

RE: 1200-1212 White Street Applications
Subject: Public Comment to Planning Department Staff Reports dated 4/17/14
DATE: 4/16/14
TO: Planning Director Donald Craig (cc: Planner Kevin Bond; ACA Larry Erskine
CC: Administrative Assistant Stacy Gibson (for inclusion in public record)
FROM: Linda Wheeler, Esq.

Parking Variance Staff Report:

1. Page 5 of the Variance Staff Report (VSR) (Criteria 4 Hardship conditions) states: ***"If the parking variance is denied, only a small portion of the existing building could be utilized and the applicant would be deprived of reasonable use of the land and the existing structure. Therefore, hardship conditions exist."***
2. Page 5 of the VSR (Criteria 5 Only minimum variance granted) states: ***"... it would be difficult for the applicant to propose any reasonable use of the property without needing a parking variance."***

These Staff Report statements (highlighted above), are erroneous and misleading representations in the public record.

We have now established unequivocally (by our exchange of emails) that Mr. Mills may use 100% of his building for professional office space (any number of offices, of unrestricted sizes) , as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance. (This is exactly what occurred when Coldwell-Banker opened its real estate and TDC offices directly across the street from this site in the old tire store. That space is almost double in size to the applicant's property and it is 100% successfully occupied for permitted-by-right office use.)

Alternately, the Applicant may use 100% of his building for a retail store (under 2500 sf) and use the remaining floor area for professional offices (any number of offices, of unrestricted sizes) as well as lease the two (2) apartments on the second floor, without triggering any additional parking requirements or creating any need for a parking variance. (In our discussion yesterday, Director Craig stated that this alternate interpretation was "open to challenge," however, this is exactly how the newly-built mixed-use commercial building on the corner of White and United -less than 300 feet

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away from applicant's site- has been successfully utilized, along with 4 residential units on the 2nd floor).

Professional offices and retail sales stores (less than 2500sf) are certainly "**reasonable uses**" for Applicant's property in this HNC-1 district. These "permitted-by-right" uses are codified as "permitted-by-right" uses under the current LDR's (Section 122-807 (5) and (6)). If the planning department (or board) (or Applicant) are of a contrary opinion, their opinion of "reasonable use" is being substituted for the judgment and legislative decision of the elected body (Key West City Commission) who adopted the city's LDR's.

For the reasons set forth above, the following VSR evaluations are erroneous and materially misleading: "**Applicant would be "deprived of reasonable use," or "a hardship exists" or "it would be difficult for the applicant to propose any reasonable use of the property without needing a parking variance."** I request that such statements be corrected and clarified prior to, and at beginning of the Planning Board hearing, and written revised Staff Reports be filed in the city's *legistar* public record.

3. Another misleading and prejudicial remark in the VSR analysis is the following statement: "**only the most recent revised application submitted February 27, 2014**" (*were considered by the Planning Department*).

In 4 different paragraphs of the VSR (and in 10 separate occasions in the CUSR) the Planning Department makes reference to Applicant's "**elimination of some of the previously proposed uses**" as "mitigative." It defies logic and common sense to suggest that withdrawing wholly egregious and incompatible proposals is concessionary to the neighborhood, or mitigative, but regardless of the Planning Staff's opinion, it is unfair and materially misleading to the Planning Board and the public to make representations that only the pending application (for CU 15-seat restaurant and CU retail sales store over 2500 sf) are been evaluated by the Planning Department, and then rely of on withdrawn, previous applications, for conclusion that the

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Applicant's proposals are "mitigative."

The VST evaluation appears to be based entirely on consideration of these "mitigative" efforts (of withdrawing previous, wholly intrusive and invasive conditional uses). If prior proposals are to be considered, then an objective survey should be made and ALL previous versions of the applications should be considered - including those that were less intrusive and detrimental than the ones now pending. (e.g. An earlier version of the application did not include any CU restaurant proposal. In another amended version, a bakery was proposed (with presumably shorter hours, less intensive food service use, less offensive odors, and clearly less overall detrimental impact to the neighboring properties than the current full-service proposed restaurant).

4. The VSR also states the Applicant has demonstrated a "good neighbor policy" by eliminating some of the previously proposed uses."

In point of fact, there have been NO "good-neighbor" efforts. The Planning Staff fails to disclose Applicant's un-permitted activities and illegal business operations during the 15 months his applications have been pending. The city code enforcement office only succeeded in halting Applicant's illegal business operations and un-permitted activities (rental of mopeds and operation of an outside motorcycle repair shop) in mid January 2014 after numerous "stop work" orders, warnings or citations for using the public ROW for private storage and display. The Fire Marshall has also been required to intervene due to endangerment to the upstairs tenants (no CO or no permitted, no fire stops or proper separation been construction area and residential units). These are all activities and violations at this site during the pendency of this case.

Any objective "good neighbor" review should also include Applicant's actions and conduct during the pendency of his Applications. In that regard, the Applicant has made no effort whatsoever to address his neighbors' concerns. The proposed retail sales store is the same size (or enlarged since it now

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requires conditional-use approval); the proposed restaurant is the same size (or larger than initially proposed, although the consumption area was reduced); the same number of seats are proposed; the hours and 7-days-a-week proposed operation of the restaurant remain the same; and the intensity of use (full service) remains the same.

Further, had anyone at the Planning Department bothered to inquire, they would know that there has been no “good neighbor” outreach by Applicant’s agent since attorney Wayne Smith withdrew his representation of the Applicant in October 2013. (I have initiated contact by email to Mr. Trepanier on two occasions since the hearing last month, but no meeting time or place was ever offered by him, nor has he ever picked up the phone to call or email any specific proposals. In fact, he didn’t notify the undersigned attorney for 23 objecting neighbors that he had submitted revised site plans on April 1st. The revised plans (and revised Staff Reports) are known to the undersigned only because Planner Kevin Bonds was specifically asked yesterday (4/15) if any other changes had been made since the hearing was continued 3/20/14.

Conditional-Use Staff Report:

5. Again, the Condition-Use Staff Report (CUSR) states that it is evaluating only the most recent revised application (submitted on February 27, 2014), yet on at least 10 occasions in the CUSR, elimination of previously proposed uses (moped rental concession, engine repair shop and outside display and storage of vehicles) are cited as mitigative actions by the Applicant. (See pages 3; 5 (c & e); 7 (e, c1, c2, c3; 8 (4 & 6c); and 10.)

6. The CUSR findings for criteria for conditional-use review and approval (page 7) are vague, stating nothing more that the pending conditional-use restaurant is “**more compatible**” (than previously proposed uses). It appears that the entire basis of the CUSR analysis and recommendation for approval is based primarily on the premise that its not-as-bad-as-Applicant’s-previously-proposed-applications.

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“More compatible” than previous applications, is not the criteria for consideration of conditional uses. (See Section 122-61; Section 122-62 (a) & (c) (1-6).)

This matter has twice before been heard and continued by the planning board. Over the last 18 months the planning department has received numerous written letters, memos and objections from adjacent neighbors and members of the public. All of the public comments, letters and e-mail communications and all previously filed “written objections of adjoining neighbors” (submitted prior to the last hearing on March 20, 2014) are not currently available to the public or the Planning Board on the city’s *legistar* site. (The undersigned has made a written request for reinstatement of these previous communications and pleadings.)

At the last planning board hearing on 3/20/14, there were approximately 2 hours of presentation and public comments (the hearing was then tabled for further discussion until 4/17/14). During the 3/20/14 hearing, the Planning Department Staff sat through 2 hours of public comments. All of the commentators were adjacent or affected neighbors (except 2) and they expressed very specific and compelling concerns about severe parking shortages, pervasive cooking odors, increase of trip generation, intensity of use, increased waste and containment issues, abatement of pollution, litter, noise and other noxious impacts, and the inability of Applicant’s site to accommodate the proposed conditional use in the **pending** application for a conditional-use restaurant and 18 parking variance. The CUSR two-sentence recommendation, stating: ***“Staff believes that the applicant has attempted to address the concerns of neighboring residents and property owners about some of the previously proposed uses, and their associated traffic, parking, noise and aesthetic impacts”*** fails to address one any the public concerns voiced at the last hearing.

For example: At the 3/20/14 hearing, one neighbor testified that in December 2012 (while applications were pending before the Planning Board),

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Applicant removed a solid masonry wall (without HARC approval or a valid building permit) between the neighbor's property and the Applicant's parking lot. Removal of that wall has resulted in storm water runoff into the neighbor's property, which sits 14" below the Applicant's impermeable parking lot. The neighbor testified that the harm created by the wilful acts of the Applicant continue today. The Applicant has failed to take any affirmative actions, and the CUSR ignores any meaningful remedy of this harmful situation caused by Applicant's actions approximately 16 months ago. Instead, the Planning Department seems satisfied with inclusion of proposed condition 16: (***"On-site storm water retention calculations for the property shall be submitted to the City Engineering Services Department."***) Unfortunately, condition 16 fails to address or cure the very real, harmful and ongoing consequences of this project to this adjoining neighbor.

7. Other statements in the CUST are equally disingenuous:

(A) The Planning Staff Report considers the following actions by Applicant: Installation of hurricane-rated glass; Enclosure (screening) of a roll-out dumpster; Installation of landscaping. ALL of these actions are required by code and should not be credited to Applicant as "mitigative" or voluntary acts.

(B) The CU Staff Report recites *verbatim* Applicant's blanket statement that "***normal service vehicles are anticipated***" as satisfaction of CU criteria 5 (Scale and intensity of proposed CU measuring number and type of service vehicles). See page 5, (1) (e).

Applicant's statement (and its repeated recital in the CUSR) fails to address the specific adverse impacts at this site which it is the duty of the Applicant to address and cure. Presumably, the city Planner also has a duty to do an independent and meaningful evaluation as to whether the proposed CU may be "adequately accommodated" on this site. Specifically, Applicant proposes a myriad of CU and permitted-by-right uses. Certainly the city Planners have available engineering guidelines for an independent determination of whether the single, rollout dumpster, situated in existing rear shed with

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known dimensions, would “adequately accommodate the cumulative total solid waste and recycling containment and storage requirements for these uses and make a technical evaluation of “adequate accommodation” rather than endorsing all of Applicant’s proposed uses and then it becomes painfully obvious after-the-fact that a single dumpster cannot accommodate the totality of waste generated, in the manner proposed. There will be the following specific, known uses. The Planning Department make specific calculation, of “adequate accommodation” at this site, rather than relying on a blanket statement from the Applicant that “normal service vehicles are anticipated.” (e.g. 2795sf of retail sales store + 426 sf of professional offices + 1306 sf of kitchen and food preparation area + 225 sf of consumption area + two (2) rental apartments.)

The Planning Board’s current evaluation that “***normal service vehicles are anticipated***” is meaningless and reflects a lazy, or misleading, approach to evaluation of the “adequate accommodation” available to this site.

8. In other sections of the CUSR, there is mention of erroneous data provided by Applicant (restrooms improperly excluded from floor area calculations for parking requirements (p.3 and 5 of CUSR); and a discrepancy in Applicant’s parking calculations for the retail floor are (p. 6 of CUSR), but these errors have not been corrected by the Applicant or the CUSR.

For the reasons set forth herein, I ask that the erroneous and misleading representations in the Staff Reports concerning Applicant’s parking variance and conditional use applications be corrected and clarified, that a more thorough and objective analysis of the conditional use application be submitted prior to continuation of the planning board hearing.

Thank you for your continued courtesies.

Regards, Linda Wheeler