



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board Members

Through: Nicole Malo, Planner II

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: April 18, 2013

Agenda Item: **Development Agreement Modification - 3800, 3820, 3824, 3840, 3850 and 3852 N. Roosevelt Blvd (RE#00064940-000000, AK#1065455; 00064950-000000, AK# 1065471; 00065060-000000, AK#1065587; 00065530-000000, AK#1068233; 00065540-000000, AK#1068241; and 00065550-000000, AK#1068250)** – Request for a Modification to a Development Agreement for property located in the General Commercial (CG) zoning district per Section 90-689 of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Request: To amend a Development Agreement approved through Resolution 09-059 for the project previously known as the Key West Resort and Conference Center located in the General Commercial (CG) Zoning District, pursuant to Chapter 90, Article IX, Development Agreements, Code of Ordinances, City of Key West, Florida

Applicant: JLW Key West 1, LLC. and JLW Key West 2, LLC.

Owner: JRC Key West Hotel, LLC; RFA Key West LLC; RFA Key West II, LLC; AVA Key West, LLC; JL Key West, LLC; JL Key West II, LLC; JLW Key West 1, LLC; and JLW Key West 2, LLC.

Location: 3852, 3850, 3824, 3840, 3820, and 3800 North Roosevelt Boulevard

Legal Description: RE#00064940-000000, AK#1065455; 00064950-000000, AK#1065471; 00065060-000000, AK#1065587; 00065530-000000, AK#1068233; 00065540-000000, AK#1068241; and 00065550-000000, AK#1068250

Zoning: CG – General Commercial Zoning District

Attachments

1. Proposed Planning Board Resolution
2. Proposed Development Agreement
3. Exhibits to the Development Agreement
 - A. Legal Descriptions
 - B. Original Parking Variance – Resolution 07-083
 - C. 2007 Development Plan Approval
 - D. 2009 Development Agreement Resolution 09-059
 - E. 2013 Conceptual Site Plan
 - F. List of Easements Encumbering Property
 - G. Concurrency Analysis
 - H. Development Schedule and Phase 2 Development Commitments
 - I. Final FEMA Site Development Calculations
4. Supplementary Information

Background

On March 4, 2009 the City Commission approved a Development Agreement for the Key West Resort and Conference Center project via Resolution 09-059 (Attachment 3, Exhibit D). The Major Development Plan and Conditional Use for the project was originally approved by the City Commission via Resolution 07-164 and a parking variance was approved by the Board of Adjustment via Resolution 07-083 (Attachment 3, Exhibit B and C).

Since the 2007 Development Plan and subsequent Development Agreement, the ownership of the property has changed and in response to market force shifts, the current Owner has submitted a request to amend the 2009 Development Agreement, allowed by that Development Agreement and the Land Development Regulations. The proposed Agreement would significantly downsize the impacts of proposed development on the site and allow the owner to renovate the buildings and uses currently on the properties. The Owner has chosen not to request extension of the 2009 Development Agreement which will effectively be dissolved and superseded by this Development Agreement. Concurrent with the Development Agreement modification request the Owner has also submitted a Major Development Plan application for the first phase of the proposed renovation plan; however, this Agreement is considered and drafted as a standalone document supported by a Conceptual Site Plan (Attachment 3, Exhibit E).

After meeting with the Planning Department several times to review the procedures required and the proposals requested, the applicant submitted a draft Development Agreement, which was modified in response to staff and legal comments, including at the Development Review Committee on March 6, 2013. The draft Development Agreement is before the Planning Board for the first public hearing required under the code, prior to transmittal (with recommendations) to the City Commission for the second required public hearing.

The existing 2009 Development Agreement encumbers approximately 17 acres, with six contiguous properties known as 3852, 3850, 3824, 3840, 3820, and 3800 North Roosevelt Boulevard; and allows the construction of a 450 room hotel, 33 timeshare units, 21 residential units with lock-outs, a 20,500 square foot conference center, 21,000 square feet of retail space, a themed restaurant and bar with 7,000 square feet of consumption space, and fifty work force housing units (Attachment 4, see Supplemental Information).

The proposed impacts of development associated with this amended Agreement are significantly lower than the impacts of development associated with the 2009 Agreement. The proposal will allow the Owner to redevelop the six contiguous properties in two (2) phases over a ten (10) year time period consistent with the attached Conceptual Site Plan and construction phasing schedule (Exhibit H). As stated in this Development Agreement, all development for construction of Phase 1 and Phase 2 shall be consistent with an approved Major Development Plan subject to the Comprehensive Plan and Land Development Regulations (LDR's) in place at the time of Major Development Plan application submittal with the exception of density and intensity that is subject to the LDR's and Comprehensive Plan in place at the time this Development Agreement was submitted to the Planning Department (February 8, 2013). The density allowed in the CG Zoning District is 16/dwelling units per acre and the allowed F.A.R is 0.8.

Phase 1 - The proposed Phase 1 Redevelopment consists of renovations to four (4) existing hotels located on Sites A, B, C, and D on the Conceptual Plan, and site improvements that shall be consistent with the Land Development Regulations at the time of application submittal as follows:

Site A - 3852 North Roosevelt Boulevard (RE# 00065060-000000): Renovation of 133 existing transient units. Demolition of existing restaurant to be replaced with a new building for lobby and registration uses.

Site B - 3850 North Roosevelt Boulevard (RE#00064940-000000): Renovation of 141 existing transient units. Demolish existing restaurant space to be replaced with a new building for lobby and registration uses.

Site C - 3824 North Roosevelt Boulevard (RE#00065550-000000): Renovation of 100 transient units and (1) one non-transient unit. Demolish portions of existing lobby and reconstruct building for lobby and registration uses.

Site D - 3820 North Roosevelt Boulevard (RE#00065530-000000): Renovation of 145 transient units and existing ground floor areas. Ground floor renovations to include lobby and registration uses retail use and restaurant.

Phase 2 - The proposed Phase 2 Redevelopment consists of the redevelopment of the existing commercial uses on the remaining two parcels and the 16 units of affordable housing; additionally, the Owner shall develop at least 10 and no more than 20 affordable units as part of Phase 2:

Site E - 3840 North Roosevelt Boulevard and 1185 20th Street (RE#00064950-000000): Commercial development of not more than 0.8 FAR and affordable housing redevelopment of existing 16 units on the site, with the potential of adding additional affordable units based on new affordable housing-infill policies within the adopted 2013 Comprehensive Plan.

Site F - 3800 North Roosevelt Boulevard (RE#00065540-000000): Commercial development of no more than 0.8 FAR and with the potential of adding additional affordable units based on new affordable housing-infill policies within the adopted 2013 Comprehensive Plan.

Previous City Actions

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| May 2, 2007 | City Commission Approval of Major Development Plan and Conditional Use Approval (per Resolution 07-164); |
| March 7, 2007 | Board of Adjustment Parking Variance (per Resolution 07-083) |
| May 7, 2008 | City Commission Preliminary Consideration of Development Agreement (per Resolution 08-192) |
| November 21, 2008 | Development Review Committee Review of Draft 2009 Development Agreement |
| January 27, 2009 | Planning Board Recommendation of approval of the 2009 Development Agreement (per Resolution 2009-001) |
| March 4, 2009 | City Commission approval of the 2009 Development Agreement for the Key West Resort and Conference Center project (per Resolution 09-059) |
| March 6, 2013 | Development Review Committee Review of Draft Amended 2009 Development Agreement, proposed as the Development Agreement for the Key West Hotel Collection |

In this case the Development Agreement offers an opportunity for the applicant to modify the approved development and extend approvals as long as a ten year period, as well as an opportunity for the City to ensure that public priorities are clearly addressed by the proposed project such as affordable housing. The balance of benefits for all parties is an important consideration as the draft agreement is reviewed by the Planning Board.

The Land Development Regulations acknowledge the findings of the state legislature that enable Development Agreements under Florida Statute, as follows (see Section 90-676):

(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning

and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.

(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

Proposed Development Agreement

The City's Land Development Regulations set forth criteria for the contents of a Development Agreement. The specific criteria, as well as the location of the information within the Development Agreement, are addressed below.

Development Agreement Review Criteria (Section 90-682)

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

(1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

A legal description is included in Exhibit A of the Development Agreement and the identification of the owners is provided in the first clause of the agreement (p. 1) and per C. Terms of Agreement, Legal Description; Ownership and Equitable interests in the Property 1(p.7).

(2) The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.

The proposed duration of the agreement is ten years, per C. Terms of Agreement, 2. Duration of Agreement; Renewal (p. 7).

(3) The development uses permitted on the land, including population densities, building intensities and building heights.

The proposed development is described in Section C. Terms of Agreement, 4. Proposed Development: Phase 1 and Phase 2 Redevelopment Plan (p. 9); Section C. The allowed densities and intensities are described in Terms of Agreement, a. Uses, Densities and Intensities (p. 10). Building Heights are described in C. Terms of Agreement, d. Building Heights (page 11).

(4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

The applicant has addressed the criteria cited in the Land Development Regulations applicable to the subject project under Section C. Terms of Agreement, 11. All Permits Approved or Needed (page 16) as well as Section C. Terms of Agreement, 13. Redevelopment to Comply with Permits and City Comprehensive Plan and Code Provisions (page 17).

(5) A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required under this subsection.

A description of the public facilities that will service the development are found in Section C. Terms of Agreement, 11. Concurrency and Public Facilities (p. 15). Additionally a Concurrency Analysis Report is attached to the Development Agreement as Exhibit G.

(6) The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

Not applicable. A concurrency analysis has determined that facilities will be available at the time of development. It is Exhibit "G" to the agreement.

(7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

The agreement does not include the reservation or dedication of land for public purposes.

(8) If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

Not applicable.

(9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:

a. Any required comprehensive plan amendments or rezonings.

Not applicable

b. Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of community affairs (DCA), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.

Required permits and approvals are outlined in Section C. Terms of Agreement, 11. All Permits Approved or Needed (p. 16).

c. If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.

This issue is addressed in Section C. Terms of Agreement, 16. Laws Governing (p.17).

(10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

This issue is addressed in Section C. Terms of Agreement, 14.finding of Consistency (p.17).

(11) The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

Of particular importance are provisions relating to Affordable Housing (see page 11, Section C. Terms of Agreement, 8. Affordable Work Force Housing;

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

Section C. Terms of Agreement, 15. Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein (page 17), includes this provision.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

The proposed duration of the agreement is ten years, per C. Terms of Agreement, 2. Duration of Agreement (see page 7). Phasing is proposed by the applicant. Phase 1 Redevelopment was submitted for Planning review beginning on February 8, 2013 and is expected to follow a parallel approval track with this agreement. Phase 2 Redevelopment application plan shall be submitted to the Planning Department no later than the end of 2014, per C. Terms of Agreement, 2. Duration of Agreement (see page 7).

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

This report responds to this requirement and the minutes of the DRC Meeting are attached herein (see Supplementary Information).

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the planning board, and its recommendation along with the development review committee's recommendation shall be provided to the city commission.

This report and scheduled public meeting with the Planning Board responds to this requirement.

RECOMMENDATION

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for a Development Agreement be recommended for **approval**.