

Minutes of the Key West Planning Board

July 30, 2009

Approved August 25, 2009

Chairman Richard Klitenick called the Key West Planning Board Special Meeting of July 30, 2009 to order at 6:05 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

ITEM 1. ROLL CALL

Present were: Chairman Richard Klitenick; Members, Tim Root, Barry Barroso, James Gilleran and Gregory Oropeza.

Excused absences: Michael Browning and Ed Gartenmayer

Also in attendance were: Planning Director, Amy Kimball-Murley; Chief Assistant City Attorney, Larry Erskine; Alan Averette, Lt. Fire Inspector; HARC Planner, Enid Torregrosa; and Key West Planning Department staff, Rodney Corriveau, Brendon Cunningham, Ashley Monnier, Nicole Malo and Carlene Cowart.

ITEM 2. APPROVAL OF AGENDA

Mrs. Kimball-Murley informed members that Item 4a1 has been scheduled for the August 25, 2009 Planning Board meeting. This item will be re-noticed to property owners within 300' radius.

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

Motion carried by unanimous voice vote.

SO ORDERED.

ITEM 3. APPROVAL OF MINUTES

a. Planning Board Meeting Minutes – July 16, 2009

A motion to approve the July 16, 2009, Planning Board Meeting minutes was made by Mr. Gilleran and seconded by Mr. Barroso.

Motion carried by unanimous voice vote.

SO ORDERED.

ITEM 4. ITEMS FOR PUBLIC HEARING

a. OLD BUSINESS

- 1. Conditional Use – 4 & 6 Charles St., 213 & 217 Telegraph Lane (RE Numbers 00001410-000000, 00001430-000000, and 00001440-000000) – An application for Conditional Use approval for a bar and lounge in the HRCC-1 zoning district per**

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Section 122-688 (9) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

This item has been tabled to the August 25, 2009 Planning Board meeting.

2. Change of a Nonconforming Use – 3100 Flagler Ave (RE 00069090-000000) – An Application for Change in Nonconforming Use in the Limited Commercial (CL) zoning district per Section 122-32 (e) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

Mr. Corriveau gave an overview of the change of nonconforming use application. He also stated that the applicant held a neighborhood meeting to discuss the proposed project on July 23, 2009. Based on the criteria in the City Code, the Planning Department recommends the request for change of nonconforming use be approved with the following condition:

- Hours of operation for the facility will be limited to Monday through Friday 8 am to 6 pm, and closed on Sundays.

Mr. Klitenick asked when the nonconforming use ceased. Mr. Rojas stated that it ceased 24 months ago. Staff confirmed that it has been less than 24 months.

Mrs. Cowart informed members that 70 notices were mailed to property owners within 300' radius; 6 were returned and 1 comment received. Mrs. Cowart then read into the record comments from the following:

- Annice Curry, 3100 Riviera

Mr. Oropeza inquired about the outcome of the neighborhood meeting. Mr. Corriveau stated that the neighborhood meeting lasted about an hour and a half and several neighbors were in attendance. According to Mr. Rojas, issues raised at the neighborhood meeting pertained primarily to deed and ownership issues.

Mr. Barroso asked Mr. Corriveau if he was comfortable with how trash and parking were going to be addressed by the project and in particular whether the proposed use would generate large volumes of trash from discarded packing materials. Mr. Corriveau stated that due to the proposed use of the facility, the capacity of the dumpsters would not be a problem. He also stated that per code parking has the same requirements for the proposed use as it did for the existing use.

Mr. Root asked Mr. Averette if any fire safety precautions were required. Mr. Averette stated that the only thing required would be smoke detectors and emergency lighting.

Mr. Root then asked staff if site drainage is addressed since there is a change of nonconforming use. Mrs. Kimball-Murley stated that since there is no physical or structural change, the application does not trigger stormwater analysis.

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The applicant, Carlos Rojas, reviewed the request with members. He stated that they have conducted two studies and this request is a less intensive use. Two ADA spaces are being added. He clarified that the office will be located at the front and loading and unloading will be conducted at the back of the building. Mr. Rojas then stated that several neighbors were concerned with how the previous owner handled site management. He clarified there is now a new owner.

Mr. Barroso asked for reassurance from the applicant that the trash will be contained within the gated area. Mr. Rojas stated that landscape will be added and there will be two gates that will obscure the area. Mr. Rojas also stated that mechanical equipment will be hidden.

Mr. Rojas clarified that the gates will be closed after business hours.

A motion to approve the change of nonconforming use with the condition recommended by staff was made by Mr. Barroso and seconded by Mr. Root.

Motion carried by unanimous voice vote.

SO ORDERED.

b. NEW BUSINESS

- 1. Conditional Use - 207 Petronia Street (RE 00013740-000000) - An application for a Conditional Use Permit to operate a restaurant in the Historic Residential Commercial Core (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, Florida**

Mrs. Cowart informed members that 77 notices were mailed to property owners within 300' radius; 7 were returned and 1 comment received. Mrs. Cowart then read into the record comments from the following:

- Yolanda L. Jenkins, 103 Petronia

Mr. Cunningham gave an overview of the conditional use application. Based on the criteria outlined in Section 122-62 of the City of Key West Code of Ordinances, the Planning Department recommended approval of the 573 square foot Phase I restaurant use.

Mr. Klitenick disclosed that he represented the owner's predecessor in title, who is currently a secured creditor of the property. Mr. Klitenick then added that he was not aware of this until he was presented with the packet. Mr. Erskine agreed that this did not constitute a conflict for Mr. Klitenick.

Mr. Klitenick stated that the authorization form currently states Mr. Dickstein's name; however, if this request is approved, the authorization form needs to be changed to reflect the LLC and Mr. Dickstein as a managing member.

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Mr. Gilleran asked staff for clarification of the use. Mr. Cunningham stated that a coffee shop is considered a restaurant use. Mrs. Kimball-Murley clarified that per the Code, all of the uses as presented would constitute a restaurant, thus the conditional use is for a restaurant.

Mr. Root asked staff how many seats are being requested since the amount requested is different from the amount on the site plan. He then asked if there is a parking requirement for the catering service. Mr. Klitenick stated that he did not think it would be handled any different than deliveries.

Mr. Barroso asked the applicant what is located at the left of the building. Mr. Trepanier stated that this is a mixed use property, with residential upstairs and commercial downstairs. Half of that property is Santiago's Bodega and the other half is a laundry mat. The owner of the laundry mat would like to be released from his lease. Mr. Trepanier then gave an overview of the conditional use request. Mr. Trepanier then clarified that they are requesting a consumption area and not a number of seats; therefore, he is requesting that there not be a limitation put on the number of seats since the consumption area could hold up to 38. He stated the owners would like to be able to grow into the business and add seats as needed. He also stated that Phase II was dropped from this application since it would delay the business from being ready for Goombay.

Mr. Klitenick clarified that the number of seats serves more as an example since the staff recommendation is for 573 square feet consumption area and approximately 25 seats. Mr. Root stated he just wanted to make sure there was no confusion at a later date.

Mr. Klitenick asked staff if they responded to the person who submitted the comment that was read into the record. Mrs. Kimball-Murley stated that staff did contact Ms. Jenkins and clarified that the business is not located next to her home address.

Mr. Gilleran encouraged the applicant to work with City staff to convert the parking space in front of the laundry mat to a loading zone since it is difficult to make deliveries in that neighborhood.

Mr. Barroso stated that he does not have a problem with converting a laundry mat to a restaurant; however, he stated that there is not enough information presented. There is no lighting, landscaping or parking information provided. Mr. Barroso added that restaurants can create a big impact in a neighborhood and he would like to see additional information.

Mr. Trepanier stated that Phase II was dropped partly to neighbor concerns. He clarified that the owners are planning on directing loading and unloading from a commercial space.

Mr. Barroso stressed again that he would like details on paper on how they plan on doing all of the things that come along with running a full scale restaurant.

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Mr. Klitenick stated that he is not sure that the Board can require that of the applicant since the applicant is asking for a change of existing commercial use. He then stated that the role of the board is to look and see if the applicant has met the minimum requirements of the application and if the use complies with the criteria for a conditional use as its set in the Land Development Regulations (LDR). Other issues are more related to building permit issues that are outside scope of what we can do.

Mr. Erskine concurred with Mr. Klitenick and stated that the LDR's lay out the criteria that the members are charged with assessing. Some of the items suggested by Mr. Barroso are required by the Board to weigh in on when it is a development plan. He then stated that he understood where Mr. Barroso is coming from; however, conditional uses normally do not get to that point.

Mrs. Kimball-Murley stated that at the time the applicant was considering a Phase II, it triggered all of the issues Mr. Barroso discussed since it had impacts outside of the existing commercial structure.

Mr. Barroso stated that his intent is that he is looking out for the owners. He would hate for them to invest this kind of money and time and then go into Phase II and run into all of these obstacles. He then added that he exceptionally likes this application but that he is looking at the overall picture and would like the business to be successful.

A motion to recommend approval of the conditional use application for a 573 square foot Phase I restaurant was made by Mr. Gilleran and seconded by Mr. Oropeza.

Motion carried by 4-1 vote (opposed by Mr. Barroso). Motion carried by unanimous voice vote.

SO ORDERED.

Mr. Klitenick then informed applicant that if they return to the Board for Phase II, that they include a very specific set of plans. He urged the applicant to avoid the outdoor seating and limit the seating to what was approved.

- 2. Conditional Use and Major Development Plan - 512 Greene Street and 204-206 Ann Street (RE 00001170-000000) - A Conditional Use for a bar and a Major Development Plan for redeveloping an existing single family home, parking lot, and two historic structures for commercial use in the Historic Residential Commercial Core (HRCC-1) zoning district per Section 122-688(9) and Section 108-91 (A)2 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

Mrs. Cowart informed members that 36 notices were mailed to property owners within 300' radius; 0 were returned and 2 comments received. Mrs. Cowart then read into the record comments from the following:

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- Agnes dePoo, 614 Dey Street
- Dr. Diane Silvia, 510 Greene Street

Mrs. Kimball-Murley gave an overview of the conditional use and major development plan. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request approval with the following conditions:

- Tree Commission approval must be obtained prior to Building Permit issuance.
- The applicant will donate the 1.0 equivalent single family unit associated with the single family resident to the City of Key West through the execution of the donation waiver.
- The applicant will install and maintain a programmable distributive sound system consistent with that described in document prepared by The Audio Bug and submitted on July 25, 2009, to assure compliance with the “unreasonable noise” definition of Section 26191 of the Code of Ordinances.
- There will be no live music at the site unless approved under a special event permit per Section 6-86 of the City Code.

Mr. Klitenick stated that if approved, this would move forward as a recommendation to the City Commission.

Mr. Klitenick then stated that the Board will need a full set of site plans since the plans provided are very hard to read; however, the Board will move forward and hear discussion.

The applicant, Owen Trepanier, reviewed the request with members. He then stated that the owners would like to be opened for Fantasy Fest.

Mr. Don Washburn from The Audio Bug, Inc. gave members an overview of the noise study he conducted for the Greene Street Project. Mr. Washburn stated that based on their evaluation of neighboring properties, sound levels currently experienced in the area and a facility which clearly represents a low-impact usage, they can say with considerable confidence that this property will have no adverse impact on its neighbors with regard to sound or noise nuisance. He then added that unlike many of the higher profile establishments within the entertainment district, this operation should blend into its neighborhood with little if any affect. He recommends that the owners use an in-house sound system utilizing a distributed loudspeaker system intended to control sound levels within the bar area. The system will consist of multiple small, closely spaced speakers positioned to evenly distribute music throughout the bar at moderate levels. The system would be similar to that now used at the Hard Rock Café on Duval Street.

Mr. Trepanier stated that he met with neighbors and their concern was centered around the noise that would be coming from the courtyard. Mr. Trepanier stressed that there will not be live music, DJ or karaoke at this establishment.

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The following members of the public spoke on the matter:

- Suzanne Dowling, 511 Caroline Street
- Paul Hayes, 914 Windsor Lane

Mr. Trepanier addressed the concerns made by the public. He stated that there will be no outdoor speakers. The dumpsters will be stored on site but will be picked up on Ann Street and the courtyard is not intended as a consumption area.

Mr. Klitenick asked how management plans to prohibit consumption in the courtyard since patrons would need to pass through the courtyard to reach the restroom facilities.

Mr. Oropeza asked the applicant the purpose of the courtyard. Mr. Trepanier stated that the courtyard currently exists and the owners did not want to disrupt the existing grade.

Mr. Mathew McCarthy, managing member of 512 Greene Street, stated that there will be security at all doors and signs will be posted that drinks will not be allowed in the courtyard. He then informed members that the bar will have a Cuban theme.

Mr. Klitenick stated the main issues are noise, traffic and smell. He stated he is concerned for the adjacent neighbors and the location of the dumpsters. The applicant will need to obtain an easement that would run with the land for the trash to be removed on Simonton Street, which is another property owned by the same owner.

Mrs. Susan Cardenas, Attorney for the applicant, stated that the owner will record an easement.

Mr. Root urged the applicant to change the location of the dumpsters and recycling containers. It has been his experience that locating the dumpsters in the center of the property does not work since the property owner will then have to deal with the smell and the leaking of the dumpster.

Mr. Barroso requested that there be more noise mitigation in the back of the property and that lighting is directed away from residential area.

Mrs. Kimball-Murley suggested to members that site plan related conditions be wrapped into a single condition with the stipulation that staff review and ensure that these items are all included in a set of plans and are resolved before going forward to the City Commission. Members were in agreement to have Mrs. Kimball-Murley list out the conditions as part of the motion.

A motion to approve the conditional use and major development plan was made by Mr. Barroso and seconded by Mr. Root with a friendly amendment to include the following list of conditions:

- Tree Commission approval must be obtained prior to Building Permit issuance.

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- The applicant will donate the 1.0 Equivalent Single Family Unit associated with the single family residence to the City of Key West through the execution of a donation waiver.
- The applicant will install and maintain a programmable distributive sound system consistent with that described in document prepared by The Audio Bug and submitted on July 25, 2009, to assure compliance with the “unreasonable noise” definition of Section 26-191 of the Code of Ordinances, and that such referenced document shall be updated to include that a computerized sound monitoring system is installed and available to the city upon request and to state that no speakers will be placed outdoors."
- There will be no live music, disc jockeys, or karaoke at the site unless approved under a special event permit per Section 6-86 of the City Code.
- Security cameras will be provided on site and security personnel will be present during the hours of operation.
- A draft easement for off-site dumpster location on the adjacent Simonton Street property will be provided in a form acceptable to the City Attorney’s office prior to forwarding a recommendation of approval to the City Commission and such easement will be executed prior to building permit issuance, to insure that all trash removal is handled via Simonton Street.
- The following site plan modifications will be provided to the satisfaction of City staff prior to forwarding a recommendation of approval to the City Commission to include the following items:
 1. Complete exterior lighting plans to ensure that lighting impacts are directed away from residential areas;
 2. Elevations as provided to HARC will be included in the site plan package;
 3. The trash and recycling containers will be relocated to the adjacent property (RE 00001111-000700) to enable pick-up to occur from Simonton Street;
 4. The landscape plan shall be modified to include additional buffering on the south side of the site and in proximity to the exit of the bar into the courtyard;
 5. A plan showing the proposed location of speakers will be provided and in no case shall speakers be located outdoors; and
 6. The site plans shall be clearly marked to show that no consumption is approved outdoors on the site.

Motion carried by unanimous voice vote.

SO ORDERED.

ITEM 5. PLANNER’S REPORT

A Planner’s report was not given.

ITEM 6. ADJOURNMENT

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A motion to adjourn was made by Mr. Barroso and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

Meeting adjourned at 9:05 pm.

**Submitted by,
Carlene Cowart
Administrative Coordinator
Planning Department**