

Minutes of the Key West Planning Board

October 20, 2011

Approved November 16, 2011

Ms. Tennyson returned to the dias.

- 4 PS Zoning District Ordinance - An ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled "Zoning" of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

This item has been postponed to the November 17, 2011 meeting.

- 5 Zoning in Progress - A resolution of the City of Key West Planning Board recommending to the City Commission the invoking of Zoning in Progress for the property known as Peary Court (RE# 00006730-000000); directing Planning staff to consider appropriate amendments to the Future Land Use Element of the Comprehensive Plan and Land Development Regulations in response to the proposed sale of the military property to a non-governmental entity, and assigning an interim zoning designation to the property; providing for an effective date.**

Mr. Klitenick disclosed that he has a conflict on this matter. He has not been formally retained, but has provided some advice and attended a meeting on behalf of one of the groups that is putting forward a proposal on this project. Mr. Klitenick left the dias during the discussion.

Ms. Monnier gave members an overview of the zoning in progress (ZIP). She informed members that in April of this year, the City was put on notice that the United States Navy and its housing partner Southeast Housing, LLC would be selling the property commonly known as Peary Court and all of the structures on it to a private entity. Since that time, planning staff has been coordinating with the Navy and Southeast Housing, and officials from its subsidiary company, Balfour Beatty Communities to understand the unique characteristics of the military property; as the sale would require changes to the City's Comprehensive Plan and Land Development Regulations. The Land Use Element in the City's Comprehensive Plan currently recognizes the property as having a Military (M) Future Land Use Designation, which operates without any land use controls.

Ms. Monnier stated that at minimum, the process required to change the Future Land Use designation and supporting Land Development Regulations will take approximately 12 months from initiation. Consequently, City staff has proposed Zoning in Progress as an interim solution for the lack of regulatory land use controls governing the property as both a protection for the public, and to clearly identify for the seller and potential buyers the entitlements and development rights that run with the land in the event that the property is sold before the new land use designation is approved. Based on preliminary site analysis, a designation of Planned Redevelopment District (PRD) may be the most appropriate interim Future Land Use designation, as the existing site characteristics appear to be most consistent with the PRD district. However, there are aspects of the PRD regulations that would cause the site, as existing, to be inconsistent with some standards of the PRD zoning district. As an alternative, staff also reviewed the MDR district regulations, but identified similar issues. Staff has found that no one existing zoning designation is entirely appropriate as a final zoning designation, or Zoning in Progress designation. However, because of the temporary nature of Zoning in Progress as a regulatory tool, and the flexibility that the law allows in the application of interim designations to protect the public health, safety, and welfare, the PRD designation with some limitations on the types of development allowed in the interim is justified.

In summary, Ms. Monnier stated that the Planning Department recommends the invoking of Zoning in Progress to allow the PRD Land Use Designation and corresponding zoning designation to be used as an interim measure, should the property be sold by the U.S. Navy during the processing of the Future Land Use amendment change

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- Colette Wik, 810 Whitehead
- George Lennox, 817 Terry Lane
- Ken Sullivan, 1107 Whitehead

The property owner, Ed Swift, addressed public comments. He then stated that they proposed to open at 8am so that they would be able to serve breakfast.

Mr. Craig proposed amending condition six to include installation of programmable distributive sound system. Members agreed with Mr. Craig's proposal and amended condition six accordingly.

Board members reviewed and discussed the request with the applicant, staff and members of the public who spoke on the matter. Members addressed neighborhood impacts and concerns on the number of seats, parking on Terry Lane, hours of operation and noise.

Based on the terms of the criteria in the staff report, Mr. Gilleran made a motion to approve the conditional use request to include Planning Department recommendations with the following amendments:

- **Decrease seating from 165 to 150**
- **Change hours of operation to 9am-11pm**
- **Condition #11 - Employment opportunities – have language drafted that is in compliance with all applicable laws opined by the City Attorney**

The motion was seconded by Mr. Oropeza.

Motion carried by 5-1 voice vote (opposed by Chairman Klitenick).

SO ORDERED.

2 PS Zoning District Ordinance - An ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled "Zoning" of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Mr. Oropeza recused himself from this item since the outcome may inure to the special gain or loss of his business associate. Ms. Tennyson recused herself from this item since the outcome may inure to the gain or loss to Monroe County Board of County Commissioners, of which she is an employee. Mr. Oropeza and Ms. Tennyson left the dias during the discussion.

Ms. Malo gave members an overview of the proposed ordinance change to the PS Zoning District. She informed members that the purpose of this amendment is to clarify the uses currently allowed in the PS zoning district, by more clearly defining language regarding permitted and conditional land uses within the Public and Semi-Public (PS) zoning district. Additional clarification and modifications are proposed to the district's dimensional requirements. This request is to specifically allow for amendments to Sections 122-1016(a) and (b), 122-1017, 122-1018, and 122-1020 for clarification pursuant to Section 90-517 and 90-521. The proposed amendments serve to improve the city's efficiency by resolving the following:

1. Standardize formatting of Section 122-1016(b) and (c) , Intent
2. Modify Section 122-1017, Permitted Uses and 122-1018, Conditional Uses to comport with Comprehensive Plan Policy 1-2.6.1
3. Better define uses associated with Essential Public Services and Facilities
4. Standardize dimensional requirements inconsistent with standards in other non-historical, residential, mixed-use and commercial districts

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The proposed modifications should result in the ability of the municipal government to more effectively utilize city property and provide essential public services to the citizens of Key West.

The following members of the public spoke on the matter:

- Margaret Romero, 1615 Washington
- Joanne Alexander, 5601 College
- Joy Brown Taylor, 5607 College #202
- Bart Smith, 624 Whitehead (on behalf of 52 residents)

Mr. Craig responded to public comments stating these amendments are necessary and provide clarification. He added that we believe there is no requirement for amending the Comprehensive Plan and that the existing PS District allows residential use such as nursing homes, rest homes and convalescent homes. Mr. Craig also stressed that “essential public services including but not limited to” means that it is not an exhausted list, which can include homeless shelters. He then stated that homeless shelters serve more than the continually homeless, it can also include all of us who can be homeless in an emergency situation if a hurricane destroyed our homes.

Based on the findings made by the Planning Department, Mr. Gilleran made a motion to recommend to the City Commission the proposed ordinance for the PS Zoning District.

Chairman Klitenick passed the gavel to Vice-Chairman Root.

The motion was seconded by Chairman Klitenick.

Motion fails by 2-2 voice vote (opposed by Mr. Holland and Vice-Chairman Root).

A motion to postpone the proposed ordinance for the PS Zoning District to time certain was made by Mr. Holland and seconded by Vice-Chairman Root.

Motion carried by 3-1 voice vote (opposed by Mr. Gilleran).

SO ORDERED.

Ms. Tennyson and Mr. Oropeza returned to the dias. Mr. Gilleran excused himself from the meeting.

New Business

- 3 Variance - 1210 Washington Street (RE# 00041290-000000) - A request for an 8' fence in the rear and side yard of property located in the HMDR zoning district per Section 122-1183(d).(1).(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 variance request. She informed members that the applicant is requesting variances to allow the installation of an 8' privacy fence in the side and rear yards of the property. The applicant has contacted the neighbors and received letters of support. 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, the Department recommends the following condition:

1. That a Certificate of Appropriateness is obtained for the fence in accordance with Code Section 122-1183(b).

Chairman Klitenick disclosed that he is currently representing parties that are under contract to purchase an adjacent property and that his disclosure does not pose a conflict. Vice-Chairman Root disclosed that he owns property two doors down from 1210 Washington. Mr. Erskine agreed that both disclosures do not pose a conflict.

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SO ORDERED.

RESOLUTIONS

Old Business

- 4 PS Zoning District Ordinance – Consideration of an ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled “Zoning” of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Oropeza recused himself from this item since the outcome may inure to the special gain or loss of his business associate. Ms. Tennyson recused herself from this item since the outcome may inure to the gain or loss to Monroe County Board of County Commissioners, of which she is an employee. Mr. Oropeza and Ms. Tennyson left the dias during the discussion.

Ms. Malo gave members an overview of the proposed ordinance amendment. She informed members that the proposed text amendments were first heard by the Planning Board at a public meeting held November 17, 2011. Ms. Malo stated that based on the public comments given during that meeting; staff identified and analyzed four main arguments: (1) Residential Uses vs. Nonresidential Uses (2) Exclusivity (3) Definition of Essential Public Services and (4) Consistency with the Comprehensive Plan. Ms. Malo stated that in response to these issues, staffs recommendation to amend the LDR’s for the PS Zoning District Regulations remain the same.

The following members of the public spoke on the matter:

- Janice Whittemore, 235 Golf Club Drive
- John Isaksen, 323 Spoon Bill Way
- Audrey Thompson, 5603 College Rd #202
- Robert Munson, 20 Kingfisher
- Steve Black, 227 Golf Club Drive
- Ray Jensen, 57 Spoonbill Way
- Gary Mockus, 22 Kingfisher Lane
- Steve Datzman, 61 Spoonbill Way
- Suzanne Coleman, 233 Golf Club Drive
- Rigoberto Contreras, 23 Kingfisher Lane
- Marilyn Smith, 25 Allemande Terrace
- Jerry Smart, 12 Spoonbill Way
- Joan Baucon, 261 Golf Club Drive
- Joanne Alexander, 5601 College Rd #102
- James Spreitzer, 5601 College Rd #104
- Dennis Crippler, 75 Spoonbill Way
- Sue Brun, 18 Spoonbill Way
- Eilene Black, 227 Golf Club Drive
- Robin Rose, 117 Golf Club Drive
- Edgar Watson Jr, 30 Spoonbill Way #2
- Mark Gambuzza, 214 Golf Club Drive
- Margaret Romero, 1615 Washington
- Bart Smith, 624 Whitehead

Mr. Erskine addressed Mr. Bart Smith’s request that Mr. Browning recuse himself due to his position on the board of SHAL. Mr. Erskine stated that under the law, having a non-paid position on a non-profit board does not constitute a conflict since it does not constitute a gain. Chairman Klitenick stated that Mr. Smith’s objection is noted for the record.

Mr. Erskine then addressed Mr. Smith’s concern regarding the improper motion made after the motion failed at the November 17, 2011 meeting. Mr. Erskine stated that there was no motion that passed; therefore, an additional motion can be made to postpone. Chairman Klitenick stated that Mr. Smith’s objection is noted for the record.

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Mr. Erskine addressed Mr. Smith's concern that an application was not submitted by the applicant. Mr. Erskine stated that there is nothing in Section 90-518 stating that you cannot move forward without an application. Chairman Klitenick stated that Mr. Smith's objection is noted for the record.

Board members reviewed and discussed the request with the applicant, staff and members of the public who spoke on the matter. Members discussed moving "emergency shelters for the homeless and shelters for temporary housing" as item 1 under conditional use. Members then voiced their concern about the city not having submitted an application.

A motion was made by Mr. Browning to recommend to the City Commission the proposed ordinance for the PS Zoning District to include amending Section 122-1017(13) by moving "emergency shelters to homeless" down to conditional use under Section 122-1018, under item 1. Motion was seconded by Mr. Holland.

Motion fails by 2-2 voice vote (opposed by Mr. Gilleran and Chairman Klitenick).

SO ORDERED.

A motion to postpone the proposed ordinance for the PS Zoning District until the next regularly scheduled meeting on March 15, 2012 to include staff direction was made by Mr. Gilleran and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

Ms. Tennyson and Mr. Oropeza returned to the dias.

- 5 Variance - 400 South Street (RE# 00036390-000000) - A request for a variance to the maximum allowed wall height of six feet to the requested eleven feet proposed within the coastal construction control line on a property located within the HCT zoning district per Section 122-1148 (2) and 122-1183 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Cunningham gave members an overview of the variance request. He informed members that the applicant is requesting variances to allow the wall to be increased from its current approximate non-conforming eight foot height to a total of eleven feet within the construction control line. The property is adjacent on two sides to the Atlantic Ocean. As such it is subject to periodic storm surges. The property experiences occasional damage due to its proximity to the water and subsequent storm activity.

Mr. Cunningham informed members that the applicant previously applied for a similar variance to increase the wall height. The variance was denied by the Board of Adjustment through Resolution 07-247 on July 5, 2007. 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, the Department recommends the following condition:

- That a Certificate of Appropriateness is obtained for the wall in accordance with Code Sections 102-152 and 122-1183(a).

The applicant's legal representative, Wayne LaRue Smith, gave members an overview of the HARC process for this request.

There were no public comments.

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March 15, 2012

Approved March 27, 2012

- 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.**

This item was postponed to time certain (April 19, 2012).

- 4 PS Zoning District Ordinance – Consideration of an ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled “Zoning” of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Ms. Tennyson and Mr. Oropeza have a standing recusal. They both left the dias during the discussion.

Mr. Browning disclosed that he was contacted by several members of the public including Bart Smith. Vice-Chairman Root and Mr. Holland also disclosed they were contacted by Bart Smith. Members acknowledged that issues discussed did not prejudice their decision-making capacity.

Ms. Malo gave members an overview of the proposed ordinance amendment. She informed members that the proposed text amendments have been heard twice by the Planning Board at public meetings held November 17, 2011 and on January 18, 2012. After members of the public continued to raise concerns regarding the proposed amendments at the January 18, 2012 hearing, primarily regarding the potential development of Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless, the Planning Board recommended changes to the proposed ordinance that the specific use of Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless be defined as Essential Public Services and Facilities be listed as a conditional use with specific criteria for development and operational limitations. The use was previously considered a permitted use in the PS zoning district. No additional changes are proposed to the original amendment request. Planning Staff recommends the Planning Board forward a recommendation of approval of the ordinance amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 of the Land Development Regulations.

The following members of the public spoke on the matter:

- Vickie Datzman, 61 Spoonbill Way
- Dave Hubbert, 111 Golf Club Drive
- Bob Munson, 20 Kingfisher Lane
- Pete Fazio, 140 Golf Club Drive
- Mark Gambuzza, 214 Golf Club Drive
- Steve Black, 227 Golf Club Drive
- Bart Smith, 1111 Grinnell

Mr. Craig clarified for members of the public floor area ratio and gave an overview of the conditional use process.

Mr. Craig then addressed public comments made by Mr. Smith.

Mr. Erskine addressed Mr. Smith’s concern regarding the improper motion made after the motion failed at the November 17, 2011 meeting.

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Approved March 27, 2012

Members reviewed the request with staff and members of the public who spoke on the matter. Members were in agreement that the proposed amendments protect the public interest by providing clarity, additional oversight and a set of guidelines for development criteria.

A motion to recommend to the City Commission the proposed ordinance for the PS Zoning District was made by Mr. Browning and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

Ms. Tennyson and Mr. Oropeza returned to the dias.

New Business

- 5 Variance - 2718 Harris Street (RE# 00067640-000000) - A request for a rear yard setback and building coverage variances in the SF zoning district per Section 90-391, Section 122-238(4)a. and Section 122-238(6)a3. of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Craig gave members an overview of the variance request. He informed members that the request is for variances to building coverage and rear yard setback requirements to construct a roof addition over a portion of the existing patio. He stated that the applicant previously made a variance request to construct a roof over the entire patio area encroaching into the rear-yard setback up to five feet from the property line, which was denied last year by the Board. This application is substantially different to the extent that there is over a 50% reduction in the area requested for the variance. Further, the encroachment into the required rear-yard setback is no greater than what currently exists. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied.

The owner, Mary Bentley, gave members an overview of the request. She stated that they have coordinated with neighbors.

The following member of the public spoke on the matter:

- Diana Jones, 2721 Harris

Mr. Craig confirmed for Ms. Jones that the variance request is limited to what is on the site plan.

Members reviewed the request with the applicant, staff and member of the public who spoke on the matter. Members acknowledged that the applicant addressed neighbor concerns and commended their efforts.

A motion to approve the variance request was made by Mr. Oropeza and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

- 6 Variance - 906 Johnson Street (RE# 00058740-000000) - A request for variances to building coverage and impervious surface ratio in the SF zoning district per Section 90-391, Section 122-238(4)a.2 and Section 122-238(4)b.1 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**