

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report



To: Chairman and Planning Board Members
Through: Scarlet Hammons, AICP CTP, Planning Consultant
From: Katie P. Halloran, Planning Director
Meeting Date: February 17, 2022

Application: **Amendment to a Development Agreement – 541 White Street (RE# 00006730-000200)** – A request for an Amendment to a Development Agreement to construct 48 affordable workforce housing units in the Historic Special Medium Density Residential (HSMDR) zoning district pursuant to Section 90-689 and 122-611 of the City of Key West Land Development Regulations.

Request: Request to amend an existing development agreement between Peary Court Apartments LLC and the City of Key West related to the construction of 48 new affordable residential units

Applicant: Donald Craig / Representative

Property Owner: Peary Court Apartments LLC

Location: 541 White Street- (RE# 00006730-000200)

Zoning: Historic Special Medium Density Residential (HSMDR) Zoning District



Background:

The subject property is bound by Palm Avenue, Eaton Street, White Street, Eisenhower Drive and Angela Street within the HSMDR Zoning District. It consists of one 24 acre parcel under single ownership. The property has historically been utilized as army barracks dating as far back as the mid nineteenth century and redeveloped in the early 1990’s to 160 Navy housing units. The property also housed a 10,000 square foot bank building occupied by Keys Federal Credit Union that was demolished in 2013. The site of the bank building is now proposed to remain an open green area for recreational space.

In 2012 the Navy sold the property to a non-governmental entity thus making it and its 160 units subject to local zoning control. The City Commission adopted Ordinance 12-33 in September 2012 which established the HSMDR zoning district for Peary Court as well as set aside 48 affordable building permit allocation (BPAS) units by recommendation of the State Department of Economic Opportunity to satisfy the 30% affordable housing requirements. The total allowed maximum density is 208 units. The HSMDR zoning also requires that any major development plan be accompanied by a development agreement. Thus, both requests are put forth as part of this application.

Presently, the property is partially governed by a development agreement approved by the City for the former owner and has a site plan for construction of the 48 BPAS units involving many new structures and revisions to the street layout and drainage systems. Based upon zoning, the former owner received approval of the development agreement for adding the 48 units, along with the anticipation that the remaining original 160 units would be converted to market rate housing. The 48 units were never built because in May of 2016 the City Commission voted to allocate \$12 million of its Land Authority funds set aside for affordable housing to the current owner so that the entire property could be converted to affordable housing.

The applicant has asserted that the BPAS allocations for Peary Court occurred prior to the implementation of the energy efficiency/green building prerequisite standards set forth in Sections 86-9 and 108-997. Therefore, the owner has concluded they are exempt from these sections of the Land Development Regulations. However, it is the intent of the City that this opportunity for saving energy, and especially for lowering resident’s utility bills, is not lost. As currently drafted the Development Agreement provides that it is up to the owner’s discretion to build to green building standards.

Request:

This request is to amend an existing Development Agreement pursuant to Section 122-611(e) and 90-689 to construct 48 affordable units as previously allocated. If approved the development would result in a total of 208 units on the parcel.

Process:

Development Review Committee:	December 16, 2021
Planning Board Meeting:	February 17, 2022
HARC Commission Meeting:	TBD
Tree Commission	TBD
City Commission:	TBD
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

As stated above this Development Agreement is required by Section 122-611(e) which states:

- *(e) Any development plan approval submitted for a property in the HSMDR zoning district shall be accompanied by a concurrent application for a development agreement.*

When the HSMDR zoning district was established this requirement was codified. The zoning district was established specifically in terms of density to take into account these additional 48 affordable housing units. The draft agreement has been reviewed by the Planning Department and shall be considered by the Planning Board. The Land Development Regulations acknowledge the findings of the state legislature that enable Development Agreements under Florida Statute, as follows (see Section 90-676):

(1) The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.

(2) Assurance to a developer that, upon receipt of a development permit, the applicant may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in ensuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning and reduces the economic costs of development.

(3) The comprehensive planning process should be furthered by authorizing local governments to enter into development agreements with developers. The intent is to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development.

Development Agreement Review Criteria (Section 90-682):

The City's Land Development Regulations set forth criteria for the contents of a Development Agreement. The specific criteria, as well as the location of the information within the Development Agreement, are addressed below.

(a) Any development agreement approved under this article shall contain not less than the following requirements as provided in F.S. § 163.3227:

(1) A legal description of the land subject to the development agreement and the identification of all persons having legal or equitable ownership therein.

The legal description can be found in Exhibit A of the attachments. All ownership and equitable interests in the property are listed in Section C, Terms of Agreement 1. Legal Description; Ownership and Equitable Interests in the Property.

(2) The duration of the development agreement, which duration shall not exceed five years, but which may be extended by mutual consent of the city and the developer. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of the development agreement.

The proposed duration of the agreement is five years as expressed in Section C, Terms of Agreement 2. Duration of Agreement Renewal.

(3) The development uses permitted on the land, including population densities, building intensities and building heights.

The proposed development is described in Section C, Terms of Agreement 4. Site Plan. The permitted maximum density in the HSMDR zoning district is 8.6 units per acre which allows for 48 additional units. Building heights are not to exceed the maximum permitted height of the HSMDR zoning district.

(4) All documents required to comply with criteria cited in the land development regulations applicable to the subject project.

The applicant has addressed the criteria cited in the Land Development Regulations applicable to the subject project under Section C, Terms of Agreement 4. Site Plan. Also addressed more specifically in subsection (c) as related to the conformity with the Major Development Plan.

(5) A description of the public facilities that will service the development, including designation of the entity that will be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed shall be provided. A schedule to ensure that public facilities shall be available concurrent with the impacts of the development shall also be provided. Such schedule, relating the provision of public facilities or services to events or thresholds in the development, may be substituted for the certain dates required under this subsection.

A description of the public facilities that will service the development are found in Section C, Terms of Agreement 10. Public Facilities. A concurrency analysis showing that facilities will be available at the time of development has been reviewed by staff as outlined and attached in the Planning Board staff report for the Major Development Plan.

(6) The applicant may be required to provide for a performance bond, letter of credit, or similar instrument, to be deposited with the city, to secure the construction of any new facilities that are required to be constructed as part of the proposed development agreement. Alternatively, such construction may be a condition precedent to the issuance of any building permits or other development permissions. If the new public facilities are in place and operating at the time development permits are requested, no such performance bond or letter of credit shall be necessary unless such facilities are not adequate for the project.

Not applicable. A concurrency analysis showing that facilities will be available at the time of development has been reviewed by staff as outlined and attached in the Planning Board staff report for the Major Development Plan.

(7) A description of any reservation or dedication of land for public purposes. The development agreement shall provide specifically how all impact fees and other funding requirements for the project are to be met.

The agreement does not include the reservation or dedication of land for public purposes. All applicable City impact fees will be required.

(8) If land is to be conveyed to the city in discharge of the obligation of any impact fee or other similar obligation, the development agreement shall provide that such conveyance will be by warranty deed and will be accompanied by an environmental audit and a title insurance policy which shall be in an amount not less than the assessed value of the land. The applicant shall bear the cost of these requirements.

Not applicable.

(9) A description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include but not be limited to the following:

a. Any required comprehensive plan amendments or rezonings.

Not applicable

b. Any required submissions to or approvals from the county; the South Florida Regional Planning Council; the state departments of economic opportunity (DEO), environmental protection (DEP), transportation (DOT), health and rehabilitative services (DHRS); the United State Army Corps of Engineers; the South Florida Water Management District; the United States Environmental Protection Agency; or any other departments with competent jurisdiction over any aspect of the proposed development.

Required permits and approvals are outlined in Section C, Terms of Agreement 10. Required Permits and Approvals.

c. If development requirements are not satisfied, action in reliance on the development agreement or expenditures in pursuance of its terms shall not vest any development rights to the applicant/property owner. Failure to perform as specified in the development agreement shall not constitute partial performance and shall not entitle the applicant or property owner to a continuation of the development agreement.

This issue is addressed in Section C, Terms of Agreement 15. Laws Governing this Agreement.

(10) A specific finding in the development agreement that the development permitted or proposed is consistent with the city's comprehensive plan and with the land development regulations. However, if amendments are required to the comprehensive plan or land development regulations, such amendments shall be specifically identified in the development agreement, and the agreement shall be contingent upon those amendments being made and approved by the appropriate governmental agencies.

This issue is addressed in Section C, Terms of Agreement, 13. Finding of Consistency.

(11) The city commission may provide for any conditions, terms, restrictions or other requirements determined to be reasonably necessary for the public health, safety or welfare of city residents and property owners.

This is addressed in Section C, Terms of Agreement 6. Affordable Work Force Housing; Timing of Development; Deed Restriction. As part of this Development Agreement all forty-eight (48) units will be affordable work force housing units.

(12) A statement indicating that failure of the development agreement to address a particular permit, condition, term or restriction shall not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

This is addressed in Section C, Terms of Agreement 14. Compliance with Permits, Terms, Conditions and Restrictions Not Identified Herein.

(13) At the city commission's discretion, the development agreement may provide that the entire development, or any phase thereof, be commenced or completed within a specific period of time.

The proposed duration of the agreement is five years, per Section C, Terms of Agreement 2. Duration of Agreement Renewal.

(b) At such time as the city administrative official has reduced the terms of the proposed development agreement to written contractual form, the administrative official shall transmit such development agreement to the planning board and the city commission with a written recommendation from the development review committee.

The existing Development Agreement was presented before the development review committee on December 16, 2021.

(c) Prior to the first public hearing, the proposed development agreement shall have been reviewed by the planning board, and its recommendation along with the development review committee's recommendation shall be provided to the city commission.

The revisions to the Development Agreement are scheduled before the Planning Board on February 17, 2022.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request for an Amendment to a Development Agreement be **Approved** with the following condition:

General conditions:

1. The Conditions of Approval as provided in the Major Development Plan for Peary Court Development are applicable and binding to this Amendment to a Development Agreement.