Keri O'Brien

From: Donna Phillips
Sent: Friday, June 12, 2020 11:25 AM
To: City Clerk
Cc: Keri O'Brien
Subject: FW: 318-324 Petronia Street and 802-806 Whitehead Street Modification to Conditional Use Request
Attachments: Request for Modification .pdf; Section 3 of Opposition on Trips and Parking.pdf

Hi Keri-

Please see attached and below public comments Marilyn Brew received from Todd Santoro. Please add to Legistar.

Regards,

Donna

From: Marilyn Brew <brewmarilyn@hotmail.com>
Sent: Friday, June 12, 2020 11:19 AM
To: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Subject: FW: 318-324 Petronia Street and 802-806 Whitehead Street Modification to Conditional Use Request

Ms. Phillips,

I received below email with attachments today from one of our interested citizens. Should I forward to someone now or submit during next week's Plng Board Mtg. I have not looked at the agenda to determine if this is an agenda item for next week.

Thanks in advance.

Marilyn D. Brew
brewmarilyn@hotmail.com
(m) 910-551-8849

From: Todd Santoro <todd@toddsantoro.com>
Sent: Friday, June 12, 2020 8:13 AM
To: brewmarilyn@hotmail.com
Subject: 318-324 Petronia Street and 802-806 Whitehead Street Modification to Conditional Use Request

Dear Planning Board Member Brew:

> **Re: February 7, 2020 letter on behalf of RH Southernmost, LLC ("Rams Head") requesting a Minor Modification of Conditional Use Approval No. 2011-059 (the "Request" a copy of which is attached)**

We write this in opposition to the Request and object to the modifications of Res. # 2011-059 sought in the Request for reasons that include the following:

1st. As shown below Rams Head identifies the wrong Ordinance section and wrong review standard under which proposed changes to Res. # 2011-059 must be considered by the Planning Board. The Request errantly asserts Section 108-91(C)(4) governs the Request. But, Article 122 of the Code of Ordinances governs all revisions and additions to a conditional use. Sec. 122-63(e) of Article 122 states:

> **Sec. 122-63. - Review; enforcement. (e) Revisions or additions to a conditional use shall be reviewed based on the criteria of section 122-62(b) and (c). The procedures governing such reviews shall be identical to the procedures identified for the respective development plan which are presented in article II of chapter 108……**

Sec. 122-63 incorporates article II of chapter 108 for the procedure to use only. Sec. 122-63 requires that substantively all revisions or additions to a conditional use "shall be reviewed based on the criteria of section 122-62(b) and (c)." Therefore, Rams Head must substantively plead and establish and this Board must review the Request under the same criteria as are applicable *ab initio* for any conditional use requests under Article III of the Chapter.

2nd. Rams Head has not established standing to bring the Request for a Property of which it is not the owner.

Finally, we hereby incorporate by reference herein *in haec verba* all affected neighbors' comments, testimony and oppositional filings that are part of the record in the Property Owner's applications to amend the FLUM/Zoning for the 806 Whitehead lots on the Property from HMDR to HNC-3, which is the Property in Res. #2011-059 and the Request (the "Record").

You are aware from the Record that the Owner of the Property ("Owner") has refused/failed for nine years to comply with the conditions in Res. No. 2011-059 (the "Conditions") and most recently, it's alleged tenant Rams Head, for the past year has operated its bar/restaurant in flagrant violation of the Conditions.

Despite innumerable neighborhood complaints about violation of the Conditions and other Key West ordinances by the Owner and Rams Head, Rams Head now seeks the waiver of several material conditions with which it and the Owner have never been in compliance.

No Standing

Rams Head is not the owner of the Property and has not demonstrated whether and how it has the authority to make the Request on behalf of the Owner. The Request indicates no authorization from the Owner to file the Request. The Neighbors have requested and been refused a copy of any lease the Owner has with Rams Head, assuming one exists. So, Rams Head has shown no standing to bring the Request to change Res. # 2011-059 conditions.

The Request does not Contain the Required information or Analysis for the Board to Consider the Request and therefore the Request Must be Denied.

The Request errantly asserts Section 108-91(C)(4) governs the Request. It does not. Article 122 governs all revisions to a conditional use. Article 122, Section Sec. 122-63 states

> **Sec. 122-63. - Review; enforcement.**
>
> **(e) Revisions or additions to a conditional use shall be reviewed based on the criteria of section 122-62(b) and (c). The procedures governing such reviews shall be identical to the procedures identified for the respective development plan which are presented in article II of chapter 108. A conditional use shall expire if construction has not commenced within 12 months of approval. A**

conditional use may be extended only one time for 12 months by a favorable vote of the planning board or city commission, when the project is a major development, if the applicant submits a petition for such extension prior to the development plan's expiration and demonstrated reasonable cause for the extension. The burden of proof in justifying reasonable cause shall rest with the applicant.

Article 122 governs the substantive requirements for the Request. Article II of chapter 108 is incorporated into Sec. 122-63 only to govern the procedure to be used in the Board's treatment of the Request. Under Article II the Board must use "**the procedures identified for the respective development plan"** in Article II of chapter 108.

Res. #2011-059 allowed 6,637 square feet of flexible consumption area on the Property and the Minor Modification (referenced in the Request) involved 5,836 sq. ft. of that flexible consumption area. Therefore, the Request is not a Minor Modification but a Major Modification under chapter 108 and the *procedures* in both Sec. 108-91(C)(3) and (C)(4) apply.

Article 108 requires that the Request must "be treated in the same manner as the original approval" and "Changes to specific conditions required by the original approval shall require approval by the administrative body that originally approved the development and shall be noticed in accordance with division 2 of article VIII of chapter 90."

The Property involved in Res. # 2011-059 and in the Request contains both Historical Commercial and Historical Residential lots. The pertinent sections of 108-91 from which the foregoing follows are quoted in bold below:

Sec. 108-91. - Scope; major and minor developments. The following types of development shall require minor and major development plan approval.

A.Within the Historic District:

2.Major development plan required for:
(c)Commercial land use: addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities equal to or greater than 2,500 square feet.

B.Outside of the Historic District:…….

C.Modifications of development plan:

1.Administrative Modifications. The following and similar modifications that do not rise to the status of minor or major plan modifications may be approved by the city planner:
(a)Reduction of building size;
(b)Reduction of impervious area;
(c)Expansion of landscaping; or
(d)A revision to enhance storm water management, landscaping, handicapped accessibility, and/or utilities.

2.Minor Modifications. The following and similar modifications must be approved by the city planner, city engineer and planning board chairperson and reported to the planning board at a regularly scheduled meeting:

(a)Relocation of at least ten feet of pools, parking spaces, drives and driveways, or buildings from the location shown on the approved plan;
(b)Addition of parking spaces not to exceed 25 percent (including fractions thereof) of the total number of existing parking spaces or five spaces, whichever is the lesser amount, and no such additional parking shall consume the approved landscaped area;
(c)Attached or detached additions to buildings in the historic district that do not increase the floor area in excess of 500 square feet;
(d)Installation of utility system improvements including buildings not exceeding 200 square feet; or
(e)Any use, except single-family dwelling units and accessory structures thereto, or change in use resulting in less than 1,000 square feet of impervious surface area on the entire site.

3.Major Modifications. Modifications exceeding those to be treated as administrative or minor will be treated in the same manner as the original approval.

4.Changes to specific conditions required by the original approval shall require approval by the administrative body that originally approved the development and shall be noticed in accordance with division 2 of article VIII of chapter 90. (Emphasis added.)

As can be seen C(3) applies because the Request's requested changes to the Conditional Use affects more than 1,000 square feet of consumption area; e.g., the Request seeks changes in hours for all consumption space, changes in trash handling for all consumption area, and changes in parking affecting the entire consumption area. But, (C)(4) also applies and additionally imposes the broader notice requirements.

Sec. 108-91C(3) and (C)(4) also require the Planning Board to consider the Request "in the same manner as the original approval," and because the Conditions and Permitted Uses of the Conditional Use are interrelated, the substantive criteria required to be applied to the original application for the Conditional Use must be addressed in the Request and established by Rams Head.

Again, while Article 108 governs the procedure, Section 122-62(b) and (c) provide the mandatory substantive review criteria and requirements that Rams Head must plead and demonstrate in the Request.

Section 122-62 (b) and (c) are quoted below in bold for your convenience:

Section 122-62 (b) Characteristics of use described. The following characteristics of a proposed conditional use shall be clearly described as part of the conditional use application:

(1)Scale and intensity of the proposed conditional use as measured by the following:
a.Floor area ratio;
b.Traffic generation;
c.Square feet of enclosed building for each specific use;
d.Proposed employment;
e.Proposed number and type of service vehicles; and
f.Off-street parking needs.

(2)On- or off-site improvement needs generated by the proposed conditional use and not identified on the list in subsection (b)(1) of this section including the following:
a.Utilities;
b.Public facilities, especially any improvements required to ensure compliance with concurrency management as provided in chapter 94;
c.Roadway or signalization improvements, or other similar improvements;

d.Accessory structures or facilities; and
e.Other unique facilities/structures proposed as part of site improvements.

(3)On-site amenities proposed to enhance site and planned improvements. Amenities including mitigative techniques such as:
a.Open space;
b.Setbacks from adjacent properties;
c.Screening and buffers;
d.Landscaped berms proposed to mitigate against adverse impacts to adjacent sites; and
e.Mitigative techniques for abating smoke, odor, noise, and other noxious impacts.

Section 122-62 (c)Criteria for conditional use review and approval. Applications for a conditional use shall clearly demonstrate the following:

(1)Land use compatibility. The applicant shall demonstrate that the conditional use, including its proposed scale and intensity, traffic-generating characteristics, and off-site impacts are compatible and harmonious with adjacent land use and will not adversely impact land use activities in the immediate vicinity.

(2)Sufficient site size, adequate site specifications, and infrastructure to accommodate the proposed use. The size and shape of the site, the proposed access and internal circulation, and the urban design enhancements must be adequate to accommodate the proposed scale and intensity of the conditional use requested. The site shall be of sufficient size to accommodate urban design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, infrastructure (i.e., refer to chapter 94 to ensure concurrency management requirements are met) and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.

(3)Proper use of mitigative techniques. The applicant shall demonstrate that the conditional use and site plan have been designed to incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure, are not burdened with adverse impacts detrimental to the general public health, safety and welfare.

(4)Hazardous waste. The proposed use shall not generate hazardous waste or require use of hazardous materials in its operation without use of city-approved mitigative techniques designed to prevent any adverse impact to the general health, safety and welfare. The plan shall provide for appropriate identification of hazardous waste and hazardous material and shall regulate its use, storage and transfer consistent with best management principles and practices. No use which generates hazardous waste or uses hazardous materials shall be located in the city unless the specific location is consistent with the comprehensive plan and land development regulations and does not adversely impact wellfields, aquifer recharge areas, or other conservation resources.

(5)Compliance with applicable laws and ordinances. A conditional use application shall demonstrate compliance with all applicable federal, state, county, and city laws and ordinances. Where permits are required from governmental agencies other than the city, these permits shall be obtained as a condition of approval. The city may affix other conditions to any approval of a conditional use in order to protect the public health, safety, and welfare.

(6)Additional criteria applicable to specific land uses. Applicants for conditional use approval shall demonstrate that the proposed conditional use satisfies the following specific criteria designed to ensure against potential adverse impacts which may be associated with the proposed land use:

a.Land uses within a conservation area. Land uses in conservation areas shall be reviewed with emphasis on compliance with section 108-1 and articles III, IV, V, VII and VIII of chapter 110 pertaining to environmental protection, especially compliance with criteria, including land use compatibility and mitigative measures related to wetland preservation, coastal resource impact analysis and shoreline protection, protection of marine life and fisheries, protection of flora and fauna, and floodplain protection. The size, scale and design of structures located within a conservation area shall be restricted in order to prevent and/or minimize adverse impacts on natural resources. Similarly, public uses should only be approved within a wetland or coastal high hazard area V zone when alternative upland locations are not feasible on an upland site outside the V zone.

b.Residential development. Residential development proposed as a conditional use shall be reviewed for land use compatibility based on compliance with divisions 2 through 14 of article IV and divisions 2 and 3 of article V of this chapter pertaining to zoning district regulations, including size and dimension regulations impacting setbacks, lot coverage, height, mass of building, building coverage, and open space criteria. Land use compatibility also shall be measured by appearance, design, and land use compatibility criteria established in chapter 102; articles III, IV and V of chapter 108; section 108-956; and article II of chapter 110; especially protection of historic resources; subdivision of land; access, internal circulation, and off-street parking; as well as possible required mitigative measures such as landscaping and site design amenities.

c.Commercial or mixed use development. Commercial or mixed use development proposed as a conditional use shall be reviewed for land use compatibility based on compliance with divisions 2 through 14 of article IV and divisions 2 and 3 of article V of this chapter pertaining to zoning district regulations, including size and dimension regulations impacting floor area ratio, setbacks, lot coverage, height, mass of buildings, building coverage, and open space criteria. Land use compatibility also shall be measured by appearance, design, and land use compatibility criteria established in chapter 102; articles I, II, IV and V of chapter 108; section 108-956; and article II of chapter 110; especially protection of historic resources; subdivision of land; access, pedestrian access and circulation; internal vehicular circulation together with access and egress to the site, and off-street parking; as well as possible required mitigative measures such as landscaping, buffering, and other site design amenities. Where commercial or mixed use development is proposed as a conditional use adjacent to U.S. 1, the development shall be required to provide mitigative measures to avoid potential adverse impacts to traffic flow along the U.S. 1 corridor, including but not limited to restrictions on access from and egress to U.S. 1, providing for signalization, acceleration and deceleration lanes, and/or other appropriate mitigative measures.

d.Development within or adjacent to historic district. All development proposed as a conditional use within or adjacent to the historic district shall be reviewed based on applicable criteria stated in this section for residential, commercial, or mixed use development and shall also comply with appearance and design guidelines for historic structures and contributing structures and/or shall be required to provide special mitigative site and structural appearance and design attributes or amenities that reinforce the appearance, historic attributes, and amenities of structures within the historic district.

(Ord. No. 97-10, § 1(2-6.2), 7-3-1997; Ord. No. 01-13, § 1, 9-18-2001)

As can be seen from the Request comparing it to the information it is required to include in the Request, Rams Head fails to include the relevant information required by Sec. 122-63 and Section 122-62 (b) and (c).

If the Board is to proceed to consider the Request the Record Requires Denial

The Record demonstrates repeated and major unreasonable noise, garbage, operations, and other violations of the Conditions and the Ordinances by Rams Head and the Owner. The Record establishes and the Board should recall from the FLUM/zoning proceedings, that the Planning Board refused to consider the voluminous evidence presented by the neighbors showing Rams Head and the Owner are the epitome of Key West Bad Neighbors. Also, and inexplicably, the Planning Board chairperson announced at a Planning Board meeting in the FLUM/zoning amendment proceedings on the Property, that the Board could not consider the testimony and related oppositional filings about the Owner and Rams Head as Bad Neighbors and their innumerable other violations of the Conditions and Key West's ordinances. But, there can be no excuse for the Board not considering that evidence in the Record in opposition to the Request.

The 2015 "Minor Modification" was Ultra Vires and Ill-Advised

In early 2015 the Owner applied for and obtained a so-called "minor modification" without notice to the affected neighbors or an opportunity for them to participate, even though the requested modification violated the very agreement under which Res. # 2011-059 was granted. In doing so, the Owner and Planning Board errantly relied solely on Section 108-91C.2(e), and the Owner and Board did not address the criteria of Section 122-62 (b) and (c), nor were they met. That March 17, 2015 Minor Modification to which the Request refers and attaches to the Request, and its passage by the Board without public notice and without addressing those criteria, was an *ultra vires* action by the Planning Board: (1) Required Notice was not given; (2) there was no analysis of any of the criteria in Section 122-62 (b) and (c); (3) it violated the agreement by which Res. #2011-059 was reached; (4) it misapplied and is unsupported by facts; and it eroded the carefully negotiated "buffering" agreed to in the interrelated Conditions.

Res. #2011-059 was the result of a negotiated settlement between the Property Owner/Applicant and the affected surrounding property owners and residents. The agreed upon conditions and site plans, include conditions with which the Owner and Rams Head have never complied, including those in the Request. Many of the ignored Conditions were preconditions to obtaining any licenses, permits and approvals. As a result, under the terms of the Conditional Use and Key West's Ordinances, no occupancy permit, business license, or Development Approval under Ordinance Secs. 18-610, 612, 613, 614 should ever have been issued and the Conditional Use should have expired.

Unfortunately, without transparency, public notice or affected neighbors' participation the 2015 Minor Modification application posited an insensitive and uninformed assertion, ultimately rubber stamped by the Planning Board and staff; to wit:

> Application: "We propose to move the majority of the area forward towards the more commercialized corner of Petronia and Whitehead…The result….what remains will be moved away from the adjacent residential neighborhood."
>
> Minor Modification finding: "This letter…recognizes that the proposed modification to the conditional use approval….would reconfigure both the indoor and outdoor consumption area further away from the adjacent residential neighborhood."

Of course this ignores Key West's citizens/residents in the housing authority right across the street from the new Owner's amplified music location, and those residents suffered the brunt of intensity of that consumption space relocation and resulting incessant unreasonably loud, daily amplified music. They, like all other neighbors were neither notified nor consulted, and as is apparent the Owner and Planning Board did not consider them as residents to be concerned about, even though they would be most impacted by this modification, as they lived a few feet away from the sound source.

The Request Opens the Door to Changes in the Conditional Use and the Planning Board Should Deny the Request but should Impose Conditions that Will Remedy the Planning Board's mistakes in 2011 and 2015.

As the applicable Ordinance provides, with Rams Head's filing of the Request it opens up and brings Res. 2011-059 before the Board and any "modification will be treated in the same manner as the original approval." That is—the lid is off the pot.

Ordinance Run around--Repeated, Continuous and Material Conditions and Sound Control Ordinance Violations

As to noise violations by the Owner and Rams Head, the problem has been exacerbated since 2016. When Res. 2011-059 was passed, the HNC-3 District was treated as a Residential District for the purposes of the Sound Control Ordinance. Therefore, when the Board passed Res. 2011-059 during the hours from 8:00P.M. until 8:00A.M. the City's Sound Control Ordinance prohibited any noise on the Property (HNC-3 or HMDR) that exceeded 60 dBA.

However, in 2016, without notice to or input from affected property owners, the City of Key West amended the Sound Control Ordinance by Ordinance No. 16-03 to move HNC-3 District into the commercial district definition for the purposes of the Sound Control Ordinance. That allowed the Owner and Rams Head to disturb the quiet enjoyment of the residential neighbors after by allowing 75 dBA after 8:00 P.M. versus the prior 60 dBA limit that covered the Property from 8 P.M. to 8:00 A.M.

It should not be lost on the Board that the request to change HNC-3 to Commercial for noise enforcement came from Jim Young, the same person who just happened to be at the November Planning Board meeting so Ed Swift could call him to testify there were no noise complaints. The Record shows that testimony was at best uninformed.

But, even under that change to commercial noise standards Rams Head is and has been rocking well above the 75 dBA maximum permissible noise limit all along. **See for yourself.** You can view the very recent 2 three minute videos with dBa measurements and the 3 min average from right across the street. The noise NEVER went below 75 dBA—the maximum permissible sound level under the ordinance for a commercial district. https://www.dropbox.com/s/snv7cjoeuyi6ig3/IMG_4099.mov?dl=0 and https://www.dropbox.com/s/6it1v1doqj7v66i/IMG_4100.mov?dl=0. These links show Rams Head's recent reopening rocking the neighborhood and the lives of the residents (including the voiceless people in the housing right across from the sound source). Of course Rams Head has been violating the noise Conditions for over a year now—its entire time on the Property operating its Southernmost Bar and occasional restaurant.

The consequences of that change in Ordinance No. 16-03 was not the intended deal of the neighbors, the Owner, and the Planning Board. As you know from the Record both the Comprehensive Plan and Bahama Village Plan view the HNC-3 district as a small, neighborhood serving commercial district—so it was no mistake that HNC-3 was included in the residential district for determining and complying with the purposes of the Sound Control Ordinance.

Because the new ordinance No. 16-03 changed the meeting of minds leading to Res. #2011-059, the amplified noise hours in conditions should be changed back to prohibit amplified noise on the Property over 60 dBA from 8:00 P.M. until 10:00 A.M. to adjust for the ill-advised and uninformed HNC-3 change. That was the original intent of the Planning Board and the parties. The following link to a Yale University Decibel Level Comparison Chart gives you some insight into various sound levels: Chamber music, in a small auditorium 75-85; Vacuum cleaner 75; :normal conversation is 60-70 dBA. See https://ehs.yale.edu/sites/default/files/files/decibel-level-chart.pdf.

Despite the neighbors' continuing efforts since early June 2019 to obtain compliance with the Conditions and to enforce the mandated sound monitoring equipment, Jim Young only this week finally confirmed that Rams Head only got the required equipment January 16, 2020. But, Mr. Young would not advise the neighbors of whether and how many times the required computerized data disclosed violations of the unreasonable noise requirements under the Ordinance and Conditions.

Of course, if Code Enforcement was doing its job to ensure compliance by Rams Head and the Owner, we would not have had these two above recordings to review. You will recall that when Jim Young was asked at the November meeting whether Rams Head had the equipment---he was clueless. History teaches us that neither the Board nor the neighbors can rely on that sound monitoring equipment or Code Enforcement to gain compliance by the Owner and Rams Head with the Sound Ordinances—or any other Conditions for that matter.

It is apparent that the only way to achieve Rams Head's compliance with the Unreasonable Noise Ordinance is to take away any right of the Owner or Rams Head to have ANY amplified music on the Property after 8 P.M. and probably before 8 P.M. as well, as the two recordings above were before 8:00 P.M and never went below 75 dBA. The Record shows Rams Head is the epitome of a Key West Bad Neighbor. That alone is reason enough to deny the Request.

The Parking and Congestion Nightmare & the Owner's Specious Parking and Trip Report

The Request seeks to change both of these following Conditions that were *never completed* and as is obvious they are preconditions to A "Conditional Approval Permit." So these were IMPORTANT to the deal leading to Res. 2011-059:

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

2. The Parking lot shall be reconfigured and maintained to include two (2) compact car spaces in order to protect the root system of large trees on the site, six (6) standard vehicular spaces, one (1) handicap space, and forty (40 bicycle/scooter spaces on the lot.

The Board should note that the Conditional Approval Permit is renewable annually. Several affected neighbors met with and wrote to Greg Veliz several times about the Owner's and Rams Head's ongoing violations of the Conditions and pleaded with him to use his power as City Manager to achieve compliance, because he has the power to refuse to renew or to revoke that permit. He never even bothered to respond to our requests. So, please realize that the only way to gain compliance with Res. 2011-059 is for the Board to take a stand against the Owner and Rams Head on the Request.

The Ordinance Parking Violations

The Request seeks to change the parking agreed to under #2 above on the Site Plan-"Relocation of 2 bicycle parking spaces near trash area to elsewhere on site." The Record shows all parking spaces were to be created and maintained as drawn on the approved site plan, but Rams Head never did so, and in fact already has eliminated several of those places with its errant garbage placement and too many trash cans. In summer 2019, responding to many neighbor complaints to the City, the Owner started building fences without HARC or City permit approvals—in the wrong place—on Terry Lane and not where sited on the approved Site Plan. When the Owner was called on this by the neighbors, the Owner then submitted the wrong site plan to the Permit Department, and then tried to relocate and install the garbage dump fencing where it had illegally been storing the garbage--right on Terry Lane. You can still see the illegally placed posts on Terry Lane—not where the approved Site Plan required them to be. This change sought in the Request impacts the landscaping plan, site plan and parking requirements, and therefore implicate all Conditions operations and mitigation for the entire consumption space, buffering and logistics on the Property.

Section 122-62 (b)(1)(f) requires that the Request "clearly described as part of the conditional use application" these "characteristics". Section 122-62(b) is quoted in bold below:

(b)Characteristics of use described. The following characteristics of a proposed conditional use shall be clearly described as part of the conditional use application:

(1) Scale and intensity of the proposed conditional use as measured by the following:
a. Floor area ratio;
b. Traffic generation;
c. Square feet of enclosed building for each specific use;
d. Proposed employment;
e. Proposed number and type of service vehicles; and
f. Off-street parking needs.

Code Section 108-572 is quoted in bold below and requires:

Sec. 108-572. - Schedule of off-street parking requirements by use generally.
Off-street parking spaces shall be provided in accordance with the following schedule for motor vehicles and bicycles:

			Minimum Number of Parking Spaces Required For:	
Use			Motorized Vehicles	Bicycles As % of Motor Vehicles
(9)	Restaurants, bars and lounges		1 space per 45 square feet of serving and/or consumption area	25%

This is pretty darn simple and it is clear as a bell. Section 108-572 is MANDATORY.
For Applicant's "indoor/outdoor consumption area of 6,637 square feet," doing the math- the Code requires 147.5 off-street parking spaces for the bar/restaurant, only 25% of which can be bicycles/scooters.

Inexplicably, the Conditions only require 2 compact, 6 standard, 1 handicap [total of ***nine***] vehicle spaces, and 40 scooter/bicycle parking spaces although the Ordinance only allows bicycles to be 25% of the parking requirement. Rams Head's parking is already woefully inadequate for a 150 seat restaurant with its approved 6,637 square feet of flexible consumption area. Even if 5,836 sq. ft. of consumption area is used the Ordinance requires the Owner and Rams Head to have 129.7 parking spaces only 25% of which (32.4) can be bicycles/scooters.

The result—there's a parking and traffic nightmare in the Bahama Village. 806 Whitehead Street is part of the Property. It is HMDR and has no allowable commercial uses under Res. # 2011-059, which includes 806 Whitehead and the Terry Lane parking lots. Parking is a conditional use in the HMDR District and the Board can and should require the Owner to convert all of 806 Whitehead Street to the maximum number of automobile parking spaces as a condition of the Restaurant Conditional Use being allowed to go forward. Since the preconditions have never been met within a year, Res. 2011-059 is void, and certainly since these preconditions for a Conditional Approval Permit, per Ordinance 10-22 were never met this Board should deny the Request, and should since the matter is before the Board, revoke Res. 2011-059.

Ordinance Trip Generation Violations

Rams Head must also account for the trip generation of the Conditional Use and changes sought in the Request under Sec. 122-776, which is set forth below in bold.

Sec. 122-776. - Intent.

(d) In order to manage the impacts of future development on transportation and public facilities, the city shall limit the intensity of development within the HNC district by establishing the following thresholds within subdistricts HNC-1, HNC-2, and HNC-3, respectively….
(2)Within the HNC-2 and HNC-3 subdistricts, land use activities shall generate no more than 50 trips per 1,000 square feet of gross leasable floor area per day.

Again this is MANDATORY. The Owner's Application for Res. # 2011-059 was for "flexible, indoor/outdoor consumption area of 6,637 square feet to be located in the HNC-3 zoning district only."

The Owner submitted a Traffic Parking Report. Since the applicable Ordinance required materially more than NINE vehicle parking spaces the Owner submitted specious and fallacious Parking and Traffic Study. The Study admittedly ignores the Ordinance's applicable HNC-3 zoning mandate for both parking and trip analysis because the numbers wouldn't work, and instead uses fallacious reasoning and misapplies applicable criteria. Candidly, the Traffic Parking Report flat out misrepresents that the traffic congestion and parking problems in the surrounding neighborhoods would decrease from conversion of the then almost nonexistent commercial retail use (a few of Ed Swift's carts not being used at that time) to a 150 seat, 6,637 square feet consumption area restaurant and bar (lots of bar) use.

The Staff Report and Board accepted this without comment. The Traffic Parking Report makes an admission in its footnote 1, along with admitting it was ignoring the Ordinance's mandatory required method for analyzing trip generation in HNC-3 zoning areas:

> "The HNC-3 zoning district requires trip generation to be measured in terms of trips per 1,000 sq. ft. of gross leasable floor area per day. However, for restaurants and other establishments with significant outdoor activity area, the ITE (e.g. Institute of Transportation Engineers) indicates trip generation by floor area is an inaccurate measure of intensity**, due to the additional intensity associated with the non-floor area (i.e. outdoor) portions of the site**. To mitigate the potential inaccuracy, gross leasable area used, instead of just the gross leasable floor area, and includes indoor and outdoor activity, thereby incorporating the additional potential intensity of the outdoor (non-floor area) uses." (Emphasis added.)

Notably, the ITE data used in the Report is from *urban environments*, not the Florida Keys or Key West, which is why Key West's ordinances mandate a specific, simple method and procedure for measuring trip generation in the HNC districts.

If the Traffic and Parking Report followed the Ordinance's mandatory requirements, the projected Trip numbers would be between 71.10 and 73.5 trips per day depending on whether a 6,637 sq. ft. or 5,836 sq. ft. consumption space is used. In short—the trips are materially over 50 trips per day.

Attached to this email is section 3 of the Neighbors' Opposition filed in August 2019 and is part of the Record. One only has to spend a day in the shoes of the neighbors to realize the Trip and Parking Report submitted in 2011 was "made to order" solely to reach a trip analysis under 50 trips per day and uses trumped up reasons for 9 vehicle parking spaces rather than the 129 plus spaces required by Key West's Ordinance. Unfortunately the staff and Board did not kick the tires on the traffic and trip report at that time to expose it as a sham, but the trips per day (during non-pandemic times) far exceed 50 trips per day and the Bahama Village has a parking nightmare. The Planning Board's review of the Request is de novo. In analyzing the proposed modification of Res. # 2011-059—Rams Head must address the original sham trip and parking report and properly apply Key West's ordinances for both trips and parking.

What about the Garbage, Stench and Congestion?

Rams Head also wants to change these interrelated Conditions of the Conditional Use:

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

3. The waste and recycling handling shall be screened from adjacent properties and public rights-of-way by appropriate fences, walls or landscaping in accordance with Code Section 108-279, and the area shall be enclosed on all four sides with a roof and doors for access."

General Conditions:

11. Service vehicles are prohibited from using Petronia Street and Terry Lane and the Terry Lane parking lot for deliveries.

12. All waste pickup shall be daily via Whitehead Street."

The Request seeks to have trash/garbage picked up on Petronia and not on Whitehead despite the agreed Conditions requirement and repeated and numerous neighbor complaints. The Conditions are unambiguous--the Owner's and Rams Head's garbage must **be picked up daily from Whitehead Street.** But, for the entire time of Rams Head's operations their garbage is only picked up three times a week and NEVER on Whitehead street. They have violated those conditions every day of operation for every year since 2011. Code Enforcement, Greg Veliz and the Planning Board have done nothing about it. How can they claim in the Request that Waste Management can't find their garbage cans on Whitehead when Rams Head's garbage has never been picked up on Whitehead?

As to Code Enforcement getting together with them and claiming it is a bad idea: First, the Planning Board has advised neighbors affected by the Bad Situation at Rams Head that the Planning Board can't enforce the Board's Conditions—rather we are stuck with Code Enforcement's failures to enforce them. The reverse is true for Code Enforcement. It is not a policy maker and Code Enforcement doesn't have any say in making the Conditions for this conditional use—Code Enforcement's role is to enforce those Conditions which refuse to do. If Ed Swift's trolley can stop on Whitehead next to his Property several times a day to drop off his customers and pick up drunks, Waste Management can certainly pick up his alleged tenant's garbage there seven days a week. Second, from all objective appearances to the neighbors, and as the Record clearly

demonstrates Code Enforcement is doing terribly at their job. The Record and the video of the 75 dBA amplified music links above demonstrate that Code enforcement has yet to bring Rams Head and the Owner into compliance with any of the Conditions or applicable ordinances—since 2011. The failure to have garbage picked up daily or on Whitehead, or to have the required walls and roof for garbage storage properly sited on the Property—when those are Conditions subject to a Conditional Approval Permit, per Ordinance 10-22- Conditions subject to an associated annual inspection. In short, Code Enforcement isn't doing their job.

Rams Head also objects to putting a roof on the garbage enclosure that the Owner was required to have permitted and built *before* any occupancy permit, license, or conditional use permit approvals were to be issued. To date they have still not been done. As support the Request raises setbacks as a reason—REALLY…. The Record shows most of the Owner's construction on the Property has been done without permits or HARC or the tree Commission approvals. Last year the neighbors caught them illegally putting in posts on Terry Lane and complained to the City, who made them stop. By the way, it took going to several City officials because the response from zoning to one of the neighbors complaining was, "its Ed Swift's property and he can do what he wants with it." HARC and the Planning Board hear and grant setbacks, and Res. #2011-059 was approved by both bodies and that alone eviscerates that specious argument. Sec. 108-279 mentioned in this Condition is a minimum requirement and sets no outer limits.

In the Request Rams Head claims the roof is bad because of odors. 1st, if Rams Head's and the Owner's garbage was picked up daily as required—the garbage would have no time to ferment and the neighbors wouldn't have to experience the stench they have been complaining about for over a year. 2nd In the infamous March 2015 Minor Modification the Owner and Planning Board moved all consumption area out of the front of the 318 Petronia Street building (no commercial uses were allowed in the rear) and the new site Plan neither shows nor allows any commercial activity in that building under the Conditional Use Permit as modified. Undeterred Rams Head is using it for storage and what else no one knows, but Rams Head can certainly store its garbage inside that building—and air conditioned garbage is unlikely to ferment if Rams Head has it picked up daily like the are required to do.

It should also not be lost that the conditional uses were granted based on the parties' understanding that the corresponding Conditions imposed could and would be met to "mitigate" the "conditional" restaurant and bar operations. If Rams Head is now claiming it has too much garbage in their conditional restaurant use for the sited storage shed with a roof and walls to accommodate its garbage with daily pickups, then Rams Head has too much garbage being produced daily under the Conditional Use.

The Planning Board's answer cannot be to lessen the agreed upon mitigating restrictions, but rather, your response must be to reduce the number of seats and patrons Rams Head can serve and to reduce, not increase, Rams Head's hours of operation to the point where Rams Head can comply with the agreed upon Conditions for the bar and restaurant conditional use on the Property. With fewer seats and fewer operating hours less garbage will be generated. The Owner agreed to the Conditions and they run with the land. If the Owner and Rams Head cannot or don't want to and continue to refuse to abide by those Conditions, then they should not be entitled to any of the restaurant/bar uses for which each and every one of those conditions alone and in combination are and were a **quid pro quo**.

Granting the Request Would Make a Bad Situation Worse

As to the Hours of Operation, Rams Head seeks even more time during which to adversely impact the neighbors. Rams Head has ignored to date the Conditions' hour restrictions with impunity —openly publishing opening times a half hour earlier than allowed—with no push back from Code Enforcement or any other City Official despite neighbors innumerable complaints. The Condition could not be clearer:

General conditions:

10. Hours of operation are limited from 9am to 11pm daily except during special city sanctioned events such as Fantasy Fest and Goombay.

The negotiations and agreement and mitigation struck in Res. # 2011-059 with those operating hours were a material part of the deal. The Record shows Rams Head is NOT a neighborhood serving business, unlike other restaurants mentioned in the Request. That and misconduct shown in the Record demonstrate the Owner and Rams Head are the personification of Bad Neighbors. That alone is reason enough to deny the Request for more hours than the FOURTEEN HOURS A DAY THE NEIGHBORS MUST SUFFER WITH RAMS HEAD'S NON NEIGHBORHOOD SERVING NUISANCE OPERATIONS.

But, Rams Head's disregard and contempt for the neighbors' rights in its operations goes much further, and includes Rams Head's owner's retaliation against neighbors who file complaints with Code Enforcement as to Rams Head's innumerable violations. Indeed, Rams Head's owner had the unmitigated gall, within an hour of a neighbor's complaints about Rams Head's illegal operations, including having 38 more seats than allowed, to force a Key West police officer to go to that complaining neighbor's door and threaten that neighbor with arrest if she ever went on Rams Head's property again, even as a customer. He did that in retaliation because she complained about Rams Head's lawlessness, and he also did so as an intimidating message to her and her neighbors to stop complaining. So much for ***public*** restaurant/bar licenses in Key West or compliance with the Florida Constitution's protection of victim rights.

But, addressing Rams Head's attempted comparison—none of them have the intense amplified music that Rams Head has and abuses. In fact Blue Heaven only occasionally has pleasing, low decibel music, respectful of and sheltered by barriers from its neighbors. AJ Lunas, which is out of business and its successor, have limited hours and very few customers and no noise. They all strive to be respectful of the neighbors and abide by and within the parameters of their respective conditions. Indeed, some neighbors testified in their behalves at Planning Board meetings because they are neighborhood serving businesses that try to respect Key West's Good Neighbor policy.

In contrast, the neighbors struck an agreement with the Owner of the Property that was embodied in Res. 2011-059 and it runs with the land/Property. Rams Head knew or should have known the deal and all the applicable Conditions going in and has and continues to refuse to honor them. The affected neighbors rightfully conclude and the Record shows Rams Head could care less about the neighbors' quiet enjoyment of their properties, and Rams Head is NOT a neighborhood serving business, and has disrespected the neighbors seven days a week and 365 days a year. Rams Head's ownership and management business operation mentality seems to be one of idolizing only money and power—and certainly has no concern for its neighbors—its clients are almost all from outside the Bahama Village. Because of the Owner's and Rams Head's intentional abuses of its neighbors' rights to the quiet enjoyment of their properties shown in the Record, they do not deserve the conditional uses they already enjoy and abuse, let alone the changes Rams Head requests.

While the Request doesn't mention Condition No. 5 it too must be reviewed, because Rams Head is asking the Planning Board to change what Rams Head and the Owner have never complied with.

Conditions required prior to the issuance of a certificate of Occupancy.

5. Completion of all improvements as depicted on the site plan.

Much of this remains to be done—including things the Request asks to be waived. It is time for the Planning Board to require 100% of the Conditions be complied with. There should be no retrenchment from the Conditions, but the Owner and Rams Head must be forced to honor the Agreement of Res. 2011-059. We suggest creation of a compliance deadline, and then having the Owner come back in six months after achieving

initial compliance for reevaluation—and require submission to the Board and neighbors the sound monitoring equipment data—because Code Enforcement is not using it to seek compliance. If they do not comply, then the Conditional Uses—Not the Conditions—should be whittled away until compliance is reached. That way the Planning Board does not lose total control of this mess to Code Enforcement, who for whatever reasons is ineffectual and perhaps uninterested in achieving compliance with the Conditions.

In conclusion, not only should the Planning Board deny the Request, but the Planning Board should use this as an opportunity to make a Bad Situation better, rather than as Member Lloyd commented in January, giving the Owner [or Rams Head] what they want and only making a Bad Situation worse.

Thank you in advance for your attention to this matter and,

Sincerely,

Mark Furlane, Co-Owner of 819 Terry Lane
Todd Santoro, Owner 818 Whitehead Street
David Amendt, Owner 815 Whitehead Street