

Dear Planning Board Members:

Re: Factual and Legal Opposition to Rams Head’s Application to Gut Mitigating Conditions Designed to Protect Affected Neighbors from Operational Nuisances

Please find the following containing my position on applicable ordinances and other relevant analysis of Rams Head’s application to modify Res. # 2011-059.

I. As shown below under applicable Ordinances the Planning Board’s decision on the Application to modify Res. # 2011-059 (Agenda Item 3) for this property in the historic district shall be advisory to the City Commission.

Ordinance 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.....

C. Modifications of development plan:

.....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.

Under Sec. 108-196(a). - Review and action by planning board.

(a)After reviewing a major development plan or a minor development plan for a property and staff recommendations therefor, the planning board shall act by resolution to approve, approve with conditions, or disapprove it based on specific development review criteria contained in the land development regulations and the intent of the land development regulations and comprehensive plan. The planning board resolution shall provide written comments documenting any conditions of approval that the planning board finds necessary to effectuate the purpose of this article and carry out the spirit and purpose of the comprehensive plan and the land development regulations. If the development plan is recommended for disapproval, the planning board resolution shall specify in writing the reasons for recommending such denial. **The planning board's decision on a major development plan or a minor development plan for a property**

in the historic district shall be advisory to the city commission. The decision on a minor development in the historic district shall be placed on the city commission's consent agenda for ratification.(b)The planning board's decision on a minor development outside the historic district shall be final unless appealed. The board may approve, approve with conditions or deny the application.

Therefore, under the Ordinances the City Commission is the final approving body for this Application to modify Res. # 2011-059.

II. In the Application 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 Application errantly asserts Section 108-91(C)(4) governs the Request. But, Article 122 of the Code of Ordinances governs all such requested 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.

After discussing this with the Planning Board Manager the Staff Report agrees that City Code Section 122-62(c) applies to the Application, requiring the Applicant to clearly establish all applicable criteria in Section 122-62 (b) and (c). However, the Staff Report then proceeds to mistakenly ignore several critical criteria the Applicant was required to present in its Application and establish factually with regard to **scale and intensity of proposed changes to the Conditional Use. The Staff Report without evidence errantly concludes “no changes in traffic generation are proposed” and “There are no changes to off-street parking.”** But the request is for a 7:30 a.m. opening, which would add 1 ½ hours of trip generations to the day seven days a week and would start the trip generation at 7:30am. Even the Staff’s recommended 1 extra hour of operations has a material impact on scale and intensity under the required criteria that must be evaluated.

If the 7:30 am or 8:00 am opening are allowed, when an affected neighbor drives their children to school at 7:30 am, upon their return to the neighborhood all available parking spaces would likely be taken by a Rams Head patron because of the change in starting time. Rams Head has only 9 vehicle parking spaces and 40 bicycle parking spaces. The vehicle parking spaces are woefully inadequate. Key West requires for this restaurant:

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%

Doing the math. Rams Head has a 150 seat restaurant with an 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. Inexplicably, the Conditions only require Rams Head to have 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.

The result—there’s a parking and traffic nightmare in the Bahama Village. Res #2011-059 was granted based on the assumption that the hours of operation impacting the neighborhood were 14 hours. The Planning Board therefore must analyze the impact of additional trips generated by 1 ½ hours additional use. Rams Head does not address this likely impact. A traffic study should be included with the Application and this Board must assess the Application’s impact on trips and traffic and parking.

Also, Applicant does not address and the Staff Report also erroneously concludes there is no change in employment. If the 1 ½ hour extension is granted that is 547.5 extra hours of annual operations. Assuming ten employees at that is an extra 5470.50 hours of employee/hours annually, which at the standard annual hours per employee of 2080 per year, is 2.63 extra employees per year. Yet, Rams Head does not address this and as the record shows, Rams Head has not complied with the employment requirements of Res, 2011-059.

Applicant does not address and the Staff Report erroneously concludes with no evidence that there will be no increase in service vehicles. But the Applicant seeks 547.5 more annual hours of operations, so without any facts or analysis that conclusion cannot be made. The same is true for the increase in garbage with an applied for 10 ½ hours a week extra of garbage production.

806 Whitehead Street is part of the Property. Look at the Staff Report and its attached site plans and descriptions. The Staff Report shows 806 Whitehead and the Terry Lane parking lots have no allowable commercial uses under Res. # 2011-059, or otherwise. The back of the house of

the 75' building fronting on Petronia Street also has no approved commercial use. Parking is a conditional use in the HMDR District and the Board can and should require the Owner to convert an additional part of 806 Whitehead Street to automobile parking spaces as a condition of the Restaurant Conditional Use being allowed to go forward, especially if the Planning Board is considering allowing an additional 1 ½ hours of extra operations. Trash can also be stored in the Back of the House.

Staff also recommends allowing two spots to be added to the existing bicycle rack, but Rams Head is already violating the parking Conditions, and the suggestion does not meet the Conditions for parking of bicycles and *scooters*. The staff report refers to Sec. 108-643 and also recommends looking at putting bicycles on the Whitehead sidewalk. But the Conditions do not require bicycle racks for 40 bicycles. Res. #2011-059 mandates storage for 40 “bicycles/scooters” and scooters are motor vehicles and cannot lawfully be parked on a sidewalk. Also, a scooter cannot fit in a Rams Head bicycle rack. This begs the question, why do two bike spaces need to be moved if Rams Head and the Owner intend to obey the garbage siting and daily pickup conditions.

The Staff report similarly erroneously concludes without facts or analysis that other Section 122-62 (b) and (c) criteria are not impacted by the Application, but such conclusions are not supported and ignore that the requested modifications impact most all factors because they pertain to all 6,637 square feet of flexible consumption area covered by Res. #2011-059.

Without any acknowledgement in the Application of these criteria in section 122-62(b) and (c), and with no effort by Applicant to meet its burden of establishing compliance with these criteria, and with the defective Staff analysis on these criteria, the Board should deny Applicant’s request to eliminate and weaken the mitigation conditions protecting the affected neighbors from further abuse and the nuisance of Rams Head’s bar and restaurant operations—already for 14 hours a day. To the extent not addressed above, the opposition filed by me and several neighbors, provide additional relevant and material reasons for this Board to deny the Application and not make a bad situation worse.

Sincerely,

Mark Furlane, Joint Owner of 819 Terry Lane, Key West

Name of Meeting-Planning Board Meeting Date: December 17, 2020. Subject Property Address: 318-324 Petronia Street; 802-806 Whitehead Street; and 809-811 Terry Lane - (RE# 00014010-000000; 00014050-000000; 00014060-000000) –

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

Signature: Mark E Furlane

Print Name: Mark Furlane, Joint Owner of 819 Terry Lane, Key West, on: December 16, 2020.