

Minutes of the Key West Planning Board

May 31, 2012

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Chairman Richard Klitenick called the Key West Planning Board Special Meeting of May 31, 2012 to order at 6:05 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, Sam Holland, Jr., Gregory Oropeza and Lisa Tennyson.

Excused absence: James Gilleran and Michael Browning.

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

A motion to approve the agenda was made by Mr. Holland and seconded by Vice-Chairman Root.

Motion carried by unanimous voice vote.

SO ORDERED.

APPROVAL OF MINUTES

1 April 19, 2012 Meeting

A motion to approve the April 19, 2012 meeting minutes was made by Ms. Tennyson and seconded by Vice-Chairman Root.

Motion carried by unanimous voice vote.

SO ORDERED.

2 April 23, 2012 Special Meeting

A motion to approve the April 23, 2012 special meeting minutes was made by Vice-Chairman Root and seconded by Mr. Holland.

Motion carried by unanimous voice vote.

SO ORDERED.

RESOLUTIONS

Old Business

- 3 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.**

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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.

Ms. Malo gave members an overview of the variance request. She informed members that the variance request was originally scheduled to be heard on February 16, 2012 and then on March 15, 2012; however, the applicant asked to table the item both times to give the neighbor additional time to review the site plans. Since that time, the applicant revised the site plans that have been approved by HARC. 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. However, if the Board chooses to approve the variance request the department recommends the following conditions:

1. The Privacy Shutters, as represented in the submitted plans, on the second floor deck are to be at least 9 feet wide and at least 6 feet high, to be positioned on the rearmost southeast facing portion of deck, in the position represented in the submitted plan, nearest to the southeast property boundary (54.65 feet in length) perpendicular to Grinnell Street (such boundary is referred to in these conditions as the "Southeast Property Boundary") The Privacy Shutters may only be removed for a reasonable period of time for refurbishment, replacement, repair or maintenance, but must remain a fixture of the property.
2. A Bahama type shutter, intended for privacy as well, is to be installed on the rear wing second story window (existing) facing the Southeast Property Boundary, as represented in the submitted plan, to be maintained and removed for a reasonable period of time only for refurbishment, replacement, repair or maintenance, but must remain a fixture of the property.
3. The contemplated swimming/dip pool equipment is to be located behind and to the rear of the dwelling structure, and not between the dwelling structure and the Southeast Property Boundary. The contemplated swimming/dip pool equipment shall at no time be moved to any other location on the property closer to the Southeast Property Boundary as shown on the revised site plans approved by HARC and submitted with this variance application.
4. The proposed upper deck is not to be expanded such that it is any closer to the neighboring dwelling structures opposite the Southeast Property Boundary as of the effective date of this variance.
5. The total width of the existing second story structural openings for windows and doors facing the Southeast Property Boundary are not to be increased, as represented on the plans submitted with the subject variance application.
6. Conditions one (1) through (5) above, shall be met by the property owner, his successors, heirs and assigns taking title to, possession, control, or ownership of the property, and any and all subsequent owner or owners taking title to or ownership of the property subsequent to the effective date of this variance.

The following member of the public spoke on the matter:

- Bart Smith, representing Tony Willis

Members reviewed the request with the applicant, staff and member of the public who spoke on the matter. Members discussed adding a condition that a short form memorandum which references the variance conditions be recorded. Both the applicant and Mr. Smith were in agreement with the additional condition.

A motion to approve the variance request to include Planning Department recommended conditions as well as adding a condition that a short form memorandum that references the variance conditions be recorded in the public records of Monroe County was made by Ms. Tennyson and seconded by Vice-Chairman Root.

Motion was carried by unanimous voice vote.

SO ORDERED.

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Mr. Oropeza returned to the dias.

- 4 Zoning Ordinance Amendments - Consideration of an ordinance of the City of Key West amending Chapter 122, of the Code of Ordinances titled "Zoning" of Article II, by amending Section 122-26 adding Section 122-33 to the City of Key West Land Development Regulations of the City of Key West to provide for an exception for property affected by eminent domain or voluntary conveyance for public transportation or other public purpose; providing for severability; providing for the repeal of inconsistent provisions; providing for an effective date.**

Mr. Erskine gave members an overview of the ordinance request. He informed members that FDOT is asking business owners on North Roosevelt to quick claim part of their property for upcoming sidewalk improvements on North Roosevelt Boulevard. During the April 23rd meeting, members expressed their concern on how future owners of the properties would be affected if the waiver process was not recorded or if the previous owner declined to proceed with the waiver process. Mr. Erskine clarified for members that the application for the waiver can be made prior to or after the acquiring authority has obtained title to that portion of the property needed for the intended public purpose.

Mr. Erskine informed members that this ordinance not only applies to the North Roosevelt sidewalk project, but all future projects.

There were no public comments.

Members reviewed the request with staff. Staff clarified that the proposed ordinance would allow property owners to maintain the same rights as it was prior to conveyance.

A motion to recommend to the City Commission a proposed ordinance amending Chapter 122, of the Code of Ordinances titled "Zoning" of Article II, by amending Section 122-26 and adding Section 122-33, to the City of Key West Land Development Regulations was made by Vice-Chairman Root and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

- 5 Fish & Wildlife Ordinance - Consideration of an ordinance of the City of Key West amending Section 110 of the Code of Ordinance entitled Floodplain Protection by adding Section 110-467 providing the basis for enhanced protection of specifically identified endangered species habitat and the species focus area maps and real estate list; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Cunningham informed members that in 1990, environmental advocacy groups filed suit against Federal Emergency Management Act (FEMA) and the U.S. Fish & Wildlife Service (USFWS), on the basis that the FEMA issuance of flood insurance for new construction was thought to be potentially destructive to habitats of endangered species. A court ruling was found in favor of the plaintiffs. Agreements between the various entities provided a list of properties that contained habitats that would support endangered species. The property list created as a result of the litigation included 49,000 properties in Monroe County, 257 are found in Key West. FEMA then produced the Species Focus Area Maps (SFAMS). These maps further identify properties adjacent to those on the existing FEMA list. Therefore, if a property is identified on the list or as being adjacent to such a property on the maps, all are on the "list." To develop a property that is on the list, it must be determined that there is no endangered species present or the habitat has been compromised to the extent that it is not habitable by that species. By the City acknowledging and adopting these requirements, the

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residents will continue to be eligible for flood insurance through the National Flood Insurance Program (NFIP). Further, the City and its residents will both be eligible for Federal disaster assistance following any storm event.

There were no public comments.

Members reviewed the request with staff. Members voiced their concern that property owners on the list were not notified.

Mr. Craig clarified for members that although each individual property owner was not notified that their property was on list; several notices were published in The Citizen, on the city website and discussed at several City Commission meetings. He then added that it is the intent of the city to try to do additional research and reduce the list.

A motion to recommend to the City Commission a proposed ordinance amending Section 110 of the Code of Ordinance entitled Floodplain Protection by adding Section 110-467 was made by Mr. Holland and seconded by Vice-Chairman Root.

Motion was carried by unanimous voice vote.

SO ORDERED.

- 6 Floodplain Protection Ordinance – Consideration of an ordinance of the City of Key West amending Chapters 14, 34 & 108 of the City of Key West Code of Ordinances, along with related local amendments to Sections 104, 107, 117, 202, 1612 of the 2010 Florida Building Codes, for the purpose of updating the City's Flood Damage Protection ordinances and related building codes; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Craig gave members an overview of the proposed ordinance. He informed members that this action would repeal the following sections of the floodplain management ordinances: Chapter 14, Sections 391-407; and Chapter 34, Sections 26-121; and Chapter 108, Section 821-927 in their entirety. The new sections would be created within Chapter 34 to accommodate the new statewide model floodplain ordinance, as amended for our island community.

Mr. Craig clarified for members that these building code amendments are largely housekeeping measures designed to ensure floodplain management harmony between the new building codes and the new model floodplain ordinance.

Mr. Fraser then clarified for members that structures listed on the City Historic Preservation Survey are authorized to be exempt from the flood resistant construction/elevation requirements for the repair, improvement, or rehabilitation of a historic building that is determined eligible for exception under the Florida Building Code, Existing Building, Chapter 11 Historic Buildings. He then stated that utilities subject to flood waters shall be elevated at or above the Base Flood Elevation.

Chairman Klitenick stated that Section 34-129.2 Appeals, should be consistent with all other appeal processes. Therefore, he requested this section be revised to reflect that appeals would be heard by the City Commission versus the Planning Board.

There were no public comments.

Members reviewed the request with staff.

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A motion to recommend to the City Commission a proposed ordinance amending Chapters 14, 34 & 108 of the City of Key West Code of Ordinances, along with related local amendments to Sections 104, 107, 117, 202, 1612 of the 2010 Florida Building Codes, to include revising Section 34-129.2 that appeals are heard by the City Commission, was made by Mr. Oropeza and seconded by Vice-Chairman Root.

Motion was carried by unanimous voice vote.

SO ORDERED.

7 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.

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. The department is aware that the neighbors are concerned about the potential noise that may generate from amplified music on the second-storey outdoor rooftop consumption area. 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:

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.

The applicant's representative, Owen Trepanier with Trepanier and Associates, gave members an overview of the coordination with neighbors and Harborside, LLC.

The following members of the public spoke on the matter:

- Doug Bennett, 706 Caroline
- Scott Donahue, 3930 S. Roosevelt
- Dan Probert, 3728 Flagler
- Joe Walsh, 909 16th Terrace

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- Pritam Singh, 1 Free School Lane
- Bart Smith, representing Harborside, LLC

Mr. Trepanier stated that the applicant is in agreement to close the rooftop area at 10pm.

Ms. Malo clarified for members that amplified music on the rooftop would be through a distributive sound system and would be limited to 10pm.

Members reviewed the request with the applicant, staff and members of the public who spoke on the matter. Members were in agreement to modify condition eight to state “rooftop”. Members then commended the applicant for their tremendous amount of time and effort in coordinating with the neighborhood.

A motion to approve the major development request to include Planning Department recommendations, and modifying condition eight to state “rooftop” was made by Ms. Tennyson and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

New Business

8 Minor Development Plan - 202 William Street (RE# 00072082-003900) – A minor development request for a commercial property in the HRCC-1 zoning district per Section 108-91 (A.)(1.)(b.) of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Ms. Malo gave members an overview of the minor development plan request. She informed members that the site is a lease area that is part of the larger Bight District owned by the City, currently leased by the Schooner Wharf as an outdoor bar and restaurant. In 2010 the existing two-story concrete building structure (CBS) used for consumption area and offices, located along the harbor walk on the north eastern portion of the site, was partially destroyed by a fire. As part of a settlement agreement the city is required to reconstruct office space for the lease owner on the site. Therefore, this development plan request is limited to the redevelopment of the existing CBS and the area behind it along Lazy Way Lane that has been used for the location of a ticket booth, miscellaneous storage of white goods and maintenance equipment. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for Minor Development Plan be approved with the following conditions:

Conditions to be completed prior to the issuance of building permits:

1. A signed and sealed elevation certificate is presented to the planning and building department.
2. The building is constructed according to ADA exempted Building Plans.

Conditions to be completed prior to the issuance of certificate of occupancy:

3. All lighting fixtures shall meet “Dark Sky” lighting standards.

General Conditions:

4. No part of the new structure, including the storage space beneath the building, nor the roof of the remodeled adjacent structure may be used for consumption area, nor food preparation area.
5. That the variance for the Coastal Construction Control Line setback is granted by the Planning Board.

Mr. Craig clarified for members that the space beneath the building is solely for storage.

The following member of the public spoke on the matter:

- Dan Probert, 3728 Flagler

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The project architect, Bert Bender, verified that the area underneath the building would be used for storage and will contain breakaway walls.

Members reviewed the request with the applicant, staff and member of the public who spoke on the matter. Members were in agreement to relocate condition one to condition five since permits would need to be issued prior to the processing of the elevation certificates.

A motion to approve the minor development request to include Planning Department recommendations to include relocating condition one to number five was made by Vice-Chairman Root and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

9 Variance - 202 William Street (RE# 00072082-003900) – A variance request for development within the Costal Construction Control Line Setback in the HRCC-1 zoning district per Section 122-1148 of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Ms. Malo gave members an overview of the variance request. She informed members that the proposed variance request is associated with a Minor Development Plan limited to a portion of the lease area as described above for the redevelopment of the existing concrete building structure (CBS) and the undeveloped area behind it along Lazy Way Lane. 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 application, the Planning Department recommends the following condition:

1. That the application for a Minor Development Plan is approved.

There were no public comments.

Members reviewed the request with the applicant and staff.

A motion to approve the variance request to include Planning Department recommendation was made by Vice-Chairman Root and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

PLANNER'S REPORT

Mr. Craig informed members that Ginny Haller has been hired as the new Planner for the department and that the department is requesting an additional position for the new budget year to accommodate the workload.

Mr. Craig then clarified for members the reason for the large number of items that have been on the past few agendas. He then stated that staff would be drafting an ordinance to allow the Planning Director to administratively approve minor variances, in order to alleviate the amount of variances heard by the Planning Board.

ADJOURNMENT

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A motion to adjourn was made by Vice-Chairman Root and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

Meeting adjourned at 8:10 pm.

Respectfully submitted by,
Carlene Smith
Development Review Administrator
Planning Department