

CITY OF BONITA SPRINGS
ZONING RESOLUTION NO. 13-01

A ZONING RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; CONSIDERING A REQUEST BY BONITA OAKS SQUARE LLC. FOR A SPECIAL EXCEPTION TO ALLOW OUTDOOR CONSUMPTION ON PREMISES (COP) AT TUSCAN BISTRO, C LEVEL AND GATSBY'S WITHIN BONITA OAKS SQUARE, LOCATED AT 4450/4480 BONITA BEACH ROAD, BONITA SPRINGS, FLORIDA, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bonita Oaks Square LLC. has filed an application for a Special Exception to allow for outdoor consumption on premises (COP) with joint use of parking lots.

WHEREAS, the subject property is located at 4450/4480 Bonita Beach Road, Bonita Springs, Florida, and is described more particularly as:

"See Exhibits"

WHEREAS, a Public Hearing was advertised and heard on January 15, 2013 by the City of Bonita Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") on Case COP12-02234-BOS who gave full consideration to the evidence available and recommended approval (5-0-1, with Norris absent and Donnelly abstaining) and gave full and complete consideration of the record, consisting of the Staff Recommendation, the documents on file with the City and the testimony of all interested parties. The December 21, 2012 Staff Report prepared by Community Development and evidence submitted at the Zoning Board hearing is on file with the City Clerk.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Lee County, Florida:

SECTION ONE: APPROVAL OF REQUEST

City Council of Bonita Springs hereby approves the Special Exception to allow for outdoor consumption on premises (COP) with joint use of parking lots with the following conditions:

A. CONDITIONS

1. The special exception for consumption on premises with outdoor seating is limited to the existing restaurant locations as depicted on the attached site plan (ATTACHMENT A).
2. The serving of alcoholic beverages for outdoor consumption on premises shall be restricted to the hours of 11:00 am to 10:00 pm

Monday – Thursday, 11:00 am – 12:00 am Friday - Saturday and 11:00 am – 8:00 pm Sunday, and is limited to the 1105 +/- square feet for the restaurant locations as shown on the attached site plan (ATTACHMENT A).

3. Outdoor live music or entertainment is prohibited. Piped in music must meet the standards of City of Bonita Springs Noise Ordinance No. 06-04, as amended. If there is music being played indoors, the building must be closed or secured so that the noise does not emanate to outdoor residences in violation of the decibel limits (in coordination with the Fire District).
4. The tables for the outdoor seating areas shall be located so as not to impede pedestrian traffic and will provide adequate access as defined by ADA and Florida Life and Safety Code.
5. The special exception for joint use of parking (shared parking agreement is attached "ATTACHMENT B") is limited to the following:
 - a. The city's approval of the shared parking agreement on Parcel 32-47-25-B3-00700.00CE/32-47-25-B3-00700.0070 (4450 Bonita Beach Road) is limited to accommodate the required 9 additional parking spaces generated by the new 580 SF outdoor seating area for a restaurant on Parcel 32-47-25-B3-00001.055A (4480 Bonita Beach Road).
 - b. The written joint use parking agreement must be recorded within thirty days of approval by the City Attorney's Office with the Lee County Clerk of Courts at the applicant's expense.
 - c. The City will monitor the parking and should a concern about the operation arise, the City retains authority to review the joint parking agreement in accordance with LDC 4-2018.
 - d. At any time in the future, should the use of the property change from a restaurant on Parcel 47-25-B3-00001.055A to a more parking intensive use, adequate parking must be provided in compliance with the LDC at the time of application, or a revision to the shared parking agreement must be submitted for review in accordance with LDC 4-2018.
 - e. At any time in the future, should the use of the property change from a shopping center on Parcel 32-47-25-B3-00700.00CE/32-47-25-B3-00700.0070 to a more parking intensive use, appropriate parking demand studies will be required to demonstrate that the shared parking agreement can accommodate all uses on both parcels in accordance with the City review the joint parking agreement in accordance with LDC 4-2018.

- f. If the parties of the share parking agreement amend, alter or dissolve the shared parking agreement, the City must approve this change prior to any alternations becoming final.

B. FINDINGS AND CONCLUSIONS

Based upon an analysis of the application and the standards for approval of a special exception, Bonita Springs City Council makes the following findings and conclusions:

1. The requested special exception as conditioned:
 - a) Is consistent with the goals, objectives, polices and the intent of the Bonita Springs Comprehensive Plan;
 - b) Meets or exceeds all performance and locational standards set forth for the proposed use;
 - c) Will be compatible with the existing or planned uses;
 - d) Will not cause damage, hazard, nuisance or other detriment to persons or property; and
 - e) Will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code.

SECTION TWO: EFFECTIVE DATE

This ordinance shall take effect thirty (30) days from the date of adoption.

DULY PASSED AND ENACTED by the Council of the City of Bonita Springs, Lee County, Florida, this 6th day of February, 2013.

AUTHENTICATION:



 Mayor



 City Clerk

APPROVED AS TO FORM: 

 City Attorney

Vote:

Nelson	Aye	Simmons	Aye
McIntosh	Aye	Simons	Aye
Martin	Absent	Lonkart	Aye
Slachta	Aye		

Date filed with City Clerk: 2-7-13

EXHIBIT "A"

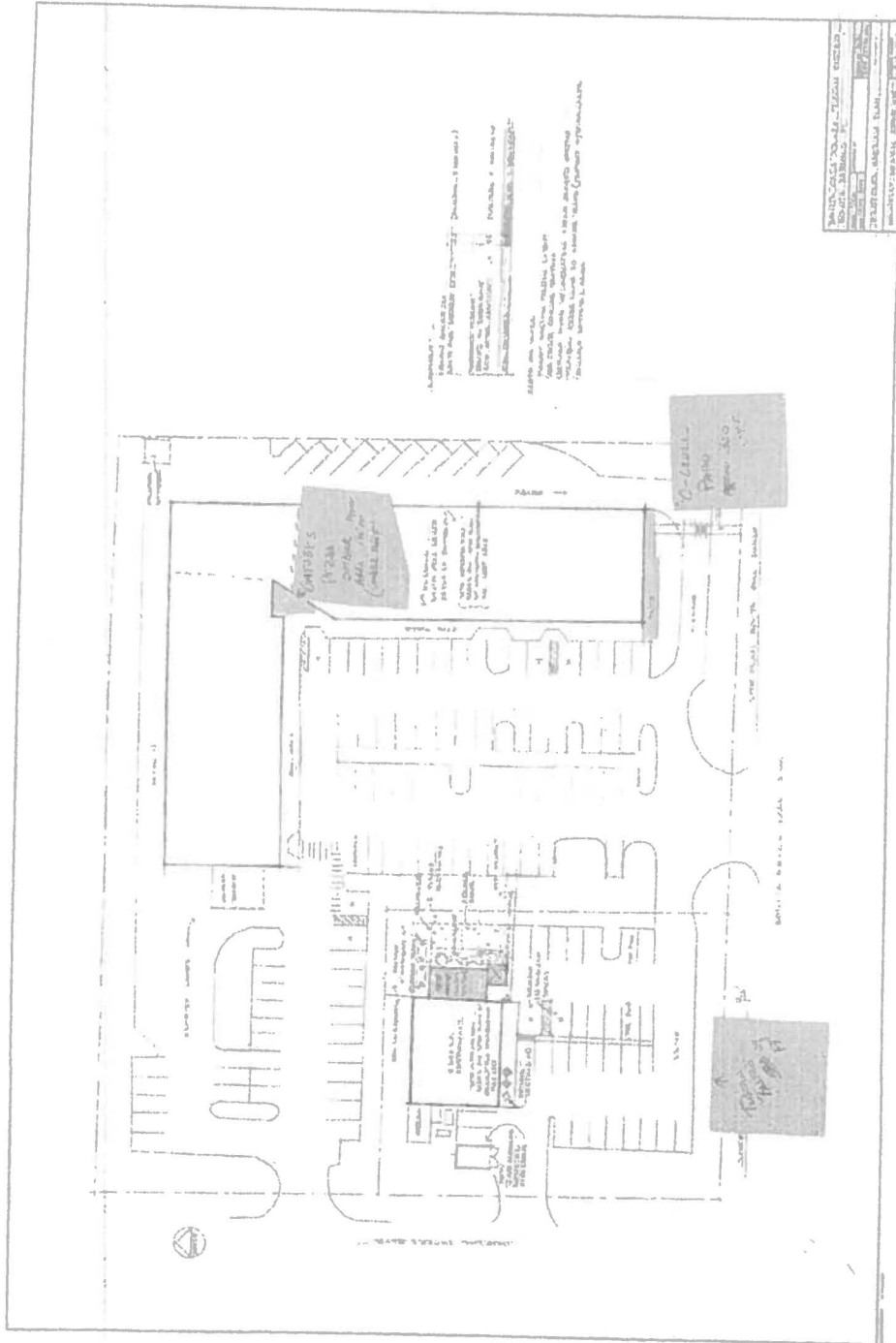
A parcel of land located in the southeast quarter of Section 16, Township 47 South, Range 25 East, Lee County, Florida, lying west of U.S. Highway 41 as the same is shown on the State of Florida Department of Transportation right-of-way map for State Road No. 45, Lee County, Section 12010-2509, Sheet 8, being more particularly described as follows:

Commence at the center of Section 16, Township 47 South, Range 25 East, Lee County, Florida; thence run north 88 degrees 45 minutes 48 seconds east along the north line of the southeast quarter of said Section 16 for a distance of 538.06 feet to the point of beginning of the parcel of land herein described, thence continue north 88 degrees 45 minutes 48 seconds east along the north line of the southeast quarter of said Section 16 for a distance of 631.63 feet to a point on the westerly right-of-way line of U.S. Highway 41 (State Road No. 45) for a distance of 163.43 feet to the beginning of a tangential circular curve, concave to the southwest; thence run southeasterly along said curve to the right, having a radius of 5,619.58 feet, through a central angle of 09 degrees 28 minutes 13 seconds for an arc distance of 928.85 feet; thence run south 88 degrees 45 minutes 48 seconds west for a distance of 744.81 feet; thence run north 00 degrees 27 minutes 03 seconds west for a distance of 1,086.41 feet to the point of beginning.

EXHIBIT "B"

A parcel of land located in Section 16, Township 47 South, Range 25 East, Lee County, Florida, lying west of U.S. Highway 41 as the same is shown on the State of Florida Department of Transportation right-of-way map for State Road No. 45, Lee County, Section 12010-2509, Sheet 8, being more particularly described as follows:

Commence at the northwest corner of the southeast quarter of Section 16, Township 47 South, Range 25 East, Lee County, Florida; thence run north 88 degrees 45 minutes 48 seconds east along the north line of the southeast quarter of said Section 16, for a distance of 1,169.69 feet to a point on the westerly right-of-way line of U.S. Highway 41 (State Road No. 45); thence run south 10 degrees 25 minutes 58 seconds east along said right-of-way line for a distance of 163.43 feet to the beginning of a tangential circular curve, concave westerly; thence run southerly along said right-of-way line and along the arc of said curve to the right having a radius of 5619.58 feet through a central angle of 09 degrees 28 minutes 13 seconds subtended by a chord of 927.79 feet at a bearing of south 05 degrees 41 minutes 52 seconds west for a distance of 928.85 feet to the end of said curve; thence run south 88 degrees 45 minutes 48 seconds west for a distance of 213.00 feet; thence run south 00 degrees 27 minutes 03 seconds east for a distance of 136.59 feet; thence run south 39 degrees 53 minutes 01 seconds west for a distance of 105.17 feet; thence run south 88 degrees 45 minutes 48 seconds west for a distance of 144.94 feet to the point of beginning containing 1.001 acres, more or less.



ATTACHMENT B

SHARED PARKING AGREEMENT

This shared parking agreement is made this 17th day of August 2012 by and between Bonita Oaks Square LLC ("Owner") of 4450 Bonita Beach Rd referred to as shopping center tract in attached exhibit "A" and Bonita Oaks Square LLC ("Owner") of 4480 Bonita Beach Rd known as restaurant in exhibit "A".

The tenants at 4480 Bonita Beach Rd are desiring to share in the additional parking located at 4450 Bonita Beach Rd. The owners of both locations are in agreement to construct and provide an easement for the use of certain parking spaces located at the shopping center location and depicted on the exhibit "A".

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein and in further consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound do hereby agree as follows:

1. Adoption of recitals. The parties hereby acknowledge that the forgoing recitals are true and correct and the same and hereby adopted as part of this agreement.
2. Parking Easement. The parties hereby acknowledge that fifty (50) parking spaces (hereinafter referred to as the "Parking Spaces" in the parking areas located on the Shopping Center Tract and depicted on Exhibit "A" shall be used for Outparcel A. Bonita Oaks Square LLC does hereby, for itself, its successors, and assigns, grant to the Restaurant Tract, its customers, employees, agents, invitees, and licensees, an exclusive irrevocable easement and right to utilities those fifty (50) parking spaces on the Shopping Center Tract for vehicle parking and an exclusive easement and right to use that portion of the Shopping Center Tract necessary to access said parking spaces from the public street and the building on Exhibit "A".
3. General. This agreement shall be binding upon the respective parties hereto, their successors and assigns, and shall constitute covenants running with the lands described herein and shall inure to the benefit and be binding upon the parties here to and respective grantees, heirs, successors, assigns, tenants, agents, employees, guests and invitees. The invalidity, in whole or in part, of any covenants, restrictions, or any section, subsections, sentence, clause, phrase, word, or other provision of this Agreement shall not affect the remaining portions thereof. This Agreement shall be governed by the laws of the State of Florida as they may be amended from time to time. This Agreement constitutes the entire understanding of the parties and incorporates all previous understandings by the parties. This agreement may only be modified by, a future writing agreed by the parties or their respective successors and assigns. This Agreement shall be recorded in the Public Records of Lee County, Florida. Should any disagreement arise under this Agreement, the prevailing party in any action to recover all costs and reasonable attorneys' fees incurred before trial, at trial, and appeal, and venue for said action shall be in Lee County, FL. The parties further agree to reasonably cooperate among themselves to the extent necessary to effectuate the intent of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal this ___ day of _____, 20__.

Bonita Oaks Square LLC

By: [Signature]
Douglas M Grant, President

Witness: [Signature]

Printed Name: Ray Amador

Witness: [Signature]

Printed Name: Deborah A. Koch

State of Florida - County of Lee

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this 22 day of August, 2012 by Douglas M Grant of Bonita Oaks Square LLC, on behalf of said company, he is personally known to me.



[Signature]
Notary Public

Bonita Oaks Square LLC

By: [Signature]
Douglas M Grant, President

Witness: [Signature]

Printed Name: Leonel Ortiz

Witness: [Signature]

Printed Name: Deborah A. Koch

State of Florida - County of Lee

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this 22 day of August, 2012 by Douglas M Grant of Bonita Oaks Square LLC, on behalf of said company, he is personally known to me.



[Signature]
Notary Public

EXHIBIT
A

Site
Plan

**Bonita
Oaks
Square**

