

To Planning Board Members:

Re: Opposition to Application to Amend Conditional Use Res. 2011-059 as previously modified

Although it is sent from my email this opposition has been reviewed and is also being sent by many other of the affected neighbors. It is our opposition to the Application of RH Southernmost, LLC (“Rams Head”) and its lawyer Richard McChesney to further modify Conditional Use Res. 2011-059. We hereby incorporate by reference the entire record in the applications of Historic Tours of America to change the FLUM and zoning as to this Property currently pending before the City Commission. Most of the Planning Board Members refused to consider most of that record when that application was before you, but it is relevant and material to this pending application.

Rams Head seeks a one-sided gift asking the Planning Board to throw out a carefully crafted compromise among the affected neighbors, the Planning Board and Ed Swift. Rams Head offers no mitigation or protections to the affected neighbors in return. And the Application comes while the Planning Board and its staff know for a certainty that Rams Head and/or the Property Owner have been in continuous violation of most all of the Res. 2011-059 conditions, since shortly after the Conditional Use was passed by the Planning Board in the midst of strong neighborhood opposition. As the Staff Report notes Rams Head has been in violation of most all of the Conditional Use conditions since it took over the bar/restaurant last year.

In the current application Rams Head without justification or any promise to reform its unlawful operations to date, seeks concessions that will only further abuse the affected neighbors and the Bahama Village neighborhood. Rams Head wants to (1) extend the hours of its unlawful operations by one and a half hours (**to a total of 15 and ½ hours of operation**), (2) continue Rams Head’s admitted refusal to have required daily garbage pickups on Whitehead as expressly required in Res. 2011-059, (3) allow Rams Head to continue to ignore the garbage mitigation it and the Owner have ignored since Res. 2011 was approved by this Board in 2011; and (4) moving two nonexistent bicycle (should be bicycle/scooter) spaces to accommodate Rams Head’s and the Owner’s unlawful citing of the garbage dump with illegal posts already in the ground.

During the hearings on Mr. Swift’s requested zoning changes the Board chairman and at least one other Board member ignored all complaints of affected neighbors about Rams Head’s violations and abuses of the neighbors. You stated you could not consider them. You said you could do nothing to enforce the conditions, although you were well aware from the record that Code Enforcement has proven ineffective or unwilling to enforce the Conditions. You told the affected neighbors that you just make the MESS and it is someone else’s responsibility to clean it up. This passing the buck is why greedy, bad Key West neighbors are allowed to continue to exist in Key West.

**At least two board members got the message in the zoning hearings that the Board was just making a bad situation worse.** This Planning Board does have the authority here to not make a

bad situation worse. Planning board Members are not ostriches and you heard about Rams Head's willful and continual abuses of its Conditional restaurant privileges without having to answer to anyone for their violations. This pending Application should be denied and should not be entertained again by the Planning Board until Rams Head comes into and maintains full compliance with all conditions for at least one year, to demonstrate it is willing to operate its bar/restaurant as a Key West good neighbor.

### **The Facts**

**1<sup>st</sup> Request. No roof on the garbage.** The record, including that of the zoning/FLUM incorporated by reference in this opposition, demonstrate conclusively the garbage stench and nuisance from the Owner's and Rams Head's refusal to put up walls and a roof on its garbage storage where the Board sited the storage location or to have garbage picked up daily. These conditions were imposed on the Owner and Rams Head to protect the neighbors from this nuisance that Rams Head and the Property Owner have allowed for years. They merely anticipate and correct for the anticipated violation of the law by Rams Head and the Property Owner of the law:

Sec. 26-31. - Offensive and nuisance conditions prohibited.

No person shall permit, cause, keep, maintain or do any nuisance or contribute to the nuisance, as defined by the laws of this state, this Code or city ordinances, or cause or permit to be committed, caused, kept, maintained or done or contribute to the committing, causing, keeping or maintaining of any such nuisance within the city's jurisdictional limits.

Sec. 26-32. - Nuisances illustrated.

The following are declared to be nuisances; provided, however, that the following shall not be deemed to be exclusive:

(1)All substances which emit or cause foul, obnoxious, unhealthful or disagreeable odor or effluvia, in the neighborhood where they exist.

. The walls and roof were incorporated into the conditional use to ensure the neighbors did not have to live next to this nuisance The stench was witnessed by Planning Board members first hand. Staff recommends that Rams Head comply with the actual cited location for trash storage, which Staff acknowledges Rams Head and the Owner have been ignoring. This Board is also aware Rams Head and the Property Owner have violated all of the garbage related conditions since at least the time Rams Head took over the operations last year. This Board does have control over restating the obvious boundaries imposed in the original site plans, that Rams Head and the Owner ignore, and as Staff recommends that they should be reinforced. This Board also

has the ability to and should say no to Rams Head's request to diminish any of the mitigating factors presently in the conditions.

Board members themselves have witnessed the stench from the Rams Head garbage. If Rams Head and the Property Owner complied with the condition requiring all trash and garbage picked up daily as required, they would not accumulate as much garbage storage and the garbage would not cook in the sun with timely pickups. The garbage cooked in the sun because Rams Head left it sitting there for days before it was picked up. That caused an accumulation of days of garbage, rather than one day's garbage. Much of Rams Head's garbage looks to be accumulated during and after happy hour, after the sun goes down. And during the evening the neighbors are exposed to the nuisance stench from the uncontained garbage. There is no evidence or even argument that a roof will not help mitigate Rams Head's garbage stench odor nuisance that everyone agreed to in 2011 as an essential mitigating condition.

Rams Head cannot establish factually or otherwise that the stench that would be contained with walls and a roof would cause any problem, because Rams Head has never built the mandated walls or roof, or had all garbage picked up daily. The Staff Report recognizes the roof condition was added as a mitigation measure to protect the neighbors from the garbage odors, and the record is clear about that garbage stench emanating from the Property.

Rams Head cannot use its past violations to justify abandoning the roof as a mitigating condition. Without any explanation or factual basis the Staff Report supports the removal of the roof requirement, even though the staff recognizes that the Property Owner and Rams Head have never been in compliance with any garbage storage or pickup requirements. That unsupported and unexplained Staff Report recommendation has no factual or other basis to support reducing this mitigation condition. If given any weight by this Board such an unsupported recommendation destroys any respect for the rule of law or the requirement that the Planning Board decision be based on facts presented by the Applicant and the law. Even an expert witness has to explain their opinion or it is immaterial. And the staff is not an expert on this particular garbage situation that the neighbors have been living with since Rams Head arrived last year. So why does the staff say remove it—no one knows—because the staff report does not explain the recommendation. The Planning Board should not reward Rams Head with more, while Rams Head's violations of these and all other conditions are shown in the record and known to the Board. Affected neighbors advised staff that the back of the house at 318 Petronia is on HMRD land. All consumption space was moved out of that building by the 2015 modification, so no restaurant use is allowed in the building. But trash storage is and the building is or can be air conditioned. Neighbors suggested to the Planning staff that the back of that building be used for trash storage, rather than where the trash storage is located on the approved Site Plan. It would open up space for more parking. Staff did not mention that solution in its report. Rather than the Planning Board rewarding Rams Head for violating the Conditions at the expense of the affected neighbors and giving Rams Head what it wants despite its egregious and ongoing violations, the Planning Board should just say no. The roof should remain as an essential mitigation condition.

. **2<sup>nd</sup> request-7:30 am start time. If anything Rams Head's closing time should be reduced to 10:00 pm and no expansion of hours should occur.** It is a fact that the Property Owner and/or Rams Head have ignored the conditions of Res. 2011-059 as modified since its inception starting with failures to meet the initial time deadlines, voiding the conditional use. As to Rams Head's request to change hours, the record already shows and this Board is aware of Rams Head operating since at least 8:30 am, and advertised that on its website until recently. Even now Rams Head advertises openly on its website that **Rams Head is operating as a bar and not a restaurant.** Its website states:

## **HOURS**

9 AM to 11 PM Daily  
Food served until 10 PM

**How is Rams Head a restaurant from 10PM to 11PM when all it serves are the drunks hanging around past 10 pm.**

The Staff Report recommends an hour earlier opening using opening times of three other restaurants in the area as its sole basis. However, as shown below the Staff Report fails to address relevant factors that demonstrate conclusively that the Applicant should not be given additional operating hours. First, those three restaurants mentioned in the Staff Report are apples and Rams Head is an orange (actually its closer to a rotten tomato)—they are not the same.

**Also, Rams Head already is permitted to be open for neighbor abuse continuously from 9 am-11pm –14 hours. Rams Head wants to be open 15 ½ hours. None of the other three restaurants the staff report mentions are open past 10 pm, and none are open for more than 10 ½ hours a day:**

Blue Heaven Restaurant hours are Monday through Saturday from 8 a.m. - 2:30 p.m., 5 p.m. - 10 p.m. and Sunday from 8 a.m. - 2 p.m., 5 p.m. - 10 p.m. **Daily total hours open worst case 10.5 hours**

• La Creperie French Café hours are Monday through Sunday 7:30 a.m. – 3 p.m. **Daily total hours open worst case 7.5 hours**

• Viv Wine Bistro hours are Monday- Sunday 12 p.m. – 10 p.m., Closed on Wednesdays **Daily total hours open worst case 10**

Also, the Bahama Village Plan passed by the City Commission envisions small, neighborhood serving commercial businesses along the Petronia Street corridor. Rams Head is neither small nor a neighborhood serving business. The others are neighborhood serving. **More importantly, each of those restaurants has proven to be a Good Key West Neighbors. They abide by the Conditions of their conditional use permits. Rams Head does not. Many of the neighbors**

**stood in support of those business when they were applying for more seats because they were neighborhood serving businesses and good Key West neighbors.**

Rams Head has been violating the hours conditions since it opened, opening at or earlier than 8:30 am. Until recently it advertised 8:30 am as its opening time. **A neighbor as recently as Sunday, 12/13/2020 went to Rams Head shortly after 8:30 am and it was open. He bought a coffee and paid with a credit card at 8:40 am.**

If this Board over affected neighbors’ opposition grants extended hours, they should address mitigation measures required to address the impact. Yet, even though required to do so **the Application does not address 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 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. There is an impact. Rams Head does not address this impact. A traffic study should be included with the application and this Board must assess the impact on trips and traffic and parking.

With 3 restaurants on the 800 block of Whitehead and FDOT removing 2 parking spaces in 2022 to upgrade the handicap parking on the block; parking is an even more pressing issue. Neighbors can't even unload groceries close to their house so they have to use wagons to transport life essentials. Between the employees and customers using the parking on the most densely residential block w/o off street parking we pay the price for these restaurants to operate.

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. A casual count of employees at any given time at Rams Head is ten (this may be higher due to kitchen staff), so with ten employees that is an extra 5470.50 hours of employees, 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 and Mr. Swift have never complied with the employment requirements of Res, 2011-059. The city could be collecting \$750/mo from Mr. Swift for this violation alone. Commissioner Lopez is on record stating that he has never seen an advertisement for employment in his Bahama Village office where the resolution recommends it be posted.

Applicant does not address and the Staff Report also erroneously concludes with no evidence that there will be no increase in service vehicles. But there are 547.5 more annual hours of operations, so without any facts or analysis that conclusion cannot be made.

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. 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, especially if the Planning Board is considering allowing an additional 1 ½ hours of extra operations.

Rams Head's amplified sound blares into the night at 90 db violating the unreasonable noise ordinance and Code enforcement does nothing. It took until January of this year for Rams Head to get sound monitoring equipment and it sits there unused by the City of Key West and the amplified music blares on in violation. When this Board required that sound monitoring equipment it assumed incorrectly it would mitigate the damage of a bad neighbor. It does not because Key West doesn't bother to look at it. If it did Key West could solve its budget shortfall by collecting fines from Rams Head for all of its violations. The neighbors recently requested the

sound reports from the City of Key West in a FOIA request however nothing was returned; so it is obvious that Code Enforcement is not obtaining or looking at these reports, assuming the mandated sound monitoring equipment even exists, and there is no evidence it does.

**3<sup>rd</sup> Request. Daily Garbage pickup on Whitehead.** The Planning Board issued that condition as mitigation for a 150 seat restaurant operating in a residential neighborhood surrounded by a narrow Terry Lane and narrow one-way Petronia Street. Rams Head has ignored this condition since taking over the business over a year ago. Rams Head has never complied. It still does not comply and has grease and other refuse still picked up on Terry Lane, and for a year Rams Head violated the daily pickup of all garbage on Whitehead requirement.

The Staff Report recommends denial of this request. The Staff recognizes Rams Head has no legitimate excuse for refusing to comply with this condition and recommends denying this request. This garbage pickup location was part of the integrated mitigation compromises reached with the neighbors for issuance of the conditional use, and there is no legitimate reason for retracting that mitigation effect. If an 18-wheeler can make daily deliveries on Whitehead to the property why cannot the trash be picked up daily there too? Rams Head's refusal and violation of this condition daily to date simply does not make sense.

Now that all garbage, according to the Staff Report, is to be picked up daily as the start of the operations as required by 2011-059, previously violated by the owner and Rams Head, the amount of garbage storage and required storage containers should decrease by from 43% to 55% from Rams Head's and Mr. Swift's prior tenant's previous three and four days a week pick-up schedules with Waste Management. Applicant cannot and has not shown garbage pickup on Whitehead of materially fewer garbage cans a day cannot be done. That was their deal and they must be required to live with their bargain and those mitigation conditions.

Applicant's only reasoning is that Code Enforcement agrees with them. Code Enforcement has no standing to opine on policy determinations, and the record already demonstrates that relative to Rams Heads' operations Code Enforcement either has no interest in or is wholly ineffective at doing the job it is supposed to be doing—enforce all of the conditions of Res. 2011-059.

As the Staff Report recommends, this request should be denied.

**4<sup>th</sup> Request. Move the bicycle space.** The Condition mandates “forty (4) bicycle/scooter spaces on the lot.” That means that forty spaces are required that are large enough to accommodate the larger of the two, which would be a scooter. A bicycle rack does not meet the requirements of this Condition. A scooter will not fit in a bicycle rack and you cannot park a scooter on the side walk because a scooter is a motor vehicle under the ordinances:

**Sec. 86-9. - Definition of terms.**

Automotive vehicle means any self-propelled vehicle or conveyance designed and used for the purpose of transporting or moving persons, animals, freight, merchandise or any substance. The phrase shall include passenger cars, trucks, buses, motorcycles, scooters and station wagons, but shall not include tractors, construction equipment or machinery or any device used for performing a job except as stated in this definition.

The staff report mistakenly refers to Sec. 108-64, which applies only to bicycles.

Sec. 108-643. - Bicycle parking design, lighting and security criteria.

*Each bicycle parking space shall be at least two feet wide by six feet long with a seven-foot minimum vertical clearance. An access aisle at least five feet wide shall be provided and maintained beside or between rows of bicycle parking. A facility for bicycle parking shall offer security including either a lockable storage enclosure or a stationary rack to which the bicycle can be locked. Bicycle rack design must accommodate both U-shaped locks and cables and include such common shapes as an inverted "U" design or a "ribbon" design. Racks shall be securely anchored. Lighting shall also be provided in bicycle parking areas so that all bicycle facilities are thoroughly illuminated and no less illuminated than any motor vehicle parking stalls on site.*

Rams Head is in violation of this condition even assuming it covered only 40 bicycle spaces, as there is no eighty-foot-wide by six feet wide of bicycle storage racks with access aisle bicycle storage rack on the property. But the Conditions is not limited to 40 bicycles; it requires storage for “forty 40 bicycle/scooter spaces on the lot.” Thus, a bike rack does not comply, but those forty spaces must accommodate either a bicycle or a scooter.

Staff recommends allowing two spots to be added to the existing bicycle rack, which as shown would violate Key West Ordinances on size and construction of bicycle storage and more importantly, it does not meet the Conditions for parking of bikes 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 and motor vehicles (scooters) cannot lawfully be parked on a sidewalk.

More importantly, Applicant (nor staff) provides no reasons or justifications for making that change. We can only conclude Rams Head intends to continue to ignore where the garbage must be sited on the Property. Otherwise, this request is not necessary, if Rams Head and the Property Owner properly sited the trash under the approved Site Plan or they more preferably stored it in the back of the air-conditioned house of 318 Petronia. In short, their motivation can only be that they want to continue to ignore the approved site plans..



The record shows the neighbors have brought this to the attention of the City innumerable times. Yet Code enforcement has not enforced the clear and unequivocal conditions relative to garbage storage or pick up or hours of operation or employment or noise standards. Rams Head continues to be in violation of those and other condition as the record demonstrates.

Code Enforcement has acknowledged that Rams Head acquired, only in January 2020, real time access to sound monitoring equipment, yet Code Enforcement has been requested by the neighbors to review the records and determine the number of violations and it will not do so. Such equipment is meaningless when Code enforcement does not use it, and as the record shows Rams Head's amplified music regularly violates the sound limits endangering neighbors and causing a nuisance after residential quiet hours. Amazingly, Code Enforcement recently introduced an ordinance that lessened Rams Head's noise ordinance obligations on the Property, passed under the radar without notice to affected neighbors.

The neighbors do not want to be on the phone with code on a daily basis nor is it our jobs to do so. We want compliance with the conditions just like we are required to comply with city law. Why should Rams Head and Mr. Swift get special treatment? The neighbors know what at least two of the Planning Board members already recognized, that Code enforcement has not stopped the Property owner and Rams Head, so it is up to this Board to do what it can to protect the affected neighbors and not make a bad situation worse. That requires as a start this Board denying any further erosion of the mitigating protections of the Conditions of Res #2011-059.

The Planning Board made a decision in 2011 as to the totality of the appropriate mitigation necessary for a 150 seat restaurant on the property with amplified music, liquor in a residential neighborhood. Nothing has changed justifying lessening of any of those restrictions. In fact, the opposite is true. The record demonstrates only that there needs to be more conditions imposed in Res 201-059, not fewer conditions. In 2011 and in 2015 the Planning Board unknowingly dealt a bad hand to the neighbors. You have known for a year that any concessions to Rams Head and the property owner are only making a bad situation worse. We ask the Planning Board to do the right thing and not reward Key West Bad Neighbors. We ask you to deny all of Applicant's requests for changes to the existing conditions. Also, we request that the Planning Board clarify and strongly reinforce the conditions and site plans that already exist so that the affected neighbors have a fighting chance of getting someone in the City to enforce them.

Sincerely,

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

Cc: (1) City Clerk for filing with Board Agenda Item Comments  
(2) Planning Manager