

# Minutes of the Key West Planning Board

**April 21, 2011**

Approved May 19, 2011

Vice-Chairman Tim Root called the Key West Planning Board Meeting of April 21, 2011 to order at 6:00 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

## ROLL CALL

**Present were:** Vice-Chairman Tim Root; Members: Jim Gilleran, Gregory Oropeza, Sam Holland, Jr. Lisa Tennyson and ex-officio member, Ron Demes.

**Excused Absence:** Chairman Richard Klitenick, Michael Browning

**Also in attendance were:** Interim Planning Director, Don Craig; Chief Assistant City Attorney, Larry Erskine; Alan Averette, KW Fire Department; and Planning Department staff, Brendon Cunningham, Carlene Cowart, Ashley Monnier and Nicole Malo.

## PLEDGE OF ALLEGIANCE

## APPROVAL OF AGENDA

Ms. Cowart informed members that the applicant for 908 Trinity has requested postponement to the May 19, 2011 Planning Board meeting.

**A motion to approve the amended agenda was made by Mr. Gilleran and seconded by Mr. Holland.**

**Motion carried by unanimous voice vote.**

**SO ORDERED.**

## APPROVAL OF MINUTES

### 1 March 17, 2011 – Meeting Minutes

**A motion to approve the March 17, 2011 meeting minutes was made by Ms. Tennyson and seconded by Mr. Oropeza.**

**Motion carried by unanimous voice vote.**

**SO ORDERED.**

## RESOLUTIONS

### Old Business

**2 After the Fact Variances – 908 Trinity Drive #4 (RE# 00065570-001010) – A variance request for building coverage, impervious surface ratio, side, and rear setbacks in the Single Family zoning district per 122-238 (4)(a), 122-238 (4)(b)(1), 122-238 (6)(a)(2) and (3) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

This item has been postponed to the May 19, 2011 Planning Board meeting.

**3 Variances – Mallory Square (RE# 00072082-001100, 00072082-001400 and 00072082-003700) – A request for variances required for the construction of a new restaurant in the HPS zoning district for impervious**

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**surface ratio per Section 122-960(4)b., side yard setback per Section 122-960(6)b., open space requirements per Section 108-346(b), and Coastal Construction Control Line requirements per Section 122-1148(2), of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Ms. Malo gave members an overview of the variances request. She informed members that the proposed variance request is associated with a Major Development Plan (Resolution 2011-002) for four contiguous leasehold areas; however, site data calculations are derived from the entire Mallory Square area because it is considered a single parcel. Due to the existence of the proposed restaurant structure within the lease area boundaries (which are immediately adjacent to the waterfront to southwest) a side yard variance is requested. Additional variances to impervious surface ratio and open space requirements due to the existing hardscape and development of Mallory Square, and to the Coastal Construction Control Line setback are required for the proposed development. In addition a height variance for non-habitable space is necessary to accommodate the proposed roof design; that variance will be heard by the Board of Adjustment due to charter provisions. The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for variance be denied. However, if the Planning Board chooses to approve the variance application, the Planning Department recommends the following condition:

1. That the application for a Major Development Plan with conditions is approved.

The applicant's representative, Owen Trepanier with Trepanier and Associates, gave members an overview of the reason for postponements. Mr. Trepanier then stated that he had a different perspective on what constitutes a hardship, then went over how they met all of the criteria's for the variances requested.

Mr. Gilleran confirmed with Mr. Trepanier that he had ample opportunities to discuss the variance criteria with staff in regards to this project.

Mr. Oropeza voiced his concern about non-conforming use versus non-conforming building. Mr. Erskine stated that because the consumption area is not being increased then the project that is going to house that consumption area is not an expansion of the building.

Ms. Tennyson clarified with staff that the project is in response to the request for proposal (RFP). Mr. Craig informed members that this is the only location for the existing non-conforming use and under the present regulation cannot be moved to another location; hence the city contemplated that variances would be required.

The following members of the public spoke on the matter:

- Robert Cintron, 317 Whitehead

Board members reviewed and discussed the request with the applicant and staff.

Mr. Holland inquired to the applicant if the change in the site plan was in response to the meeting with Westin owners. Mr. Trepanier stated that by moving the building away from the Westin, they were in their perspective eliminating a variance.

Mr. Gilleran confirmed with staff that the applicant filed a request with the Building Official on a determination for demolishing the existing cable hut. Mr. Craig stated that the applicant's current site plans contain the cable hut. If the plans are approved and the Building Official determines the cable hut can be demolished, the applicant then has the option to come back and amend their request.

Mr. Trepanier requested an extension from the board to allow more time for clarity on the cable hut from the Building Official.

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**A motion to postpone the variances request to the May 19, 2011 Planning Board meeting was made by Mr. Gilleran and seconded by Mr. Oropeza.**

Mr. Craig informed members that a month would not be enough time to obtain a finding from the Building Official, since they are waiting for feedback from an independent engineering study.

**A motion to amend the previous request to the June 16, 2011 Planning Board meeting was made by Mr. Gilleran and seconded by Mr. Oropeza.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

## New Business

- 4 After the Fact Variances – 825 Ashe Street (RE# 00022300-000000) - After-the-fact variance request pursuant to Section 122-1078 for habitable space and for building coverage, impervious surface ratio, and setbacks in the Historic High Density Residential zoning district per Sections 122-630 (4) a & b and 122-630 (6) b. & c of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida (RE# 00022300-000000). All habitable space shall be accessible from the interior of exterior walls.**

Mr. Cunningham gave members an overview of the after-the-fact variances request. He informed members that the applicant purchased the property in its current state including the detached structure used as a satellite bedroom, office and storage. The property is nonconforming to building coverage and impervious surface ratio requirements. Further, the structure is located within the side yard setback required in the HHDR zoning district. This property is the subject of a current Code Compliance case and was the subject of similar Code cases in 2001 and 2006, both of which were closed. This indicates that this structure has been in place in its current configuration prior to the current owner's purchase of the property. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variances be denied. However, if the Planning Board approves the variances, the Planning Department recommends the following:

- The applicant shall have the building inspected to ensure compliance with the Florida Building Code.

The owner, Mike Kindinger, gave members an overview of the request.

There were no public comments.

Board members reviewed and discussed the request with the applicant and staff. Members voiced their concern that this appears to be an accessory unit.

**A motion to approve the after-the-fact variances request to include the following conditions was made by Mr. Holland and seconded by Mr. Gilleran:**

- 1. The structure is inspected by a licensed engineer or architect to ensure compliance with the Florida Building Code and Fire Safety and provide a FEMA flood elevation certificate.**
- 2. The applicant will execute and record a Restricted Covenant that limits the use of the structure to “detached habitable space” for use in conjunction with the principal dwelling and thus cannot be used as a separate rental unit.**
- 3. The applicant will allow the Code Compliance Department to inspect the structure for compliance with condition number two, annually, for three consecutive years.**

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Motion was carried by unanimous voice vote.

SO ORDERED.

**5 Minor Development Plan and Conditional Use – 305 Petronia Street, 309 Petronia Street, 729 Thomas Street, (RE# 00013250000000, 00013270-000000, 00013260-000000) – A minor development plan and conditional use request for the addition of 1,365 square feet of consumption area, and the addition of 91 seats, a combination of which are proposed indoors and outdoors in the HNC-3 zoning district per Section 108-91 (A.)(1) (b.) and (c.) and 122-868 (9) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mrs. Monnier gave members an overview of the request for minor development plan and conditional use at 305-309 Petronia Street, and 729 Thomas Street to allow the Blue Heaven restaurant to expand from 66 licensed seats to 157 seats. She informed members that the property has existed as a restaurant for several years, on the corner of Thomas and Petronia Streets. Over time, various approvals related to the restaurant have been granted on the site that may have allowed up to 157 seats. However, based on City review of execution of those approvals, 66 seats are recognized to exist and are licensed on the site today. This application considers the restaurant's expansion from 66 to 157 seats. The applicants have proposed several mitigative techniques in an attempt to abate neighborhood impacts that may be incurred as a result of the restaurant's expansion. Some of these techniques are practiced by the restaurant currently, while others are proposed. According to the application, the applicant's focus has been on parking management, loading, special events, noise generation, and coordination with neighbors.

Mrs. Monnier stated that from a land use compatibility standpoint, the Planning Department has taken into consideration a number of different factors, including the intent of the zoning designation, the existing character of the neighborhood, existing impacts and constraints within the neighborhood, and the overall scope of the request. As a result, the Department has found that the proposed addition of seating may become compatible with the other types of land uses in the area, with appropriate conditioning. Restrictions on the intensity of operations can help off-set additional impacts which, otherwise, may adversely impact nearby properties. Public comment could further inform the Planning Board whether the mitigative factors proposed in the application, and operational conditions recommended by the Planning Department will be adequate in addressing neighborhood impact concerns, and whether the proposed seating expansion could be compatible with surrounding land uses. As a result, The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for minor development plan and conditional use be approved with the following series of conditions:

- Parking variance approval is obtained from the Planning Board.
- Prior to building permit issuance, site plans are revised to demonstrate:
  - Installation of grease traps on the kitchen sinks and dishwashers (based on the dimensions of sinks and dishwasher basins).
  - Revise Sheet 4 to show the location of the existing stormwater drainage swale, and provide notation for reconstruction of the existing stormwater drainage swale.
  - The proposed bicycle parking plan shall be revised to absolve concerns raised by the Fire Department prior to building permit issuance. Written approval demonstrating satisfaction of the concerns raised in the April 12, 2011 memo from the Fire Department must be provided to the Planning Department. The revised bicycle parking plan must also be provided to the Department of Engineering and General Services, and their written approval demonstrating plan satisfaction of the revised bicycle parking must also be provided to the Planning Department.
- No more than 157 seats (including accessory bar seats) shall be allowed to be used.
- That the applicant obtain a unity of title for 305 Petronia, 309 Petronia, and 729 Thomas Streets, and present it to the Planning Department prior to change of licensure to the 157 seats requested.

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- That the applicant obtain City Commission approval for the existing structural encroachments on the site within 6 months of date of approval.
- Neighbors shall be notified, in writing, at least six weeks in advance of any special event.
- As required in Section 6-86 (b) of the Code of Ordinances, Blue Heaven may not receive more than five special event permits per year.
- Outdoor amplified music (live or recorded), shall end by 10:00 p.m. on weekdays and 11:30 p.m. on weekends, with exception to when the applicant has obtained Special Event Permit approval from the City Commission.
- At no time may more than the two exterior speakers (as demonstrated on page 4 of the site plans) be in use on the site, unless a higher number is expressly allowed within an approval for Special Event Permit.
- Impact fees for the additional 91 seats shall be paid in full within 12 months of final approval prior to issuance of certificate of occupancy.

The applicant's attorney, Rick Rumrell, gave members an overview of the applicant's request for minor development plan and conditional use.

Blue Heaven's Restaurant Manager, Ms. Joan Miller Kerry, gave statements to the members regarding the parking agreement all employees sign when hired and how she encourages patrons to bike, walk or take a cab to Blue Heaven.

The applicant's representative, Owen Trepanier with Trepanier and Associates, went over the specifics of the development plan and conditional use. He stated that there was no need for a parking variance.

Mr. Craig informed members that staff met with Mr. Trepanier and the applicant's several times and they understood that a parking variance is required. He then stated that the minor development plan and conditional use go hand in hand with the parking variance request. He asked that the applicant state whether or not they plan to table the variance request, so that he can then recommend to the members that this item not be heard at this meeting. Mr. Rumrell stated that they will move forward with both requests.

Ms. Cowart read a letter into the record from Suanne Kitchar, co-owner of Blue Heaven, who was unable to attend the meeting.

Richard Hatch, co-owner of Blue Heaven, gave members an overview of the request.

The following members of the public spoke on the matter:

- Marci Rose, 810 and 812 Thomas
- Jeffrey Dunaway, 807 Thomas
- Mary Spear, 2523 Seidenberg
- Terry Clark, 628 Mickens Lane
- TJ McCan, 309 Petronia
- Thomas Joris, 217 Olivia

Ms. Cowart informed members that 75 notices were mailed to property owners within 300' radius; none were returned and 11 comments were received in favor and four in opposition of the project.

Mr. Craig gave members a summary of the request for minor development plan and conditional use.

Board members reviewed and discussed the request with the applicant and staff.

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**A motion to approve the Minor Development Plan and Conditional Use request to include conditions recommended by the Planning Department was made by Mr. Gilleran and seconded by Ms. Tennyson.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

**6 Variance – 305 Petronia Street, 309 Petronia Street, 729 Thomas Street, (RE# 0001325000000, 00013270-000000, 00013260-000000) – A variance requesting to waive parking requirements for 30 automobile spaces; of which 6 automobile spaces are requested to be waived through bicycle substitution, in the HNC-3 zoning district per Section 108-572 (9) and 108-574 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Ms. Monnier gave members an overview of the request for parking variances at 305-309 Petronia Street, and 729 Thomas Street. She stated that the request for parking variance is prompted by the applicant's request to allow the Blue Heaven restaurant to expand from 66 licensed seats to 157 seats, in which, off-street parking requirements must be met for 30 spaces. The special provisions within the historic commercial pedestrian-oriented area do not apply since the addition of the seating generates additional consumption and floor area. The applicant has proposed to partially mitigate the variance request by means of bicycle substitution, which under 108-574 of the Code, allows for four bicycle spaces to be equivalent to one motorized vehicle space. 32 bicycle parking spaces are proposed to be added on the site. Of the 32 bicycle spaces, 8 of the spaces would not qualify to be used for bicycle substitution, as they must satisfy the requirement in Section 108-572 of the Code that bicycle spaces comprise 25% of the required number of motor vehicle spaces. As a result, 24 bicycle parking spaces are proposed to substitute for 6 motorized vehicle parking spaces, pursuant to 108-574 of the Code. Based on the criteria established by the Land Development Regulations and the Comprehensive Plan, the Planning Department recommends that the request to vary 6 motor vehicle spaces utilizing bicycle substitution be approved, and the request for variance to waive 24 off-street parking spaces be denied. However, should the Planning Board approve the request for variance to waive the 24 off-street parking spaces; the Planning Department recommends the following condition:

- The proposed bicycle parking plan shall be revised to absolve concerns raised by the Fire Department prior to building permit issuance. Written approval demonstrating satisfaction of the concerns raised in the April 12, 2011 memo from the Fire Department must be provided to the Planning Department. The revised bicycle parking plan must also be provided to the Department of Engineering and General Services, and their written approval demonstrating plan satisfaction of the revised bicycle parking must also be provided to the Planning Department.

The applicant's attorney, Rick Rumrell, gave members an overview of the applicant's request for a parking variance.

The applicant's representative, Owen Trepanier with Trepanier and Associates, went over the specifics of the parking variance. He presented a trip mode study for Blue Heaven. Mr. Trepanier acknowledged that this study was not given to staff prior to the meeting.

The following members of the public spoke on the matter:

- Jeffrey Dunaway, 807 Thomas
- Marci Rose, 810 and 812 Thomas
- Mary Spear, 2523 Seidenberg
- Shawanda Mingo, 708 Emma

Mr. Hatch made statements rebutting some of the public comments.

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Ms. Cowart informed members that 75 notices were mailed to property owners within 300' radius; none were returned and 11 comments were received in favor and four in opposition of the project.

Mr. Demes commented that the trip mode study was not a professional standard that he would have submitted to this board. Mr. Rumrell stated that this was not an official study and it was provided to members to give them an idea of the means of transportation for Blue Heaven dining guests.

Board members reviewed and discussed the request with the applicant and staff. They voiced their concern that more seats may cause more trip generation. Mr. Rumrell stated that the applicant would be willing to reduce the amount of seating in order to move forward.

**A motion to reconsider the Minor Development Plan and Conditional Use was made by Mr. Gilleran and seconded by Ms. Tennyson.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

Mr. Root passed the gavel to Mr. Oropeza.

**A motion to modify the prior approval of the Minor Development Plan and Conditional Use to reflect the decrease in seats from 157 seats to 126 seats to include the following conditions was made by Mr. Root.**

- **Parking variance approval is obtained from the Planning Board.**
- **Prior to building permit issuance, site plans are revised to demonstrate:**
  - **Installation of grease traps on the kitchen sinks and dishwashers (based on the dimensions of sinks and dishwasher basins).**
  - **Revise Sheet 4 to show the location of the existing stormwater drainage swale, and provide notation for reconstruction of the existing stormwater drainage swale.**
  - **The proposed bicycle parking plan shall be revised to absolve concerns raised by the Fire Department prior to building permit issuance. Written approval demonstrating satisfaction of the concerns raised in the April 12, 2011 memo from the Fire Department must be provided to the Planning Department. The revised bicycle parking plan must also be provided to the Department of Engineering and General Services, and their written approval demonstrating plan satisfaction of the revised bicycle parking must also be provided to the Planning Department.**
- **No more than 126 seats (including accessory bar seats) shall be allowed to be used.**
- **That the applicant obtain a unity of title for 305 Petronia, 309 Petronia, and 729 Thomas Streets, and present it to the Planning Department prior to change of licensure to the 126 seats requested.**
- **That the applicant obtain City Commission approval for the existing structural encroachments on the site within 6 months of date of approval.**
- **Neighbors shall be notified, in writing, at least six weeks in advance of any special event.**
- **As required in Section 6-86 (b) of the Code of Ordinances, Blue Heaven may not receive more than five special event permits per year.**
- **Outdoor amplified music (live or recorded), shall end by 10:00 p.m. on weekdays and 11:30 p.m. on weekends, with exception to when the applicant has obtained Special Event Permit approval from the City Commission.**
- **At no time may more than the two exterior speakers (as demonstrated on page 4 of the site plans) be in use on the site, unless a higher number is expressly allowed within an approval for Special Event Permit.**
- **Impact fees for the additional 60 seats shall be paid in full within 12 months of final approval prior to issuance of certificate of occupancy.**

# **Minutes of the Key West Planning Board**

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**Mr. Oropeza made a friendly suggestion to add as a condition that deliveries must be received between 7am and 3pm. Mr. Root amended his motion to include the delivery times. Motion was seconded by Mr. Gilleran.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

**A motion to approve the variance request to waive 20 required off-street automobile parking spaces of which 6 automobile spaces are waived through bicycle substitution to assist the hardship in the neighborhood and to include the arguments by the applicant that are directly related to the hardship and the seven criteria was made by Mr. Root and seconded by Mr. Gilleran.**

**Motion carried by 4-1 vote (opposed by Mr. Oropeza).**

**SO ORDERED.**

## **PLANNER'S REPORT**

Due to time constraints no Planner's Report was given.

## **ADJOURNMENT**

**A motion to adjourn was made by Ms. Tennyson and seconded by Mr. Oropeza.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

Meeting adjourned at 10:30 pm.

**Submitted by,  
Carlene Cowart  
Development Review Administrator  
Planning Department**