. The Belle Isle municipal code is clear, primarily intended to help protect environmentally sensitive natural systems, preserve major open spaces, and provide for the city's passive recreational needs. When the City created the Use Agreement, the City went in with a clear understanding that the school will use the field for active recreation. During the entire time, there were not many objections from the residents. He said he believes the Appeal is probably because the school asks to install the astroturf on the field. This request appears to be another perk for the school that was not anticipated.

At the P&Z Board meeting, the Board said the astroturf would be very popular and may change the quality of life for the surrounding homes and those residents who wish to use it.

Comm Readey said it was his understanding that the public would use it, and he would like to hold the promise to the residents. The artificial turf was not discussed by Council back then, and he didn't think it would be feasible. Mr. Francis said the maintenance and the cost of installing the artificial turf outlined in the Use Agreement would fall under the school's responsibility. Mayor Fouraker said it would be the school's responsibility, providing the Use Agreement remains in effect.

Comm Nielsen said there are two issues (1) installation of the astroturf and (2) allowing the school to use the field. The Council set out some very strict rules that the school board accepted, and they agreed that it would not interfere with residents' use. She stated that she received an email from a resident, Nancy Weinsier, who is opposed to the artificial turf. She believes the artificial turf will draw a lot more people.

Mr. Francis said Council did discuss the artificial turf at a previous Council meeting before the site plan's approval. The use agreement was to allow the school to use it. There will be a set schedule for school use. He further added that this is a public park, and anyone can use it. He clarified that the active sports teams the P&Z Board was referring to are outside agencies/groups using the area for practice.

For the record, Attorney Meloon stated that his client Donella Altice has trouble hearing the proceedings via zoom and will also speak via conference call.

Attorney Nathan Meloon, with offices at 1990 W. New Haven Ave., Second Floor, Melbourne, FL 32904, spoke on behalf of his clients who reside adjacent to the field. This is a quasi-judicial hearing, and there needs to be competent substantial evidence, and the applicant bears the burden of proof to the Board to support approval. He spoke and stated the following,

1. His clients are pro-school. They do not have a problem with only the school's use of the field for practice.
2. His clients are against using a parking lot, concessions, lights, bathrooms, and astroturf on the field.
3. They agree with the open space and the Special Exception because only the school can use it as a practice facility, and citizens use it as open space.
4. Attorney Meloon referenced and read BIMC Section 2-164 and Section 42-171 of the City Code.

The testimony of his clients will provide testimony and prove harm to Public Health as follows,

5. Public health will be harmed by the installation of the artificial grass field.
6. Animals will be harmed while catching their prey on the artificial turf (owls, osprey, eagles, sand cranes).
7. The safety and tranquility of the adjacent neighbors will be harmed with the increase of traffic; he stated that the Police Chief shared her concern previous to the challenge to patrolling the area.
8. Special Exception will be a detriment creating the loud noise, potential lighting noise, and decrease of the property values of the surrounding properties
9. The convenience of the area will increase traffic, creating potential parking of the neighboring properties.
10. General welfare of the area will also be harmed as it will decrease property values, create safety concerns for the neighbors, and security risks for school attendees.

Comm Shuck said he heard many maybe's and what-ifs but have not heard/seen any facts. Attorney Meloon stated that he provided the worst-case scenarios to ensure that the neighboring properties are protected. Attorney Meloon noted that the applicant is required to have the burden of proof.

Comm Readey said not having facilities, drinking water, or limited parking available to the residents will disservice.

Mayor Fouraker referenced the Land Development Code and how it applies to the approval of exceptions.

Mayor Fouraker opened for public comment.

1. Walter Gary Meloon residing at 6101 Matchett Road, said he is not opposed to the school. However, they have had issues with previous motions that were not kept by the Council that has disrupted their peace and tranquility (i.e., lights, night games). He spoke of the City Manager's misstatement and clarified that the residents have had several meetings with the City and have expressed their oppositions to the field in every meeting. He further added that the additional entrance points are a security risk.
2. Hilary Maul residing at 1130 Waltham Avenue spoke in opposition to some of the proposed special exceptions. She added that her husband's family had owned this property for almost 70-years. They are pro-school and are not opposed to the school using the field. She is opposed to the lights, bathrooms, and artificial turf, as discussed. Her property is north of the field and anything that happens in the school football field and open space can directly affect her family. In the partnership spirit, she has improved their landscaping and wall and expects the City and the school to do the same. Also, the existing drainage is an additional concern, and she would like to request a copy of the proposed plans for further review to protect her property.
3. Jim McCrae residing at 1303 E Wallace Street spoke in opposition of the proposed Site Plan. He shared his concern and stated that the City purchased the property to keep as open space. As part of the Use Agreement approval, he is opposed to the site plan and shared his concerns with drainage problems that are about to be created. He stated that he had seen ospreys, crows, cranes, and other animals on this property. For the record, Mayor Fouraker clarified that the site plan is not up for Appeal tonight; but the Special Exception's approval. The Planning & Zoning Board has already approved the site plan.
4. Larry Miles residing at 6110 Matchett Road, Orange County, spoke in opposition of the proposed Site Plan and Special Exception. One of the reasons he built his home is because of the unique area and the open field. Mr. Miles said the City would be taking away the natural beauty to add man-made materials that will deteriorate and age. He testified that birds frequently use this field and have no objection to the school using the field; however, the City is opening a big can of worms by developing the property.
5. James Koontz residing at 1311 E Wallace Street, Belle Isle, said he and his wife are pro-school; however, they are opposed to the field's development. He shared his parking concerns, residents using the field when school is in session, the bathroom's cleanliness and maintenance, and his worries about the transients and the park's policing. He also testified that many animals are in the area and should be considered.
6. Brian Leahy, CCA Staff, clarified that the school does not need or want a parking lot and is looking forward to creating a nice passive park.
7. Donella Altice residing at 1309 E Wallace Street shared her concerns with others parking on her private driveway, blocking the entrance to her home, and storing equipment on her property. She said during an event; she had to contact the Belle Isle Police Department for assistance. She spoke in opposition and concerns about the artificial turf, stating that it will be attractive to sports clubs in the surrounding area interfering with resident use. The people now using the park walk their pets without a leash and ignore the no parking signs. She said the proposed bathrooms might invite transients to the area, also disturbing the peace and tranquility. She shared her concerns for the safety of the children during school hours. She shared her testimony of the many animals and various birds who visit the open field every day. The artificial turf will certainly stop those animals from hunting.

The City Attorney stated that the hearing today is for a Special Exception (approval for an active use park) and not a site plan approval. Also, there has been testimony and evidence submitted in the packet today regarding whether it is competent for substantial determination and consideration.

Vice Mayor Carugno said he has witnessed the wildlife on the field and travels his district at least twice a week. He trusts the decision of the Planning & Zoning Board. If artificial turf is placed on the field, it will be very popular for outside agencies and groups, inviting unorganized activities. He spoke and shared his concern on the school's use and said it is a City park, and Council should consider all references.

Vice Mayor Carugno motioned to deny the Appeal approving the special Exception with the condition that the artificial turf is not installed on Wallace Field.

Comm Partin seconded the motion.

Mayor Fouraker clarified that this hearing is for a Special Exception on “Use” and not a hearing on artificial turf.

Attorney Ardaman said that is true; however, the Council can place a condition on the park's use in the motion. Discussion ensued.

After discussion, Vice Mayor Carugno stated that he does not understand the Mayor’s remark and the Attorney’s explanation on a proposed motion. Vice Mayor Carugno noted that the motion stands to deny the Appeal approving the special Exception with the condition that the artificial turf is not installed on Wallace Field.

Comm Gold said he approved the initial purchase of the field for an open space never to be developed. The green space was to comply with the required open space mandated by the Land Development Code. The artificial turf will create environmental harm in the future. He does not want to go back to the original Council decision for open space.

Comm Nielsen spoke on the prior approvals of Wallace field with limited parking. She would like to keep the open space concept while still making it a user-friendly park.

Comm Shuck shared his concern and spoke on three points, 1) he did not hear anyone address prior drainage issues on the property before the City purchase; 2) the site plan has already been approved with the artificial turf in the center of the field, not the entire field; and 3) promises made by former Council were not in writing, and things change. If the residents wanted to keep the land undeveloped in perpetuity, then the property should not have been sold.

After discussion Vice Mayor Carugno withdrew his motion.

Comm Partin withdrew his second.

Vice Mayor Carugno motioned to grant the Appeal and deny the Special Exception.

Comm Gold seconded the motion.

After discussion, Vice Mayor Carugno motioned to table the motion indefinitely.

Comm Nielsen seconded the motion, which passed 5:2 with Comm Shuck and Comm Gold, nay.

There being no further business, the motion to adjourn the meeting passed unanimously at 9:04 pm.

ADJOURNMENT

There being no further business, Mayor Fouraker called for a motion to adjourn. The motion passed unanimously at 9:05 pm.

Yolanda Quiceno, CMC, City Clerk