

BACKGROUND/ SUMMARY

On 04/02/19, Historic Tours of America, Inc. - A Florida Corporation, filed a re-zoning and re-FLUM application to resolve a zoning line issue resulting from the last re-zoning process in 1997. That process bifurcated an existing historic structure with a zoning line. The placement of that zoning line created a change in conditions for the property by eliminating the commercial/residential mixed-use rights of a portion of the historic structure and the underlying land when it was rezoned from mixed-use HP-3 to residential-only HMDR.

The proposed land use and zoning are more consistent with the City's Land Use Plan and Bahama Village redevelopment plan than the existing land use/ zoning. For example, changing it back to an "as of right" zoning results in the ability for the property owner to improve the property and the building – without the limitations under legal nonconforming status – which in turn improves property values in support of private investment in the community as desired by Bahama Village /CRA plan.

STAFF REPORT REVISION AND APPLICANT RESPONSE:

This is the applicant's response to 12 revised positions taken in the revised Executive Summary dated 10/06/22.

1. Change of lot lines has not been approved by the City "as required" per section 118-4 of the code.

Applicant Response: Section 118-4 does not apply since the lot lines have not been changed.

2. Change in lot lines does not constitute an error in zoning/ land use – merely is a merger of lots with more than one land use /zoning.

Applicant Response: Contrary to the City staff's assertion, the lot lines have not been changed. Rather, the requested development orders (FLUM and Rezoning) are for a parcel of land that contains a combination of lots (per city's own definitions) to reflect the intensity of use of the land that has existed over time.

The underlying fact is that an existing historic building has been bifurcated by the land use/zoning line change that occurred in 1997. This change now limits the property owner's ability to use the building in its entirety for commercial use, as was otherwise allowed under the HP-3 zoning.

3. The LUPA/Rezoning is not necessary since variances / conditional use approvals have been granted to allow some retail and restaurant use on the subject property.

Applicant Response: The subject property has been used as a mixed-use commercial/residential development. Prior to 1997/2013 the property was zoned for light commercial (HP-3) use.

The bifurcation of land use and zoning of the building is a result of land use and zoning changes that were adopted by the City thereafter. Although the building existed at that time, there was no resolution of the fact that the new land use and zoning bifurcated the building.

Limitations imposed by "legal nonconformity" issues result in limitations on the property owner's ability to make major improvements to the existing building and property, that would otherwise be allowed under the requested land use and zoning.

4. The LUPA/Rezoning would allow the expansion of commercial uses into the residentially zoned and land use area, removing a buffer from the adjacent residential uses.

Applicant Response: The requested City land use and zoning will allow a cohesive use of the building for commercial and residential use without losing the protection afforded under the conditional use process for review of impacts, should a restaurant use be expanded into the building.

5. This expansion of commercial use has the potential to create noise and other impacts on residential neighbors.

Applicant Response: The requested City land use and zoning will allow a cohesive use of the building for commercial and residential use without losing the protection afforded under the conditional use process for review of impacts, should a restaurant use be expanded into the building.

Additionally, the City has noise ordinance provisions that are required to be met under any circumstances.

6. There is an insufficient review of impact on services and facilities.

Applicant Response: A concurrency analysis was provided to the City on 04/09/19. The analysis was review by the Planning Department, the Development Review Committee, the City's utility providers and the Planning Board. No comments, objections, or recommendations for additional analysis were made at that time or since. Planning staff's independent analysis concluded that...

"The projected impacts of the land uses allowed by the proposed FLUM amendment are not anticipated to generate public facility needs that would trigger capital improvements."

Source: Key West Planning Department Executive Summary dated 03/03/20

7. Constitutes spot zoning.

Applicant Response: The requested rezoning does not constitute spot zoning. The requested zoning to HNC-3 is compatible with and consistent with the adjacent zoning of HNC-3 that surrounds the majority of the subject property.

In its review and establishment of the Community Redevelopment Area and the Bahama Village subarea, the City recognized that there is a pattern of existing intermixing of commercial and residential uses within the City, which does not constitute spot zoning. This is reflected in a response to Key West Planning Board and Citizens comments dated July 20, 1998, the City stated that...

...“Spot zoning as traditionally applied from suburban communities do not work well in cities such as Key West, where there has been a history of successful and unique intermixing of commercial and residential uses...”

Source: City of Key West Community Redevelopment Plan – Bahama Village Review– Comments July 20, 1998

8. Benefit only to applicant – no public benefit.

Applicant Response: The requested land use and zoning change is not to the exclusive benefit of the landowner. The change would allow private investment in support of mixed use development as desired under the City’s Bahama Village redevelopment plan, which is otherwise not encouraged under the existing land use and zoning. This private investment improves the stability of the site for mixed use, resulting in additional tax benefits that help to serve this redevelopment area, which includes commercial properties on Whitehead Street as noted in the Bahama Village 2010 update.

“... Whitehead Street also contains a variety of commercial and office uses...”

Source: City of Key West Community Redevelopment Plan – Bahama Village Update Jan 5, 2010 pg. 22

The request is also consistent and in furtherance of the City’s comprehensive plan, which recognizes the Bahama Village subarea should allow for flexibility in guiding future development, while maintaining qualitative standards, such as those afforded under the conditional use process.

“An improved redevelopment management framework shall provide greater flexibility for guiding future residential and non-residential development alternatives while incorporating mandated qualitative standards.”

Source: City of Key West Community Redevelopment Plan – Bahama Village Update Jan 5, 2010 pg. 91)

9. Grants special privileges to this property owner.

Applicant Response: The requested land use and zoning is in support of the goals of the City’s redevelopment plan for mixed use development in the Bahama Village subarea. This land use and zoning change does not prohibit other property owners with similar situations in the

Bahama Village area to request similar land use and zoning change in furtherance of that plan.

- 10. Inconsistent with Policy 1-1.2.1 – Encroachment is incompatible (“Stable residential areas and projected future residential areas as delineated on the Future Land Use Map shall be protected from encroachment by incompatible development.”)

Applicant Response: The land use and zoning does not result in an encroachment of incompatible development into a stable and projected future residential area.

The pattern of development in the area is both commercial and residential. Areas of residential have intermittent mixture of commercial uses, similar to those that would be permitted under the requested land use and zoning.

The Bahama Village subarea plan does not project future residential development in the area.

The City’s zoning regulations provide for conditional use review for certain commercial uses, including bars and restaurants, as a means to ensuring compatibility with surrounding uses.

- 11. Commonality of “lot splits of buildings” – does not make this a unique situation.

Applicant Response: Staff provides no evidence to support this claim.

Uniqueness of this situation is a combination of historical use of the property (commercial/residential mixed use); zoning pre 1997 (HP-3), within Bahama Village area.

- 12. Staff LUPA/ Rezoning – as requested is not a basis for meeting criteria for LUPA/Rezoning: approval.

Applicant Response: The request for land use and zoning change meets that criteria and is consistent with City’s Comprehensive Plan, Bahama Redevelopment Plan and Zoning criteria

ADDITIONAL

List of Historic Record of Land Use/Zoning Changes

Lot	Zoning pre-1997	FLUM pre-1997	Zoning post-1997	FLUM post-1997	FLUM post 2013
4 & 5 (318-320 Petronia St.)	HPS-3	NA	HNC-1	HNC-1	HC
3 & 8 (322-324 Petronia St. & 802-804 Whitehead St.)	HPS-3	NA	HNC-1	HNC-1	HC
7 (806 Whitehead St.)	HPS-3	NA	HMDR	HMDR	HR
10 (809 Terry Ln.)	HPS-3	NA	HMDR	HMDR	HR
11 (811 Terry Ln.)	HPS-3	NA	HMDR	HMDR	HR

List of Historic Record of Vested Commercial Use of the property (Mixed Use – Special Exceptions/ Conditional Use Approval)

Approval	Applicable Properties	
	Address	RE No.
Res. No. 90-96 Special Exception for retail (craft booths)	Between Whitehead St. and Terry Ln. at 320-324 Petronia St.	--
Res. No. 97-72 Variance to HP-3 to allow 0ft side setback and a Special Exception - Restaurant	802-804 Whitehead St., 809 Terry Ln, 811 Terry Ln	1401, 1401-001, 1402, 1405, 1406
Res. No. 97-73 Special Exception for small-scale commercial use	804 Whitehead St. & 809, 811 Terry Ln.	--
Res. No. 98-44 – Variance to setbacks to build commercial structure	AKA 804 Whitehead St. & 809, 811 Terry Ln.	1401, 1401-001, 1402, 1405, 1406
Res. No. 98-94 – Exception to Outdoor Display (retail)	804 Terry Ln.	--
Res. No. 98-95 – Exception to Outdoor Display (retail)	804 Terry Ln.	--
Res. No. 98-96 – Exception to Outdoor Display (retail)	804 Terry Ln.	--
Res. No. 98-97 – Exception to Outdoor Display (retail)	804 Terry Ln.	--
Res. No. 98-98 – Exception to Outdoor Display (retail)	804 Terry Ln.	--
Res. No. 98-99 – Exception to Outdoor Display (retail)	804 Terry Ln.	--
Res. No. 2011-059 Conditional Use – 150-seat Restaurant	802-806 Whitehead St. 318-324 Petronia St. 809-811 Terry Ln.	00014010-000000, 00014020-000000, 00014010-000100, 00014500-000000, 00014060-000000
Res. No. 2020-44 Amendment to Conditional Use – 150-seat Restaurant	318-324 Petronia St.; 802-806 Whitehead St.; and 809-811 Terry Ln	00014010-000000; 00014050-000000; 00014060-000000

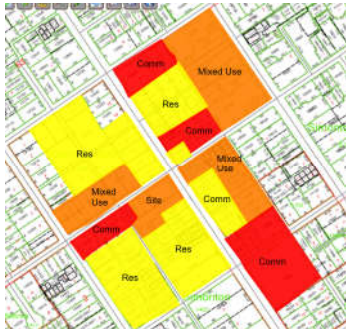
List of Documents that show Support for LUPA/Rezoning

Document	Date	Action
DRC Review Comments	05/23/19	Planning Director – Patrick Wright, Split zoning does create a problem and should be corrected
PB Staff Report FLUM	06/20/19	Recommendation to approve
PB Staff Report Zoning	06/20/19	Recommendation to approve
PB Staff Report FLUM	07/18/19	Recommendation to approve
PB Staff Report Zoning	07/18/19	Recommendation to approve
PB Staff Report FLUM	08/15/19	Recommendation to approve
PB Staff Report Zoning	08/15/19	Recommendation to approve
PB Staff Report FLUM	09/19/19	Recommendation to approve
PB Staff Report Zoning	09/19/19	Recommendation to approve
PB Staff Report FLUM	10/17/19	Recommendation to approve
PB Staff Report Zoning	10/17/19	Recommendation to approve
PB Staff Report FLUM	11/21/19	Recommendation to approve
PB Staff Report Zoning	11/21/19	Recommendation to approve
PB Staff Reports	01/16/20	Recommendation to approve
Planning Board Res. No. 2020-01	01/16/20	Approved
Planning Board Res. No. 2020-02	01/16/20	Approved

List of Goals, Objectives and Policies in Support from City Comprehensive Plan and City Redevelopment Plan – Bahama Village Redevelopment Plan.

- OBJECTIVE 1-1.6
- Policy 1-1.1.4
- Policy 1-1.1.9
- Policy 1-1.3.2
- Bahama Village Redevelopment Plan

Map of Existing Pattern of Development on Whitehead – Intermittent mix of residential and commercial.



Adequacy Review – Show LOS standards will be met based on max development potential.

Max Trip Generation (Trips/day)		Max Solid Waste (lbs./capita/day)		Sewer (gal/capita/day)		Potable Water (gal/capita/day)	
Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
10.1	97.5	2.66	6.37	100	660	100	NA

Spot Zoning – American Planning Association definitions of Spot Zoning

A Planner’s Dictionary
By Davidson and Dolnick
American Planning Association

Spot zoning (See also floating zone) [A] change in district boundaries, variances, and other amendments to the zoning code and use and area maps that violate sound principles of zoning and are characterized by the following: (a) Individuals seek to have property rezoned for their private use. (b) Usually the amount of land involved is small and limited to one or two ownerships. (c) The proposed rezoning would give privileges not generally extended to property similarly located in the area. (d) Applications usually show little or no evidence of, or interest in, consideration of the general welfare of the public, the effect on surrounding property (including adequate buffers), whether all uses permitted in the classification sought are appropriate in the locations proposed, or conformity to the comprehensive plan or to comprehensive planning principles (including alterations to the population density patterns and increase of load on utilities, schools, and traffic.) (Coral Gables, Fla.)

The zoning of a small land area for a use which differs measurably from the zoned land use surrounding this area. Land may not merely be so zoned in the interest of an individual or small group, but must be in the general public interest. Such zoning does not conform to the future land use plan and is not otherwise necessary in order to protect the health, safety, welfare, or morals of the community. (Hot Springs, Ark.)

A change in the zoning code or area maps that is applicable to no more than a few parcels and generally regarded as undesirable or illegal because it violates equal treatment and sound planning principles. (Wisconsin Department of Natural Resources) Rezoning a lot

or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive plan. (Temple, Tex.)

An arbitrary zoning or rezoning of a small tract of land, usually surrounded by other uses or zoning categories that are of a markedly or substantially different intensity, that is not consistent with the comprehensive land use plan, and that primarily promotes the private interest of the owner rather than the general welfare. (Norfolk, Nebr.)