Keri O'Brien

From: Donna Phillips
Sent: Monday, June 08, 2020 2:51 PM
To: Keri O'Brien
Subject: FW: Rams Head's Minor Modification Letter Request
Attachments: Minor Modification Request.pdf; Exhibit 5 to November 2019 Neighboring Property Owners' Opposition to Applications----March 17 2015 Minor Modification Letter.PDF

Please see below comment from Mark Furlane pertaining to CU Amendment.

From: Katie P. Halloran <katie.halloran@cityofkeywest-fl.gov>
Sent: Monday, June 8, 2020 1:45 PM
To: Daniel Sobczak <daniel.sobczak@cityofkeywest-fl.gov>; Melissa Paul-Leto <mleto@cityofkeywest-fl.gov>
Cc: Donna Phillips <donna.phillips@cityofkeywest-fl.gov>
Subject: FW: Rams Head's Minor Modification Letter Request

fyi

From: Roy Bishop <rbishop@cityofkeywest-fl.gov>
Sent: Friday, June 5, 2020 6:33 PM
To: Katie P. Halloran <katie.halloran@cityofkeywest-fl.gov>
Subject: Fwd: Rams Head's Minor Modification Letter Request

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From: Mark Furlane <mfurlane@bnf-law.com>
Sent: Friday, June 5, 2020 6:31:26 PM
To: Roy Bishop <rbishop@cityofkeywest-fl.gov>
Cc: Shawn D. Smith <sdsmith@cityofkeywest-fl.gov>; Teri Johnston <tjohnston@cityofkeywest-fl.gov>
Subject: Rams Head's Minor Modification Letter Request

Dear Mr. Bishop,

I just learned this afternoon that you received the attached February 7, 2020 letter requesting on behalf of RH Southernmost, LLC ("Rams Head"), a Minor Modification of Conditional Use Approval No. 2011-059. We object to any such modification. It is neither permitted by Key West Ordinances or regulations or policies or under Florida law. I have explained to you several times it is this so-called minor modification process that is abusive to the neighbors, especially given the tri-party agreement (Owner/Neighbors/Planning Board) that led to Res. 2011-059 in the first place.

The Minor Modification issued in 2015 itself was ultra vires, as it did not pertain to a Development Plan, but rather to Conditional Use Res. #2011-059, and there was not the required division 2 of article VIII of chapter 90 notice. Those agreed upon Res. #2011-059 conditions and site plans, include conditions with which the Applicant has never complied. As a result, under the terms of the Conditional Use granted, no occupancy permit, business license or Development Approval under Ordinance Secs. 18-610, 612, 613, 614 should ever have been issued. Now, with both the owner and Rams Head having refused/failed for nine years to comply

with the law (the Conditions), despite neighborhood complaints, Rams Head now seeks their waiver. By the way, despite innumerable requests Rams Head has refused to even meet with the neighbors and avoided meetings with neighbors. I also note that the attached letter/application has no authorization from the Property owner to file this application, and no copy of a lease is attached, if one exists. We have requested and been refused to see a copy of the lease between the owner and Rams Head. So, Rams Head has shown no standing to even make such a request.

The Section under which Rams Head seeks a minor modification (Sec. 108-91(C)(4) does not by its terms apply to the conditional use conditions set forth in Resolution #2011-059. Sec. 108-91(C)(4) only applies to minor and major development plans. Even Key West's applications for major/minor developments and conditional uses differentiate between the two.

The Section on which Rams Head relies (Sec. 108-91(C)(4) states in pertinent part:

> Sec. 108-91. ***Scope; major and minor developments***. The following types of development shall require minor and major development plan approval.(Emphasis added.)
>
> * * *
>
> C. Modifications of development plan:
>
> * * *
>
> 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.

Although that paragraph 4 references "conditions" those are conditions of a development plan, of which a conditional use permit is not. The March 17, 2015 Minor Modification to Res. 2011-059 was issued in error and violated the agreement reached between the affected neighbors and the property owner and the Planning Board allowing the conditional use of the property subject to mandatory preconditions and conditions. That Minor Modification moved around consumption area on the property, including removing all consumption area (over 700 sq. ft.) from the inside of 318 Petronia Street building, (where inside it could do little harm to the neighbors) and moving around other consumption area from the previously agreed to site plan. This was all without notice to the neighbors or their involvement. That contributed in large part to the current increased nuisance suffered by the neighborhood from Rams Head's operations.

Even assuming arguendo that Sec. 108-91was available for changing conditions in Res. 2011-059, all "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." All the required notices in division 2 must be given and the conditional use hearing must take place before the entire Planning Board. Also, since the Rams Head proposes to change conditions with which the Owner and Rams Head have been in noncompliance *ab initio*, the Planning Board should be required to

review the entire Resolution 2011-059. For example, the traffic/trip/parking studies submitted by Applicant in 2011 were inaccurate and in noncompliance with the Ordinances at the time. Moreover, a review of the approved site plans (unaffected by the 2015 Minor Modification) and comparison to the operations and layout of the Property demonstrate the Owner/Rams Head have since 2011 failed to follow the applicable site plans, Landscaping site plan, or provide required parking, in addition to their innumerable other Res. # 2011-059 condition violations.

Since Res. 2011-059 was a negotiated deal between the affected neighbors and Mr. Swift (owner) and that deal runs with the land, for the Planning board to consider any proposed changes in Res. 2011-059, this application opens up the entire Res. 2011-059 for total review. Normally, an applicant might claim due process by opening up the rights of a conditional use with the attendant obligations, but since the property owner and Rams Head have never complied with many, and have routinely violated most of the conditions of Res. 2011-059, only the substantive and procedural due process rights of the affected neighbors have been trammeled upon by the actions of the owner and Rams Head. In short, they have no equitable or legal claim to the high ground when they act as bad neighbors and violators of these conditions—which, whether they like them or not, those conditions were agreed to as a quid pro quo for Res. 2011-059 and became the law to which they are bound.

If the Planning Board is to review Res. 2011-059—everything about Res. #2011-059 needs to be open and fair game, including the Conditional use itself. That certainly would require a traffic, trip, and parking study, as the requested modification impacts all of those aspects of the conditional use as a restaurant in the area. And, this time a specious trip and parking study that flies in the face of Key West's ordinances will not pass muster, and the Owner and Rams Head should not expect an agreement with the affected neighbors this time, because we have learned they cannot be trusted to live up to their agreement memorialized in 2011-059. If the trash/garbage was picked up daily as required, instead of 3 x's a week as they have been doing, the garbage wouldn't have a chance to ferment.

The two bicycle spaces it seeks to relocate—what a joke. The trash area already took them over years ago. The Applicant only has nine vehicle parking spaces and 40 scooter/bicycle spaces, woefully inadequate for a 150 seat restaurant with its Res. 2011-059 approved 6,637 square feet of flexible consumption area (although only 5,836 sq. ft. is referenced in the Minor Modification). The Property already flies in the face of the Ordinance's requirements both legally and factually. Code Section 108-572 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:
> * * *
> (9) Restaurants, bars and lounges 1 space per 45 square feet of serving and/or consumption area (Bicycles as % of Motor Vehicles-- 25%.)

If the Owner followed Section 108-572 it's "indoor/outdoor consumption area even only using 5,836 and not the 6,637 square feet as provided in Res. 2011-059, doing the math---the Code requires 129.69 off-street parking spaces for the bar/restaurant, only 25% of which (32.42 spaces) can be bicycles/scooters. The Applicant has already created a parking nightmare in Bahama Village neighborhood with its commercial activities.

The Application is defective and improper. Unless and until the Applicant brings it into compliance it should not be accepted by the Planning Board for consideration.

I am copying Mr. Smith and the Mayor, because as you know, this letter on behalf of Rams Head relative to the Property has come in the midst of the Owner's zoning change application.

Sincerely,

Mark Furlane, 819 Terry Lane, Key West