

Minutes of the Key West Planning Board

January 19, 2012

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Chairman Richard Klitenick called the Key West Planning Board Meeting of January 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, Jim Gilleran, Sam Holland, Jr., Gregory Oropeza, Lisa Tennyson and Michael Browning.

Excused absence: Vice-Chairman Tim Root

Also in attendance were: Planning Director, Donald Craig; Chief Assistant City Attorney, Larry Erskine; Planning Department staff: Brendon Cunningham, Carlene Smith, Ashley Monnier and Nicole Malo.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Craig requested that Item 8 be postponed to time certain, so that Mr. Demes can be present for the discussion.

A motion to approve the amended agenda was made by Mr. Browning and seconded by Ms. Tennyson.

Motion carried by unanimous voice vote.

SO ORDERED.

APPROVAL OF MINUTES

1 November 16, 2011 Special Meeting

A motion to approve the November 16, 2011 special meeting minutes was made by Mr. Gilleran and seconded by Mr. Holland.

Motion carried by unanimous voice vote.

SO ORDERED.

2 November 17, 2011

A motion to approve the November 17, 2011 meeting minutes was made by Mr. Holland and seconded by Ms. Tennyson.

Motion carried by unanimous voice vote.

SO ORDERED.

3 December 5, 2011 Special Meeting

A motion to approve the December 5, 2011 special meeting minutes was made by Mr. Gilleran and seconded by Ms. Tennyson.

Motion carried by unanimous voice vote.

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SO ORDERED.

RESOLUTIONS

Old Business

- 4 PS Zoning District Ordinance – Consideration of an ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled “Zoning” of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Oropeza recused himself from this item since the outcome may inure to the special gain or loss of his business associate. Ms. Tennyson recused herself from this item since the outcome may inure to the gain or loss to Monroe County Board of County Commissioners, of which she is an employee. Mr. Oropeza and Ms. Tennyson left the dias during the discussion.

Ms. Malo gave members an overview of the proposed ordinance amendment. She informed members that the proposed text amendments were first heard by the Planning Board at a public meeting held November 17, 2011. Ms. Malo stated that based on the public comments given during that meeting; staff identified and analyzed four main arguments: (1) Residential Uses vs. Nonresidential Uses (2) Exclusivity (3) Definition of Essential Public Services and (4) Consistency with the Comprehensive Plan. Ms. Malo stated that in response to these issues, staffs recommendation to amend the LDR’s for the PS Zoning District Regulations remain the same.

The following members of the public spoke on the matter:

- Janice Whittemore, 235 Golf Club Drive
- John Isaksen, 323 Spoon Bill Way
- Audrey Thompson, 5603 College Rd #202
- Robert Munson, 20 Kingfisher
- Steve Black, 227 Golf Club Drive
- Ray Jensen, 57 Spoonbill Way
- Gary Mockus, 22 Kingfisher Lane
- Steve Datzman, 61 Spoonbill Way
- Suzanne Coleman, 233 Golf Club Drive
- Rigoberto Contreras, 23 Kingfisher Lane
- Marilyn Smith, 25 Allemande Terrace
- Jerry Smart, 12 Spoonbill Way
- Joan Baucon, 261 Golf Club Drive
- Joanne Alexander, 5601 College Rd #102
- James Spreitzer, 5601 College Rd #104
- Dennis Crippler, 75 Spoonbill Way
- Sue Brun, 18 Spoonbill Way
- Eilene Black, 227 Golf Club Drive
- Robin Rose, 117 Golf Club Drive
- Edgar Watson Jr, 30 Spoonbill Way #2
- Mark Gambuzza, 214 Golf Club Drive
- Margaret Romero, 1615 Washington
- Bart Smith, 624 Whitehead

Mr. Erskine addressed Mr. Bart Smith’s request that Mr. Browning recuse himself due to his position on the board of SHAL. Mr. Erskine stated that under the law, having a non-paid position on a non-profit board does not constitute a conflict since it does not constitute a gain. Chairman Klitenick stated that Mr. Smith’s objection is noted for the record.

Mr. Erskine then addressed Mr. Smith’s concern regarding the improper motion made after the motion failed at the November 17, 2011 meeting. Mr. Erskine stated that there was no motion that passed; therefore, an additional motion can be made to postpone. Chairman Klitenick stated that Mr. Smith’s objection is noted for the record.

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Mr. Erskine addressed Mr. Smith's concern that an application was not submitted by the applicant. Mr. Erskine stated that there is nothing in Section 90-518 stating that you cannot move forward without an application. Chairman Klitenick stated that Mr. Smith's objection is noted for the record.

Board members reviewed and discussed the request with the applicant, staff and members of the public who spoke on the matter. Members discussed moving "emergency shelters for the homeless and shelters for temporary housing" as item 1 under conditional use. Members then voiced their concern about the city not having submitted an application.

A motion was made by Mr. Browning to recommend to the City Commission the proposed ordinance for the PS Zoning District to include amending Section 122-1017(13) by moving "emergency shelters to homeless" down to conditional use under Section 122-1018, under item 1. Motion was seconded by Mr. Holland.

Motion fails by 2-2 voice vote (opposed by Mr. Gilleran and Chairman Klitenick).

SO ORDERED.

A motion to postpone the proposed ordinance for the PS Zoning District until the next regularly scheduled meeting on March 15, 2012 to include staff direction was made by Mr. Gilleran and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

Ms. Tennyson and Mr. Oropeza returned to the dias.

- 5 Variance - 400 South Street (RE# 00036390-000000) - A request for a variance to the maximum allowed wall height of six feet to the requested eleven feet proposed within the coastal construction control line on a property located within the HCT zoning district per Section 122-1148 (2) and 122-1183 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 allow the wall to be increased from its current approximate non-conforming eight foot height to a total of eleven feet within the construction control line. The property is adjacent on two sides to the Atlantic Ocean. As such it is subject to periodic storm surges. The property experiences occasional damage due to its proximity to the water and subsequent storm activity.

Mr. Cunningham informed members that the applicant previously applied for a similar variance to increase the wall height. The variance was denied by the Board of Adjustment through Resolution 07-247 on July 5, 2007. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied. However, if the Planning Board chooses to approve the variance, the Department recommends the following condition:

- That a Certificate of Appropriateness is obtained for the wall in accordance with Code Sections 102-152 and 122-1183(a).

The applicant's legal representative, Wayne LaRue Smith, gave members an overview of the HARC process for this request.

There were no public comments.

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Board members reviewed and discussed the request with the applicant and staff. Members discussed adverse affects on neighboring properties and changing the concrete panels to clear glass panels. The applicant was in agreement that the addition to the existing wall be constructed of clear glass panels.

A motion to approve the variance request to include that the 2.9 foot extension be constructed of clear glass panels and that the certification of appropriateness condition be removed was made by Mr. Gilleran. The motion was seconded for discussion by Mr. Browning.

Mr. Browning asked for clarification if a variance approval can bypass HARC approval. Mr. Erskine clarified for members that a variance approval cannot bypass a HARC approval; however, adding this condition may require that the applicant obtain an additional approval that may not be needed.

Motion was carried by unanimous voice vote.

SO ORDERED.

New Business

- 6 Conditional Use - 501 Southard Street aka 537 Duval (RE# 00009660-000000, 00009680-000000) - An application for Conditional Use approval for a beer and wine bar located at 501 Southard Street, in the HRCC-1 zoning district per Section 122-688 (9) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Cunningham gave members an overview of the conditional use request. He informed members that the request is for the conditional use of the existing rooftop deck space to be open to the general public. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for conditional use be approved with the following conditions:

Condition to be completed prior to the issuance of a certificate of occupancy:

1. ADA bathroom access is provided and maintained.
2. If the applicant proposes to provide prerecorded background music, 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 is provided to the City.

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

3. Hours of operation are limited to 11 am to 10 pm.
4. The use is approved for the sale of beer and wine only.
5. There will be no live amplified music on the premises.
6. There will be no more than 30 seats allowed without further City approvals.
7. The applicant expressly agrees to provide the City's agents unfettered access to the computer-generated reports and full, real-time web-based access to the digital monitoring of on-site acoustics for the purpose of assuring compliance with the conditions contained herein.

The applicant, Pinky Singh, gave members an overview of the request.

Mrs. Singh was in agreement with the conditions recommended by staff.

There were no public comments.

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Board members reviewed and discussed the request with the applicant and staff. Members recommended that the applicant provide a corporate resolution, in a form acceptable to the City Attorney, authorizing Sandeep Eshri Singh to execute documents on behalf of Key West Office Management, Inc. DBA Pegasus International Hotel.

A motion to approve the conditional use request to include Planning Department recommendations and a corporate resolution in a form acceptable to the City Attorney, authorizing Sandeep Eshri Singh to execute documents on behalf of Key West Office Management, Inc. DBA Pegasus International Hotel was made by Mr. Holland and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

7 Comprehensive Planning Report - Presentation of the schedule and approach to the Evaluation and Appraisal Report (EAR) amendments to the City of Key West Comprehensive Plan.

Mrs. Monnier gave members an overview of the evaluation and appraisal report amendments. She informed members that the City is in the process of preparing amendments to the Comprehensive Plan based on the recommendations from the 2005 and 2007 Evaluation and Appraisal Reports (EAR). Ms. Monnier stated that although the 2005 and 2007 EAR reports were adopted by the City and found compliant by the State Land Planning Agency, the corresponding amendments were never made to the Comprehensive Plan. In order to implement the EAR-based amendments, the City of Key West has entered into contract with The Corradino Group to prepare the amendments and update the data and analysis as needed.

Mrs. Monnier stated that the EAR-amendment process is expected to be completed prior to December 29, 2012 and that the Planning Department will provide periodic updates as major aspects of the EAR-amendment initiative are met.

8 Future Land Use Amendment - Consideration of an ordinance of the City of Key West, addressing the compatibility of lands adjacent to or closely proximate to military installations in the future land use element of the City of Key West Comprehensive Plan; revising Policy 1-3.9.1, and creating Policy 1-3.9.2, Policy 1-3.9.3, Policy 1-3.9.4, Policy 1-3.9.5, Policy 1-3.9.6, and Policy 1-3.9.7; 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 in the City of Key West Comprehensive Plan.

This item was postponed to the February 16, 2012 meeting.

9 Building Permit Allocation System (BPAS) Annual Report - Presentation of the tracking and monitoring requirements and recommended changes to the BPAS, as required by Section 108-995 of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Mrs. Monnier gave members an overview of the BPAS Annual Report. She informed members that the annual report is required to track all inputs into the Building Permit Allocation System, per Section 108-994, as well as allocations to the system by structure and use type. In 2009, the Planning Department performed an Audit of the City's implementation of the Building Permit Allocation System. This is the first annual report presented to the Planning Board since the release of the Audit, and provides a summary of the changes that have occurred to the system.

There were no public comments.

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Board members reviewed and discussed the annual report with staff.

A motion to approve the findings was made by Mr. Browning and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

- 10 Zoning in Progress - A resolution of the City of Key West Planning Board recommending to the City Commission the invoking of the Zoning in Progress Doctrine; declaring that the City is considering amendments to its Land Development Regulations to adopt a 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 an effective date.**

Mrs. Monnier gave members an overview of the zoning in progress. She informed members that the latest update to the BPAS ordinance occurred through Ordinance 10-10. This ordinance, under Section 108-995 provides that the City shall reserve a minimum number of units for beneficial use claims, based on available data. The ordinance then provides that “remaining units shall be allocated in accordance with the Comprehensive Plan and Land Development Regulations.” Based on the data available when Ordinance 10-10 was approved, any remaining units available would need to be allocated for affordable housing, as the 2009 BPAS Audit Report findings identified that Policy 1-3.12.2 in the Comprehensive Plan had not yet been met. As such, the interpretation of Ordinance 10-10 provided that any remaining units must be reserved for beneficial use claims and meeting Comprehensive Plan requirements with respect to affordable housing.

Mrs. Monnier stated that when staff re-evaluated the 2009 Audit Findings to compile the 2010-2011 BPAS Annual Report, it became evident that there is no longer an obligation under the Comprehensive Plan to reserve units specifically for affordable housing. As such, Planning Department staff has determined that the City must consider revisions to the BPAS ordinance to ensure consistency between the Comprehensive Plan and supporting BPAS ordinance, as well as to provide an updated allocation system for excess units. Though at this time there is a minimal number of excess units available, an updated allocation system will help provide direction to the City should additional units be allocated in the future, or be discovered (for example, such as new allocations granted by the state, allocations that may derive from settlement agreements, or through the recognition of fully documented recovered units). Therefore, the Planning Department recommends the invoking of the Zoning in Progress Doctrine, commencing retroactively from November 16, 2011; with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.

There were no public comments.

Board members reviewed and discussed the zoning in progress with staff.

A motion to recommend to the City Commission the invoking of the Zoning in Progress Doctrine was made by Mr. Gilleran and seconded by Mr. Browning.

Motion was carried by unanimous voice vote.

SO ORDERED.

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PLANNER'S REPORT

Mr. Craig informed members that staff will be attending a hurricane workshop at the end of January.

ADJOURNMENT

A motion to adjourn was made by Ms. Tennyson and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

Meeting adjourned at 9:40 pm.

Respectfully submitted by,
Carlene Smith
Development Review Administrator
Planning Department