

Minutes of the Key West Planning Board
August 18, 2011 **DRAFT**

Chairman Richard Klitenick called the Key West Planning Board Meeting of August 18, 2011 to order at 6:00 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

ROLL CALL

Present were: Chairman Richard Klitenick, Vice-Chairman Tim Root, Gregory Oropeza, Sam Holland, Jr., Jim Gilleran and Michael Browning

Excused Absence: Lisa Tennyson

Also in attendance were: Planning Director, Don Craig; Deputy Assistant City Attorney, Larry Erskine; Assistant City Attorney Ron Ramsingh; Fire Marshall, Marcus DelValle; Urban Forestry Manager, Cynthia Domenech-Coogle; Planning Department staff: Brendon Cunningham, Carlene Cowart and Nicole Malo.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Klitenick stated that both he and Mr. Oropeza would be recusing themselves from item 2. He then requested that item 6 be moved up on the agenda after item 2.

A motion to approve the amended agenda was made by Mr. Root and seconded by Mr. Oropeza.

Motion carried by unanimous voice vote.

SO ORDERED.

APPROVAL OF MINUTES

1 July 21, 2011 – Meeting Minutes

A motion to approve the July 21, 2011 meeting minutes was made by Mr. Root and seconded by Mr. Browning.

Motion carried by unanimous voice vote.

SO ORDERED.

RESOLUTIONS

Old Business

2 After the fact Variance - 512 Margaret Street (RE# 00008230-000000) - For an after the fact side-yard setback variance in the HHDR zoning district per Section 122-630 (6) b. of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Mr. Klitenick and Mr. Oropeza declared a conflict of interest and therefore recused themselves. Mr. Klitenick passed the gavel to Mr. Root. Both Mr. Klitenick and Mr. Oropeza left the dias during the discussion.

Mr. Cunningham gave members an overview of the project. He informed member that the request is for an after-the-fact variance for the installation of air conditioning equipment and a pool pump within the side-yard setback. Mr. Cunningham reviewed the criteria's for evaluating a variance. Based on the criteria established by

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the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for after-the-fact variance be denied.

The applicant's representative, Patrick Flanigan with Barton Smith, P.L., gave members an overview of the project.

There were no public comments during the meeting.

(The following public comments were received prior to the meeting and entered into the record)

Comments Received in Favor (3):

- *Anna Maria Prato Manciola, 534 Margaret*
- *Art Kara, 918 Cornish Lane*
- *Ken & Judy Horton, 510 Margaret*

Mr. Browning inquired if permits were ever pulled by the prior contractor. Mr. Cunningham stated that permits were pulled but that final inspections were never done. Mr. Browning then stated that the work was not done illegally; the process was just never completed.

Mr. DelValle stated that the Fire Department is ok with the size of the unit currently in place.

A motion to approve the after the fact variance was made by Mr. Browning and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

Mr. Klitenick and Mr. Oropeza returned to the dias.

New Business

- 6 Conditional Use - 802 - 806 Whitehead Street (RE# 00014010-000100, 00014020-000000) / 320-324 Petronia Street (RE# 00014010-000000), 809-811 Terry Lane (RE# 00014050-000000, 00014060-000000) - A Conditional Use request for a restaurant in the HNC-3 zoning district per Section 122- 868(9) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Ms. Malo gave members an overview of the conditional use request. She informed members that the proposed application is for a mixed use property of approximately 21,520 square feet located at the corner of Whitehead and Petronia Streets. The collective properties consist of five separate parcels. Three of the five parcels are zoned Historic Medium Density Residential – HMDR, including the parking lot that is accessed on Terry Lane; the remaining two parcels along Petronia Street are zoned Historic Neighborhood Commercial - HNC-3. She then stated that the request is for an increase of 125 seats, for a total of 165 seats. The applicant has chosen to limit the number of seats allowed while requesting flexible, indoor/outdoor consumption area of 6,637 square feet to be located in the HNC-3 zoning district only. The site currently is required to maintain the parking lot and 25 parking spaces associated with the existing development. However, the site is located in the Historic Commercial Pedestrian Oriented Area, and the change of use from the established commercial/restaurant uses to restaurant use does not trigger an increase in parking requirements. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for conditional use be approved with the following conditions:

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Conditions subject to a Conditional Approval Permit, per Ordinance 10-22. Conditions subject to an associated annual inspection:

- 1 Approval is limited to no more than 165 seats. At no time does the request for 6,637 square feet of consumption area allow the applicant to increase seating on the site without conditional use review.
- 2 The parking lot shall be reconfigured and maintained to include two (2) compact car spaces in order to protect the root system of large trees on the site, six (6) standard vehicular spaces, one (1) handicap space, and forty (40) scooter spaces on the lot including twenty-five (25) bicycle parking spaces throughout the site.

General conditions:

- 3 No amplified music or live performance is allowed after the hours of 10pm unless approved under a special event permit per Section 6-86 of the City Code or for a special city-sanctioned event within the Petronia Street Commercial Corridor. Amplified music will be regulated by the “unreasonable noise” definition of Section 26-191 of the Code of Ordinances.
- 4 Recycling of applicable materials is required.
- 5 Hours of operation are limited from 8am to 11pm daily accept during special city sanctioned events such as Fantasy Fest and Goombay.

The applicant’s representative, Owen Trepanier with Trepanier and Associates, gave members an overview of the request. He informed members that there is no new floor area and that density would not be increased on the site. Mr. Trepanier suggested an additional condition be added that alcohol sales be consistent with restaurant closing hours.

Mr. Browning inquired if the applicant would be seeking an SRX license. Mr. Erskine gave Mrs. Debbie Swift Batty an overview of the license. Mrs. Batty was in agreement with the license.

The following members of the public spoke on the matter:

- Wesley Calvin, 2811 Fogarty
- Margaret Romero, 1615 Washington
- Stanley Wolkorf, 11 Hutchinson Lane
- Jeffrey Dunaway, 807 Thomas
- Sue Fowler, 824 Terry Lane

Mr. Trepanier responded to concerns from the public comments.

Ms. Cowart informed members 101 notices were sent to surrounding property owners within a 300 foot radius, six letters were undelivered and thirteen comments were received.

(The following public comments were received prior to the meeting and entered into the record)

*Comments Received in **Favor** (1):*

- *Bill Hanney, 809 Whitehead*

*Comments Received in **Opposition** (10):*

- *George & Susan Lennox, 817 Terry Lane*
- *Marci Rose, 810 Thomas*
- *Jeff Turner (no address provided)*
- *Norm & Sue Fowler, 824 Terry*
- *Colette Wik, 810 Whitehead*
- *Barbara Ramey, 615 William*
- *Nancy Paulic, 812 Terry Lane*
- *Ralph Justen, 812 Terry Lane*
- *S. Miller (no address provided)*
- *James Washburn, 917 Thomas*

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Comment Requesting Postponement and/or Voicing Concern (2):

- *Suzanne Washburn, 917 Thomas – requests postponement*
- *Birchard Ohlinger, 817 ½ Terry Lane - concerned*

Members reviewed the request with applicant and staff. Members stated that although the property is zoned commercial, it is still a neighborhood. They voiced their concern on the number of seats requested, traffic on Terry Lane, neighborhood used as a thorough fare and the lack of communication with the neighbors. Members also stated that some concern would be alleviated if neighbors knew who would be occupying the location.

A motion to postpone the conditional use request to the September 15, 2011 meeting to allow the applicant time to coordinate a neighborhood meeting was made by Mr. Gilleran and seconded by Mr. Root.

Motion was carried by unanimous voice vote.

SO ORDERED.

Mr. Root excused himself from the meeting.

3 A proposed ordinance revision to Sec. 110-287 to allow for expanded expenditures regarding educational programs for city staff and the Tree Commission as sponsored by Commissioner Lopez and approved by the Tree Commission.

Mr. Ramsingh gave members an overview of the proposed ordinance. He informed members that the proposed ordinance revision is to Sec. 110-287 to allow for expanded expenditures regarding educational programs for city staff and the Tree Commission as sponsored by Commissioner Lopez and approved by the Tree Commission.

Mrs. Domenech-Coogle clarified for members that members that sit on the Tree Commission are not in the industry or in agriculture. She stated that depending on the conference, most cost \$250-\$300 per person and that Commissioners normally serve two, three year terms.

Mr. Ramsingh informed members that funds received are as a result of compliance settlement agreements, fines imposed by the special magistrate and/or any other compensation paid to the city for damage to trees belonging to the city.

A motion to recommend the Tree Commission Proposed Ordinance to the City Commission was made by Mr. Browning and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

4 Variances - 730 Southard Street (RE# 00011690-000000) - For side, rear and street side setbacks in the HHDR zoning district per Section 122-630 (6) b. c. & d. of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Mr. Cunningham gave members an overview of the variances request. He informed members that the property is located in the historic district and is legally nonconforming regarding setback requirements. The existing structure is in a dilapidated condition and the applicant intends to renovate and expand the structure. To do so, per Section 122-28(b), the applicant is requesting variances to existing building setback requirements since the cost of the proposed renovations exceeds 66% of the assessed value as proscribed in the code. Mr. Cunningham

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then reviewed the criteria's for evaluating a variance. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for the variances be denied.

The applicant's architect, Tom Pope, reviewed the request with members.

There were no public comments during the meeting.

(The following public comments were received prior to the meeting and entered into the record)

Comments Received in Favor (1):

- Bert Bender, 410 Angela

Members reviewed the request.

A motion to approve the variances request was made by Mr. Browning and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

5 Minor Development Plan - 241 Margaret (RE# 00072082-004501) - A Minor Development Plan for the reconstruction of the Key West Bait and Tackle retail shop and second storey offices in the HRCC-2 zoning district per Section 108-91(A.)(1)(b.) of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Ms. Malo gave members an overview of the minor development request. She informed members that the applicant is proposing a Minor Development Plan for the demolition and development of a two-storey structure on City owned property for use as a second floor office and first floor retail space. The total square footage proposed is 22,071 s.f and eight (8) parking spaces are required, although over thirty spaces may be associated with the existing use in the adjacent parking lot on the property. The proposed development meets FEMA requirements. Further, the structure has been designed to meet LEED certification levels and is thus energy efficient. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for the minor development plan be approved with the following conditions:

Conditions to be completed prior to the issuance of building permits:

1. That a signed and sealed elevation certificate is presented to the planning and building department
2. The building is constructed according to ADA exempted Building Plans LS101.

Conditions to be completed prior to the issuance of certificate of occupancy:

3. Development will meet LEED silver certification requirements
4. All lighting fixtures shall meet "Dark Sky" lighting standards

General Conditions:

5. Eight (8) parking spaces shall be provided and two (2) bicycle spaces shall be provided as per the site plan.

The applicant's representative, Owen Trepanier with Trepanier and Associates, gave members an overview of the request.

Mr. Craig clarified that condition five would read eight parking spaces are required, three of which shall be provided within the demised lease area to meet LEED certification requirements, and five of which shall be provided in the adjacent shared-used parking lot.

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There were no public comments.

Members reviewed the request.

A motion to approve the minor development to include the revised condition was made by Mr. Oropeza and seconded by Mr. Holland.

Motion was carried by unanimous voice vote.

SO ORDERED.

PLANNER'S REPORT

• **Variance Procedure**

Mr. Craig informed members that there is a perception that too many variances are being granted. When he first analyzed our difficulties with the ordinance, he assumed the solution would be to adopt new criteria similar to those found in other jurisdictions in the county, i.e. Monroe County, City of Marathon or the Village of Islamorada. The criteria for granting variances were similar to the Key West Code and all required all of the criteria to be met in order to sustain an approval. The criteria from these jurisdictions include a hardship provision.

In order to deal with the increasing number of variance applications, it is suggested the City consider changing the LDRs in two signification but useful ways.

1. Institute administrative variances approved by the Planning Director. These should involve changes of no more than 30% of the following standards:
 - Setbacks
 - Building coverage
 - Impervious surface ration
 - Improvements to residential and commercial building where more than 66% or 50% of value are being proposed when no other variances are required or meet the 30% threshold
 - Parking

Transparency and public involvement in these variances would be assured by a process of notifying the applicant and property owners within 300 feet of the project location that the Director intends to grant the variance. Any appeal after the notice would go to the Planning Board. The applicant could appeal a denial directly to the Board.

2. Adopt criteria more appropriate to area variances; it would fare better by having a more defensible position for either denying or granting variances. With an area variance, the approach is one of balancing between the benefit to the applicant and the detriment to the community.

Mr. Craig stated that if the City does not amend the variance section of the LDRs in some way, in his opinion, the only way to avoid the problems discussed is to amend the standards of each of the zoning districts to lessen the number of variance requests to that limited number that will pass the hardship test and the straight face test by getting rid of soft denial recommendations.

ADJOURNMENT

A motion to adjourn was made by Mr. Browning and seconded by Mr. Klitenick.

Motion was carried by unanimous voice vote.

SO ORDERED.

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Meeting adjourned at 8:00 pm.

Submitted by,
Carlene Cowart
Development Review Administrator
Planning Department