Minutes of the Key West Planning Board
July 21, 2011
Approved August 18, 2011

Chairman Richard Klitenick called the Key West Planning Board Meeting of July 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: Chairman Richard Klitenick, Vice-Chairman Tim Root, Gregory Oropeza, Sam Holland, Jr., Jim Gilleran and Lisa Tennyson (arrived 6:10 pm)

Excused Absence: Michael Browning

Also in attendance were: Planning Director, Don Craig; City Attorney, Shawn Smith; and Planning Department staff: Brendon Cunningham, Nicole Malo and Patrick Wright.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Craig requested that Item 2 be moved down on the agenda until Ms. Tennyson arrived since there would be some recusals.

Mr. Klitenick informed members that he has a conflict on items 2 and 5. Mr. Oropeza informed members that he has a conflict on items 5 and 6.

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

Motion carried by unanimous voice vote.

SO ORDERED.

APPROVAL OF MINUTES

1 June 29, 2011 – Meeting Minutes

A motion to approve the June 29, 2011 special meeting minutes was made by Mr. Holland and seconded by Mr. Oropeza.

Motion carried by unanimous voice vote.

SO ORDERED.

RESOLUTIONS

4 Modifications to a Major Development Plan and Conditional Use approval - 512 Greene Street (RE 00001170-000000) - A request for Modifications to a Major Development Plan and Conditional Use approval via City Commission Resolution 09-242 to enable a reconfiguration of the parking lot, elimination of an ingress and egress easement and relocation of garbage storage and pick-up areas and to modify conditions associated with the approval to allow outdoor consumption area for property located at 512 Greene Street in the Historic Residential Commercial Core Gulf Side (HRCC-1) zoning district per Section 108-91C(3) and (4) of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Mr. Root disclosed that he worked on the project two years ago and is no longer affiliated. Mr. Smith stated that the circumstance described in the disclosure does not pose a conflict.

Ms. Malo gave members an overview of the modification to a major development plan and conditional use request and its history. She informed members that the request is for modifications to City Commission Resolution 09-242 for a Major Development Plan and Conditional Use to enable reconfiguration of the parking lot, elimination of an ingress and egress easement, relocation of garbage storage and pick-up areas and to modify conditions associated with the approval to allow outdoor consumption area for the property. The request has a few key elements distinctions from the 2010 application as follows:

- 90 square feet of outdoor consumption area is proposed;
- The parking lot configuration meets dimensional standards for isle width and standard parking spaces and compact cars are no longer required;
- A stormwater drainage plan specific to the parking lot is proposed which includes that the surface material of the lot be replaced with material that meets the requirements of the land development regulations and HARC;
- The reconfiguration of swales and landscape areas and the garbage area.

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for a modification to a Conditional Use and Major Development Plan be approved with the following 10 conditions:

<u>Conditions to be completed prior to or in conjunction with the issuance of building permits:</u>

1. The parking lot surface material to be used in the parking lot must be jointly approved by the engineering division and HARC. The ADA parking space must meet Federal guidelines.

<u>Conditions to be completed prior to the issuance of certificate of occupancy:</u>

2. The applicant will install and maintain a programmable distributive sound system consistent with that described in the 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 real time monitoring access is provided to the City.
3. City Staff will confirm that the sound system is functioning as provided for in Condition two (2).

<u>Conditions subject to a Conditional Approval Permit, per Ordinance Number 10-22: Conditions subject to associated annual inspection:</u>

4. Outdoor speakers are prohibited.
5. Security cameras will be provided on site and security personnel will be present during the hours of operation.
6. Waste handling shall be consistent with the Solid Waste Management plan dated July 13, 2011. The applicant will recycle materials accepted by the city's waste handling contractor.
7. Compliance with the plans dated July 12, 2011, is a condition of approval and specifically incorporated herein.
8. The outdoor consumption area is limited to the side yard area on the corner of Greene and Ann Streets only and is strictly prohibited from the rear courtyard area.

<u>General Conditions:</u>

9. The applicant expressly agrees to provide the City's agents unfettered access to the computer-generated reports and full, real-time web-based access to the digital monitoring of on-site acoustics for the purpose of assuring compliance with the conditions contained herein.
10. There will be no live music, disc jockeys, or karaoke anywhere on the site unless located indoors and approved under a special event permit per Section 6-86 of the Code of Ordinances. Under no circumstances will these venues be allowed outdoors.

The applicant's representative, Owen Trepanier with Trepanier and Associates, gave members an overview of the request. He stated that upon approval, the property owner agrees to transfer one full market rate permanent

residential ROGO unit to the city that is associated with this property. He added that the applicant agrees to all conditions and proposes that condition 10 read all amplified music be routed through a distributive sound system and allowed outdoors only under a special event permit per section 6-86.

Mr. Craig clarified for members that engineering and HARC have concurred on what is approvable as dust free parking surface and that asphalt is discouraged by design guidelines and rather suggest brick pavers or pavers with holes for water distribution.

Members discussed with staff and Mr. Trepanier the confusion of the transfer of the ROGO unit. Mr. Craig assured members that prior to the City Commission meeting, staff will provide the Commissioners and the applicant the Planning Department's position in writing.

The following members of the public spoke on the matter:

- Dean Carlson, 729 Truman Avenue
- Margo Ellis, 3311 Harriett Avenue

A motion to approve the modification to a Major Development Plan and Conditional Use to include conditions recommended by the Planning Department as well as the modification to condition 10 was made by Mr. Holland and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

2 After the fact Variances - 908 Trinity Drive #4 (RE#00065570-001010) - For an after the fact variances to building coverage, impervious surface ratio and setbacks in the SF zoning district per Section 122-238 (4)(a), (4)(b)(1) and (6)a.2.&3.of the Land Development Regulations of the Code of Ordinances of the City of Key West.

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

Mr. Cunningham gave members an overview of the after-the-fact variances request. He informed members that the applicant constructed an accessory unit in his backyard without permits or approvals. There is an existing code case and the applicant is trying to rectify the situation with an after-the-fact variance request. Mr. Cunningham 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 variance be denied. However, if the Planning Board approves this request, staff would like to require the following conditions:

- That the accessory unit be deed restricted according to Section 122-233(a)(1).
- That a Certificate of Elevation be provided to confirm that the structure meets FEMA base flood elevation requirements. In the event that the structure does not meet the required elevation, the structure will need to comply.

Mr. Craig suggested that members modify the last condition to add that the applicant is required to demonstrate the structure meets Florida Building Code.

The applicant's attorney, Sam Kaufman, informed members that once the owner was informed of the code violation, they were active in complying as much as they could. He informed members that engineers and architects were hired and a survey was completed as suggested by the Planning Department. Swales were placed

in the back of the property to deal with water drainage issues. He then stated that the property owner agrees with the deed restriction and has no problem with staff conditions.

There were no public comments.

Members reviewed the request with the applicant's representative and staff. Mr. Oropeza inquired if any of the other four homes built by this developer had accessory units. Mr. Kaufman replied no.

Mr. Oropeza then asked why building permits were not acquired. Mr. Kaufman informed members that the original plans approved by the City Commission allowed for one deed restricted accessory unit on each property.

Mr. Craig stated that the original plans called for an accessory unit if the developer provided his own affordable BPAS allocation switch rather than the city providing BPAS allocations. The developer refused and the plans were modified to exclude the accessory unit. He then stated that the applicant having purchased the property and perhaps seeing a set of previous plans with an accessory unit thought he could build it and thought he may have had some prior city approval to build an accessory unit. Mr. Craig stated that it does not excuse the necessity of obtaining a building permit and the applicant may have mistaken that. The only way to rectify the issue is an agreement by the applicant to deed restrict the unit and have a BPAS allocation allocated to it for affordable purposes only.

Ms. Tennyson inquired if original plans had the unit constructed 23' into the setback. Mr. Craig stated that the original plans met setback requirements. Mr. Craig then confirmed that the current structure is built 23' into the setback.

Mr. Craig informed members that the request was triggered by a code case. If the members choose not to approve the request with the appropriate conditions suggested, then the applicant would be required to either appeal the decision or remove the structure. He then stated that one mitigating factor is that even though it does not meet the criteria of a variance it is providing affordable housing that meets the criteria.

Mr. Holland stated that he does not have an objection to the after the fact variance. He stated that although he is not endorsing the applicant's action by not obtaining building permits, his actions to bring it into compliance as much as he can as well as the additional mitigating factor have caused him to come to this conclusion.

Ms. Tennyson asked staff if they would recommend approval if the applicant submitted a plan to build 23' into setback. Mr. Craig stated that the department would not recommend approval since the hardship criteria applies and the applicant would still have reasonable use of the property.

A motion to deny the after the fact variance was made by Mr. Gilleran and seconded by Ms. Tennyson.

Motion was carried by 3-2 voice vote (opposed by Mr. Root and Mr. Holland).

SO ORDERED.

3 Variance Extension - 814 Simonton Street (RE# 00016570-000000) - An extension to an approved variance for a reduced side-yard setback in the HNC-1 zoning district per Board of Adjustment Resolution 07-353 of the City of Key West.

Item was handled administratively and removed from the agenda.

5 **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 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. He stated that the subject property was built well before the LDR's were enacted. At the time of the construction, it was not contemplated that the required setbacks would be enacted decades later. Air conditioning systems were not in existence nor were they contemplated at the time of the construction. He then stated that the seller executed a seller's affidavit at closing stating that there would be no pending matters that would or could violate local government regulations. The applicant relied on that statement. If denied, the air conditioning units would have to be removed. The applicant has explored the use of several split units and condensed units, the use of such would still invoke the need for variances due to the property's limited space.

The following public comments were received prior to the meeting:
(All comments were in favor of the project)

- Judy and Ken Horton, 510 Margaret
- Anna Maria Prato Mancioli, 534 Margaret
- Art Kara, 918 Cornish Lane

Members reviewed the request with the applicant's representative and staff. Mr. Root inquired if the statement made by the applicant's representative that there is no approvable place for the units on the site plans is factual. Mr. Craig stated that in the past HARC has approved placing a split unit on a roof behind a peaked roof or some location not visible from the street. He then added that the comments given by the DRC was that nothing else be placed in that area because it provides the only reasonable access to the rear of the house for emergency services.

Mr. Flannigan stated that the applicant met with the building department and was told that the units could not go anywhere else.

Mr. Root suggested that the applicant postpone so that they can either seek HARC approval to place the a/c units on the back roof or place the units in area seven where there is a sundeck and it is within the setbacks.

A motion to postpone the after-the-fact variance request to the August meeting was made by Ms. Tennyson and seconded by Mr. Gilleran.

Motion was carried by unanimous voice vote.

SO ORDERED.

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

6 **Conditional Use - 529 United Street (RE# 00028790-000100) - A conditional use request for 201 square feet of consumption area for a restaurant, a combination of which are proposed indoors and outdoors in the HNC-1 zoning district per Section 122-808 (13) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Oropeza declared a conflict of interest since his firm represents the applicant. He recused himself and left the dias during the discussion.

Mr. Cunningham gave members an overview of the conditional use request. He informed members that the request is to allow an existing commercial office space formerly used as a commercial office to be converted into a restaurant with indoor and outdoor consumption area, with the remainder of the building in the rear to remain as a residence. 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.

The applicant's representative, Patrick Flanigan with Barton Smith, P.L., gave members an overview of the conditional use request. He stated that the applicant attempted to contact surrounding neighbors and received no response. He then stated that there is no offsite parking but that the property falls into the parking waiver district.

There was no public comment.

Members reviewed the request.

A motion to approve the conditional use request was made by Mr. Root and seconded by Ms. Tennyson.

Motion was carried by unanimous voice vote.

SO ORDERED.

Mr. Oropeza returned to the dias.

7 **Variance - 1621 Bahama Drive (RE# 00070230-000000) - For building coverage requirements in the SF zoning district per Section 122-235 (4) a. 1. of the Land Development Regulations of the City of Key West.**

Mr. Cunningham gave members an overview of the variance request. He informed members that the applicant is proposing the addition of a screened porch since the structure is located adjacent to the Salt Ponds. The addition would increase the non-conforming building coverage by an additional 4% thus requiring a variance. Mr. Cunningham 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 variance be denied.

The applicant's attorney, Susan Cardenas with Stones and Cardenas, gave members an overview of the variance request. Mrs. Cardenas stated that the applicant realizes they do not meet the legal requirements for hardship, but argues he does not have reasonable use of his backyard due to the mosquito problem. Another issue is that Riviera Shores was platted and constructed in the 1960's, which makes 98% of the lots there substandard size when you impose the LDR's that were passed in 1998. The home is 1,692 square feet and the applicant is requesting an additional 220 square feet which is a 4% increase.

Mr. Klitenick requested that Mrs. Cardenas discuss some of the existing nonconformities that may be corrected or come more into compliance. Mrs. Cardenas stated that the impervious surface issue has been rectified by

redesign and is no longer a variance requirement and that the applicant's request is solely on the lot coverage issue.

The following member of the public spoke on the matter:

- James Pierce, 1613 Bahama Drive

Members reviewed the request with staff. Mr. Root inquired if a variance would be required if the request was for a deck versus a screened porch. Mr. Cunningham stated that if the deck board had a space between them it would not be considered impervious and if the deck were lower than 30" then it would not violate code.

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

Motion was carried by unanimous voice vote.

SO ORDERED.

8 Variance - 1315 Third Street (RE# 00047640-000000) - For building coverage, impervious surface ratio, front and rear-yard setback requirements in the SF zoning district per Section 122-235 (4) a. and b. and (6) a. 1. and 3. of the Land Development Regulations of the City of Key West.

Mr. Cunningham gave members an overview of the variance request. He informed members that the applicant is proposing a room addition to accommodate a health care provider to look after her aged parents. The room addition will increase the non-conforming building coverage by approximately 3%. Additionally, front and rear setbacks are non-conforming; therefore, variances are required. Mr. Cunningham 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 variances be denied.

The applicant's daughter, Gladys Bethel, gave members an overview of the variance request. She stated that the addition is for her to be able to stay in the house in order to provide care for her elderly parents.

The following public comments were received prior to the meeting:
(All comments were in favor of the project)

- Joseph and Joy Fiore, 2017 Harris
- Octavio Alpizar, 2118 Harris
- Carole Favors, 2120 Harris
- Michael Gordon, 2104 Harris
- Teresa Ashley, 2101 Seidenberg
- Esther Canfield, 1330 Third
- Robert Grea, 2026 Harris

Members reviewed the request with staff. Mr. Holland inquired if the applicant proposed a kitchen addition. Mr. Cunningham confirmed that the request is only for a room addition.

A motion to approve the variance request was made by Mr. Gilleran and seconded by Mr. Oropeza.

Motion was carried by unanimous voice vote.

SO ORDERED.

PLANNER'S REPORT

- **Peary Court Rezoning Process**

  Mr. Craig gave members an overview of the Peary Court rezoning process. He informed members that since the property will no longer be owned by the Navy, we will have to amend our Comprehensive Plan and provide zoning designation for the property. Mr. Craig reviewed the tentative timeline for coordinated agency review process.

  Mr. Klitenick inquired if we are in a position to do an amendment to the Comprehensive Plan and were we up to date with all of the EAR submissions. Mr. Craig informed members that DCA is willing to work with us since we are dealing with something beyond our control in the excessing of the Navy property, as well as being in the process of having a consultant in place to start updating our EAR based amendments.

  Mr. Craig informed members that it is the city's position that every BPAS allocation the city has will not be allocated to this project.

  Mr. Smith informed members that if there are existing nonconformities on the site, they will not translate to legally existing nonconforming uses when they come onto the hands of private entities.

- **Changes to Conditional Use Resolutions**

  Mr. Craig informed members that conditions in conditional use resolutions will now be grouped into categories so that applicants as well as city staff are very clear on when the conditions need to be met.

- **Q&A – Items of interest from Planning Board Members**

  Members had no comments.

ADJOURNMENT

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

Motion was carried by unanimous voice vote.

SO ORDERED.

Meeting adjourned at 7:50 pm.

Submitted by,
Carlene Cowart
Development Review Administrator
Planning Department