

Minutes of the Key West Planning Board

April 19, 2012

DRAFT

Chairman Richard Klitenick called the Key West Planning Board Meeting of April 19, 2012 to order at 6:00 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

ROLL CALL

Present were: Chairman Richard Klitenick, Vice-Chairman Tim Root, Jim Gilleran, Sam Holland, Jr., Gregory Oropeza, Lisa Tennyson, Michael Browning and ex-officio member Ron Demes.

Also in attendance were: Planning Director, Donald Craig; Chief Assistant City Attorney, Larry Erskine; Fire Department staff: Alan Averette and Jason Barroso; Planning Department staff: Brendon Cunningham, Carlene Smith and Nicole Malo.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Craig informed members that the applicant for 230-246 Front Street withdrew their request.

APPROVAL OF MINUTES

1 March 27, 2012 Special Meeting

A motion to approve the March 27, 2012 special meeting minutes was made by Vice-Chairman Root and seconded by Mr. Oropeza.

Motion carried by unanimous voice vote.

SO ORDERED.

RESOLUTIONS

Old Business

- 2 Zoning in Progress – A resolution amending Planning Board Resolution 2012-04, and recommending amendment to Chapter 108 of the Code of Ordinances entitled “Planning and Development” to include Section 108-999 to provide for the retroactive invoking of the Zoning in Progress Doctrine; declaring that the City is considering amendments to its Land Development Regulations and Building Permit Allocation System; directing Building and Planning Department staff to continue the policy of deferring the acceptance and processing of development applications requiring the issuance of building permit allocations; continuing this policy until new building permit allocation regulations or amended Land Development Regulations are adopted by the City Commission; providing for retroactive effect, directing staff to continue preparations of new Building Permit Allocation Regulations; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Craig gave members an overview of the staff request. He stated that members recently approved a resolution recommending to the City Commission the invoking of Zoning in Progress (Resolution 2012-04). However, staff recommended to amend the resolution and propose the invoking of Zoning in Progress doctrine by means of ordinance to comport with the necessary specifics of law, which requires resolutions affecting the land use, timing, development, or location of development be adopted by ordinance only. Therefore, the Planning Department recommends the amending of Planning Board Resolution 2012-04, and the recommendation of the attached ordinance invoking of the Zoning in Progress Doctrine to the City Commission.

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Staff clarified for members that the substance stayed the same.

Mr. Erskine confirmed for staff that the 365 days begins from the date of City Commission approval.

There were no public comments.

A motion to approve amending Planning Board Resolution 2012-04 was made by Ms. Tennyson.

Mr. Erskine requested a minor change to the ordinance.

Ms. Tennyson withdrew her motion.

Mr. Erskine requested that the following language be amended on page three: “*with exception ~~to~~ of requests for beneficial use allocations.*”

A motion to approve amending Planning Board Resolution 2012-04 to include the verbiage change was made by Ms. Tennyson and seconded by Vice-Chairman Root.

Motion was carried by unanimous voice vote.

SO ORDERED.

- 3 Variance - 906 Johnson Street (RE# 00058740-000000) - A request for variances to building coverage and impervious surface ratio to construct a carport in the SF zoning district per Section 90-391, Section 122-238(4)a.2 and Section 122-238(4)b.1 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Cunningham gave members an overview of the variance request. He informed members that the applicant is requesting variances to increase existing impervious surface ratio and building coverage to construct a carport. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variances be denied.

The applicant’s architect, Rob Delaune, gave members an overview of the request. He stated that they reached out to neighbors.

There were no public comments.

Members reviewed the request with staff, applicant and neighbors. Staff clarified the request is for minor increase to building coverage and impervious surface ratio.

A motion to approve the variance request was made by Mr. Holland and seconded by Mr. Browning for discussion.

Mr. Browning discussed the loss of off street parking and the gain of on street parking. Vice-Chairman Root requested that the curb cut be eliminated in order to create another on street parking space.

Mr. Delaune had no objection.

Mr. Holland amended his motion to include a condition to eliminate the curb cut in order to create additional on street parking. Motion was seconded by Mr. Browning.

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Motion was carried by unanimous voice vote.

SO ORDERED.

- 4 Variance - 1107 Grinnell Street (RE# 00031760-000100) - A variance for rear yard setback and building coverage in the HMDR zoning district per Section 90-391, Section 122-600(4)a and Section 122-600(6)c of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Oropeza recused himself from this item since the outcome may inure to the special gain or loss of his business associate. He left the dias during the discussion.

Mr. Browning recused himself since the neighbor to the subject property is his accountant and he has close business relations. Mr. Browning left the dias during the discussion.

Chairman Klitenick disclosed that the same neighbor is also his accountant but that it did not prejudice his decision-making capacity.

Ms. Malo gave members an overview of the variance request. She informed members that the variance request was originally scheduled to be heard twice; however, the applicant asked to table the item both times to give the neighbor, Tony Willis, additional time to review the site plans. Since that time, the applicant revised the site plans to increase privacy for Mr. Willis. The applicant informed the department that they have attempted to meet with the neighbor and his attorney; although, it remains unclear what issues may be remaining if any. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variances to rear yard setback and building coverage be denied.

Mr. Craig clarified for members that the variance section of the code is broadly stated, and that property owners have the right to apply for variances to all standards of the LDR's.

The architect, William Horn, gave members an overview of the request. Mr. Horn stated that the owner has requested postponement twice in order to allow more time for the neighbor to review the plans. Mr. Horn then gave an overview of the changes made to the site plans. He stated that louvered privacy screens and Bahama shutters have been added to doors and windows. The A/C unit and pool pump were relocated to the rear yard, and doors on the second floor deck have been removed. Landscaping has been added to the rear yard to provide privacy for the concerned neighbor.

The following member of the public spoke on the subject:

- Bart Smith, representing Tony Willis

The applicant, Tim Young offered to withdraw portions of the variances in order to be able to move forward.

Mr. Erskine expressed his concern on breaking up the variance request. Chairman Klitenick informed the applicant that if his request was denied then he would need to wait two years before reapplying.

Mr. Smith informed members that Mr. Willis would be able to provide input by the May 17th Planning Board meeting.

A motion to postpone the variance request to date certain (May 17, 2012) was made by Mr. Gilleran and seconded by Mr. Holland.

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Motion was carried by unanimous voice vote.

SO ORDERED.

Mr. Browning returned to the dias.

- 5 Major Development Plan Amendment - 230 - 246 Front Street (RE# 00001630-000400) - An amendment to a major development plan to remove a condition of approval to provide public access to a playground per City Commission Resolution 06-340.**

This request was withdrawn by the applicant on March 30, 2012.

- 6 Major Development Plan - 201 William Street (RE# 00072082-004200) - A Major Development Plan for the addition of outdoor commercial activity for a new restaurant in the HRCC-2 zoning district per Section 108-91A(2)c. of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Oropeza has a standing recusal from this item since the outcome may inure to the special gain or loss of his business associate.

Ms. Malo gave members an overview of the major development plan request. She informed members that the development plan application was originally scheduled to be heard on March 15, 2012 by the Planning Board; however, the applicant requested postponement in order to work with the neighbors. She then stated that in order to demonstrate the impacts of the potential noise generation from the second storey rooftop area on the neighboring properties, the applicant held a community meeting the evening of April 12, 2012. The test was run between 5:30-7:30 pm at a time when there were numerous other sources of background noise; however, the music was played at levels higher than City Ordinance 26-191 allowed for demonstration purposes. There was common agreement that the noise was minimally audible from the ground around the sides and back of the building. Staff is aware that the nearest second storey residential neighbor, the proposed hotel immediately to the west of the project site, may be more adversely affected by amplified music at the same elevation and staff has coordinated with the owner of the property and the applicant in order to craft the proposed conditions of approval. Based on the verbal agreement by the applicant and the proposed hotel property owner, the department is recommending that outdoor performance and/or entertainment activity, whether amplified or otherwise, shall end by 10 pm as a condition of approval.

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for Major Development Plan be approved with the following conditions:

General Conditions:

1. Hours of operation (excluding City approved special events) for the rooftop Waterfront Brewery Café are limited to 8 a.m. to 12 a.m. and any outdoor performance or entertainment activity whether amplified or otherwise shall end by 10 p.m.
2. The applicant shall obtain a Conditional Approval Permit, pursuant to Section 18-610.
3. The applicant shall recycle materials accepted by the city's waste handling contractor.
4. New lighting shall be designed to "Dark Sky" lighting standards.
5. The upstairs turf area shall not be used for table placement or be considered consumption area.
6. Prior to City Commission review of the project the applicant shall submit a site plan with location and direction of proposed speakers to the Planning Department for review and approval that will be attached to the Commission Review Package.

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 and subject to an associated annual inspection:

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7. The applicant shall renew the Conditional Approval Permit issued by the City on an annual basis. The renewal is due on May 31st of every year.
8. The applicant will install and maintain a programmable distributive sound system to assure compliance with the “unreasonable noise” definition of Section 26-191 of the Code of Ordinances, and shall include a computerized sound monitoring system with real time monitoring access provided to the City.
9. The applicant shall point any speakers or any sound amplification device on the rooftop Waterfront Brewery Café, away from neighboring and/or surrounding transient and residential properties.

Ms. Malo clarified for members that staff did not verify nor were they contacted by the 196 people who signed the Key West Bight Neighborhood Association petition objecting to the rooftop amplified music.

Chairman Klitenick requested information on whether the programmable distributive sound system worked with amplified and ambient sound, since one of the concerns is the ambient noise if the use continues past 10pm.

The applicant’s architect, Bill Horn, gave members an overview of the site plans.

The applicant’s representative, Owen Trepanier with Trepanier and Associates, gave members an overview of the request. He then provided an alternative to condition one:

The upstairs exterior café shall operate as a fine dining establishment commensurate with other such fine dining establishments currently operating in the City of Key West such as, the Roof Top Café (308 Front St), Louie’s Backyard (700 Waddell) or Santiago’s Bodega (207 Petronia). The café shall not operate as a bar, including but not limited to music bar or sports bar, cocktail lounge or any other type of lounge, night club/dance club or adult entertainment establishment.

After 8pm, there shall be ambient/background music only, at the café, inaudible to any nearby residential or transient property. Ambient/background music shall be defined according to its plain and ordinary meaning. No more than four televisions shall be allowed on, in or at the café and shall comply with the sound restriction contained herein.

Upon a complaint being filed, Key West City Code Compliance or any Key West City Official, with the properly vested authority (“City Official”), shall cite the café for violation of this restriction if the city official arrives at the complainant’s property and the music generated by the café can be heard by the city official that is or has been made, generated, and or created by the café, except during the city-approved special events. It shall be prima facie evidence of a violation of this condition on sound restriction if a city official can audibly hear the music from inside complainant’s property boundary that is or has been made, generated, and or created by the café.

This restriction on use of sound and sound equipment shall be binding upon the applicant, its successors and/or assigns as the case may be and shall inure to the benefit of the neighboring residential and/or commercial/transient property owners, their tenants and guests.

The following members of the public spoke on the matter:

- Doug Bennett, 706 Caroline
- Joe Walsh, 909 16th Terrace
- Greg Wythe, 234 Front
- David Thard, 429 Caroline #4
- Bill Cottrill, 320 William
- Patricia Rogers, 324 Margaret
- Bart Smith, 223 Elizabeth
- Shirley Freeman, 724 Eaton
- Pritam Singh, 1 Free School Lane
- Barbara Bowers, 320 William

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Mr. Browning disclosed that he was contacted by several members of the public and that it did not prejudice his decision-making capacity.

Members reviewed the request with the applicant, staff and members of the public who spoke on the matter. Members commended the applicant for working with their neighbors. Members then voiced their concern on potential noise generated from a possible sports bar atmosphere due to the proposed installation of televisions and how it affects surrounding property owners and live aboard vessel tenants. Members then requested that the applicant meet with neighbors to discuss the conditions.

Mr. Craig requested that the applicant be directed to meet with staff to craft language in a timely manner so that it can be made available to the public a few days prior to the meeting.

A motion to postpone the major development request to date certain (May 17, 2012), and to direct applicant to meet with staff to craft language in a timely manner so that is made available to the public a few days prior to the meeting was made by Mr. Gilleran and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

Mr. Oropeza returned to the dias.

New Business

- 7 Comprehensive Plan Amendment - Consideration of an ordinance of the City of Key West, Florida, proposing amendments to the Future Land Use Element and Future Land Use Map series of the City of Key West Comprehensive Plan for property known as the Peary Court Housing Complex (RE# 00006730-000000, Alternate Key# 1006939); amending the Future Land Use Map Legend and Density and Intensity of Development, amending Map 1-1, Map 1-4, and Map 1-6 of the Future Land Use Map series; creating Policy 1-1.6.4; and Policy 1-2.3.11 to provide for the integration of the military site into the community; and to define a new Future Land Use Map designation of "Historic Special Medium Density Residential" (HSMDR) and applying such designation to said property; providing for severability; providing for the repeal of inconsistent provisions providing for transmittal to the State Land Planning Agency; providing for the filing with the Secretary of State and for an effective date; and providing for the inclusion into the City of Key West Comprehensive Plan.**

Chairman Klitenick recused himself since he acts as counsel for a related party. He left the dias during the discussion.

Mr. Craig informed members that on April 6, 2011, the City was notified that the United States Navy, with its concessional housing partner, Southeast Housing, LLC, would be pursuing the sale of the property known as the Peary Court Housing Complex. Therefore, the Future Land Use Element and Future Land Use Map of the City of Key West Comprehensive Plan must be amended, and subsequent amendments to the City's Land Development Regulations would be required to update the zoning district and the City's Official Zoning Map. Mr. Craig then gave members an overview of the Comprehensive Plan Amendment.

Mr. Craig gave an overview of Policy 1-1.6.4: Peary Court Housing Complex Organizing Element. All new development and redevelopment within the Peary Court Housing Complex shall be consistent with the following key organizing elements:

1. Preserve the existing housing stock of 160 units for permanent multifamily residential purposes.

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2. Maintain land use compatibility and sensitivity with the adjacent historic district.
3. Maintain land use compatibility and sensitivity with the adjacent military installation at Naval Air Station Key West Trumbo Point Annex.
4. Recognize that a portion of the existing housing on the property contributes to the affordable housing stock of the community due to its availability to non-military citizens and its rental rate structure, and to maintain such affordability for a reasonable portion of those units.

Mr. Browning, Mr. Oropeza, Mr. Holland, Ms. Tennyson and Vice-Chairman Root all disclosed that they were approached by members of the public, but that it did not prejudice their decision-making capacity.

Mr. Craig clarified for members that the change in designation did not change the existing density.

David Paul Horan representing Balfour Beatty, stated that 157 units are existing and are not new. The entire concept of requiring affordability on the new units was based entirely on new development which required the use of BPAS units. He voiced his concern on using present rate structure to determine affordability. He requested that item 4 be removed from Policy 1-1.6.4.

Mr. Craig stated that it is the position of the Department of Environmental Opportunity (DEO), Planning and Legal Department, that the units are new to the City BPAS system and are subject to the 30% affordable housing.

Mark Lavin, Vice President of Balfour Beatty, stated that he represents the interest of the Navy in this transaction, which is to get the greatest value for this property. Therefore, they are adversely against any affordability. He then stated that to look at the current rent structure and state that it meets affordability, is a misstatement, and that there is more of a detailed financial requirement of a family's income that goes into the equation, to determine whether or not they meet eligibility.

Ex-Officio member, Ron Demes recused himself since he is employed by the Navy. He left the dias during the discussion.

The following members of the public spoke on the matter:

- Monica Geers Dahl, 2932 Seidenberg
- Steve Dawkins, 1212 Angela
- William Kerr, 1312 Pine
- Mark Songer, 1310 Newton
- Naja Girard, 1214 Newton
- James Landers, 815 18th Ave
- Ralf Brooks, Attorney for White Street Partners
- Margaret Romero, 1615 Washington

Members reviewed the request with staff and members of the public who spoke on the matter. Members voiced their concern on whether or not item 4 should be removed from Policy 1-1.6.4.

A motion to recommend to the City Commission the proposed Comprehensive Plan Amendment was made by Ms. Tennyson and seconded for discussion by Mr. Oropeza.

Mr. Oropeza expressed that the issue of whether or not the units are new to the city or existing should be vetted further out, since that is a monumental decision for this property. He then stated that placing affordable restriction on this property is not detrimental.

Mr. Oropeza made a friendly amendment to remove item 4 from Policy 1-1.6.4.

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Ms. Tennyson did not accept the friendly amendment. She stated that if we envision any percentage of affordable housing, then the language should remain.

Motion fails due to lack of second.

A motion to recommend to the City Commission the proposed Comprehensive Plan Amendment removing item 4 from Policy 1-1.6.4, was made by Mr. Browning and seconded for discussion by Mr. Gilleran.

Mr. Gilleran stated that the affordable housing would be decided at a higher level; therefore, he supports removing the language. Mr. Browning acknowledged public concerns and stated that this is not an approval of a development agreement but a zoning determination. He urged the public to continue to voice their concern at additional public hearings.

Motion carried by 4-2 voice vote; opposed by Ms. Tennyson and Mr. Holland.

SO ORDERED.

Chairman Klitenick and Mr. Demes returned to the dias.

PLANNER'S REPORT

No report was given.

ADJOURNMENT

A motion to adjourn was made by Mr. Browning and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

Meeting adjourned at 10:20 pm.

Respectfully submitted by,
Carlene Smith
Development Review Administrator
Planning Department