

Minutes of the Key West Planning Board

August 25, 2009

Approved October 15, 2009

Chairman Richard Klitenick called the Key West Planning Board Special Meeting of August 25, 2009 to order at 6:10 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

ITEM 1. ROLL CALL

Present were: Chairman, Richard Klitenick; Vice-Chairman, Tim Root; Members: Barry Barroso, Ed Gartenmayer, James Gilleran, Michael Browning and Greg Oropeza.

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

ITEM 2. APPROVAL OF AGENDA

Mr. Klitenick recommended that the order of the agenda items be reversed since the first item on the agenda may take longer than the items under New Business. Items would then be heard in the following order: Item 4b3, 4b2, 4b1 and 4a1.

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

Motion carried by unanimous voice vote.

SO ORDERED.

ITEM 3. APPROVAL OF MINUTES

a. Planning Board Special Meeting Minutes – July 30, 2009

Mr. Klitenick stated that on page two under 3100 Flagler, minutes need to clarify that staff confirmed that the use had not ceased.

A motion to approve the July 30, 2009 Planning Board Special Meeting minutes as AMENDED was made by Mr. Root and seconded by Mr. Gilleran.

Motion carried by unanimous voice vote.

SO ORDERED.

ITEM 4. ITEMS FOR PUBLIC HEARING

a. Old Business

3. Variance - 1 Pinder Lane (RE Number 00008400-000000) - A variance for a front setback for an expansion of a legal non-conforming structure in the Historic High Density Residential (HHDR) zoning district per Sections 122-630(6)a and 122-28(b) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

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Mrs. Kimball-Murley gave an overview of the variance request. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied.

Mr. Root asked for clarification of the encroachment of the City right-of-way. Mrs. Kimball-Murley stated that the encroachment is less than 44 square feet. Mr. Erskine added that his recollection of the survey is that it is less than 25' x 2'.

Mrs. Kimball-Murley clarified that the front yard setback for that district is 10 feet.

The applicant's legal representative, Ginny Stones of Stones and Cardenas, reviewed the variance request with members. Mrs. Stones stated that the easement request will be going to the City Commission on September 1, 2009. She then stated that the property has been in the same family for 125 years.

Board members reviewed and discussed the request with the applicant and staff. Mr. Root asked if an easement is required for the part that encroached on the City right-of-way. Mrs. Kimball-Murley stated that it does require an easement. That request will be heard by the City Commission on September 1, 2009.

Mr. Klitenick stated this appears to be one of those situations where the applicant is really a victim of the existing regulations. This is one of the things that will be looked at by the board when revising some of the existing ordinances.

Mr. Browning asked staff if there has been any movement in revising this ordinance. Mrs. Kimball-Murley stated that staff has drafted an amendment to this section of the ordinance that would essentially remove the 66% requirement since it acts as a disincentive for renovations.

Mrs. Stones clarified for the members that the property is habitable.

A motion to approve the variance request was made by Mr. Browning and seconded by Mr. Gartenmayer.

Motion carried by unanimous voice vote.

SO ORDERED.

- 2. Minor Development Plan and Conditional Use - 3401 Northside Drive (RE#00065570-000100) - Minor Development Plan and Conditional Use for property located in the Single Family Residential (SF) zoning district for the purpose of expanding an existing teaching/medical facility per Sections 108-91 (B)1.(b) and 122-236(2) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

Mrs. Kimball-Murley gave an overview of the minor development plan and conditional use request. The proposed expansion will allow specialized medical treatment to serve residents of the Keys who currently have to travel to the mainland for treatment. 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 and conditional use be approved.

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Mrs. Kimball-Murley clarified that a variance approval would be required for the applicant to move forward.

Mr. Browning asked for clarification on the side setback. The applicant, Owen Trepanier with Trepanier & Associates, clarified that the plan does not show the overhang of the building and that the side setback is 10'.

Mr. Trepanier reviewed the minor development plan and conditional use request with members.

The following members of the public spoke on the matter:

- Michael Halpern, 209 Duval Street
- Cynthia Domenech-Coogle, 1006 16th Terrace

Mr. Klitenick echoed the sentiments of the public comments. He then stated that anything that we can do as a board to improve our facilities in this community would hopefully not only be the pleasure of the board but the philosophy as well.

A motion to approve the minor development plan and conditional use request with the condition on the receipt of a variance that is a subject of a separate application was made by Mr. Gartenmayer and seconded by Mr. Oropeza.

Motion carried by unanimous voice vote.

SO ORDERED.

- 1. Variances - 3401 Northside Drive (RE#00065570-000100) - Variances to required side and rear yard setbacks and allowed impervious surface for property located in the Single Family Residential (SF) zoning district for the purpose of expanding an existing teaching/medical facility per Section 122-238 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.**

Mrs. Kimball-Murley gave an overview of the variance request. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for the variance be denied.

The applicant, Owen Trepanier with Trepanier & Associates, reviewed the variance request with members. Mr. Trepanier stated that they can work with a minimal side yard setback, from the 15' required to the 9' proposed and with a minimal rear yard setback from the 25' required to the 5' proposed.

Mr. Barroso asked applicant for clarification of the movement of the modular building. Mr. Paul Semmes, Architect for the applicant, stated that the modular is being moved to line up with an opening and not because of a setback.

The following members of the public spoke on the matter:

- Commissioner Mark Rossi, 202 Duval Street
- Cynthia Domenech-Coogle, 1006 16th Terrace
- Rabbi Zucker, 906 Trinity Drive

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Mr. Klitenick stated that it is within the discretion of the board to look at the benefit of the community.

A motion to approve the variance request with the change to the side and rear yard setbacks was made by Mr. Root and seconded by Mr. Gartenmayer.

Motion carried by unanimous voice vote.

SO ORDERED.

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

Mrs. Kimball-Murley gave an overview of the conditional use request. She then stated that the department's primary concern was with land use compatibility issues, particularly with the residential uses in this area and the public safety issues on Charles and Telegraph. She added that staff attended a community meeting held by the applicant. The applicant has prepared an extensive noise study which demonstrates noise can be controlled. She noted that sidewalk improvements as well as additional lighting will help address safety issues in the area. 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 condition:

- The applicant will install and maintain a programmable distributive sound system consistent with that described in the document prepared by the Audio Bug and updated on August 11, 2009 to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of Ordinances, and ensure that a computerized sound monitoring system is installed and available to the City upon request.

Mrs. Cowart informed members that 49 notices were mailed to property owners within 300' radius; 1 was returned undeliverable and 4 comments received. Mrs. Cowart then read into the record comments from the following:

- Wade Ferrel
- Joyce Walker
- Laura Demchak, Lauramar Limited Partnership
- Michelle Brody, Braza Lena, 421 Caroline Street

Mr. Klitenick asked for clarification on the way the information is presented on the deed. Mrs. Susan Cardenas, legal representative for the owner, stated that a corrected deed was recorded two months ago.

Mr. Root disclosed that he has spoken to neighbors on both sides of the proposed bar and that issues discussed did not prejudice his decision-making capacity.

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Mr. Gartenmayer disclosed that he met with Commissioner Rossi and that this application was not discussed and there is no conflict.

Mr. Barroso disclosed that he has spoken with several members of the public as well as to the applicant in regards to this application and that issues discussed did not prejudice his decision-making capacity.

Mr. Klitenick disclosed that he has spoken with members of the public in regards to this application.

Mr. Oropeza disclosed that he has spoken with members of the public in regards to this application.

Mr. Erskine gave an overview of the Planning Board procedures governing the Conduct of Public Hearings.

Mrs. Cardenas reviewed the conditional use request with members. She then introduced two expert witnesses, Owen Trepanier, Land Use Consultant, and Don Washburn, Sound Expert with Audio Bug.

Mr. Trepanier provided an overview of his credentials as well as an overview of the conditional use request. He stated that there is no adverse change or change in scale. The property currently has minimal pervious surface and no stormwater retention. The pervious surface will be increased and stormwater management will be installed. The garbage area will be connected to sanitary sewer system.

Mrs. Cardenas stated they obtained records on noise complaints reported in the past few years. Mr. Trepanier commented that after reviewing the complaints, he was surprised that majority of the complaints were initiated from one neighboring bar to another.

Mr. Browning inquired about the number of residential complaints. Mrs. Cardenas stated that the Police Department does not identify the party who makes the complaint, unlike Code Compliance. They were unable to locate the property address listed under the complaint.

Mr. Washburn, President of The Audio Bug, Inc., gave members an overview of the noise study conducted for the Charles/Telegraph project. He determined that a properly designed and implemented sounds system can be operated in such a manner as to not impinge on nearby residential properties. Additional safeguards have been recommended to help mitigate sound propagation, i.e., sound curtains at strategic locations, sound monitoring capabilities to aid in code compliance and electronic control of maximum sound levels which will be preset and locked during the system commissioning process. He then stated that he can say with considerable confidence that this property will have no adverse impact on its neighbors with regard to sound or noise nuisance.

Jim Young, Code Compliance Manager, clarified the noise ordinance standards. Mr. Young then stated that it is sometimes hard to find the location where the noise is coming from since it is often a combination of several sound levels.

Matthew McCarthy, Bar Manager, clarified that bands will not be allowed to bring in amps and will only be able to plug into the bar's existing system.

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The following members of the public spoke on the matter:

- Commissioner Mark Rossi, 202 Duval Street
- Michael Halpern, 209 Duval Street

Mr. Trepanier gave members an overview of how the bar will operate.

Mrs. Cardenas stressed to members that the sound system cannot be adjusted and that no expert has come to testify otherwise.

Board members reviewed and discussed the request with the applicant and staff. Members asked Mr. Washburn for clarification on what would happen with the system codes if his services were no longer required. Mr. Washburn clarified that yes the codes belong to the owner. Mr. McCarthy agreed to add a condition stating that a contract be retained with Audio Bug or someone with similar credentials.

Members were in agreement to have records made available on demand to Code Compliance. Mr. Washburn stated that Code Officers will be able to log onto a system and view audio logs.

Mr. Gilleran expressed concern that although things may start out with good intentions, sometimes it does not always work out that way. Trying to control sound in an outdoor venue is difficult. Additionally, when live music is added to the mix, it will be difficult to know where the sound is coming from and it would be difficult to have a successful outdoor bar without it being vibrant.

Mr. Washburn stressed to members that the system being installed is not capable of exceeding the Ordinance level and that the conditions of approval will stay with this building.

Mr. Klitenick stated that the applicants have met the criteria and most likely the adverse impact is noise. He then addressed the enclosed bar issue brought up during public comment and stated that if residents of Key West want to see bars enclosed then that is an issue that needs to be brought forth to the City Commission.

Mr. Oropeza asked Mr. Young for the number of complaints on the Schooner Warf. Mr. Young stated that since his return to the Code Department in February 2009, there have been none.

Mr. Browning stated that the Code says this activity is allowed and he has not heard any refuting evidence.

A motion to approve the conditional use request with the following conditions:

- **The applicant will make computer logs available during hours of operation to Code Compliance upon reasonable demand;**
- **Retain a contract with The Audio Bug, Inc or someone with equal or similar credentials;**
- **All bands will hook up to existing sound system; and**
- **Installation of system described**

was made by Mr. Browning and seconded for discussion by Mr. Oropeza.

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Mr. Oropeza stated he was concerned with placing a condition to maintain a contract with The Audio Bug, Inc., with the possibility what if The Audio Bug increased their rates which would prohibit the owner from making a business decision. Mr. Root clarified that Mr. Browning's motion stated "or someone with equal or similar credentials."

Motion failed by 4-3 vote (opposed by Mr. Gilleran, Mr. Gartenmayer, Mr. Root and Mr. Barroso).

Mr. Erskine verified that the corrected deed was filed. He then informed members that a motion to deny can be introduced; however, the Code requires that specific findings must be listed.

Members then reviewed how noise complaints are handled with Mr. Young.

Mr. Washburn stated that Code Officers will be provided access to an IP address and be able to remotely monitor the levels.

Mr. Washburn then informed Mr. Gilleran that they are willing to provide a digital reading system that can be accessed by Code Compliance.

A second motion to approve the conditional use request with the following conditions:

- **The limitations and systems as proposed in the August 11, 2009 report by the Audio Bug will be installed and maintained on site;**
 - **Live entertainment must use the in house system as proposed by the applicant and no additional amplification will be allowed;**
 - **The applicant will make computer logs and an on site digital reading system available so that the City would have unfettered access to the computer generated reports and the digital monitor on site. The City will have unfettered access upon reasonable demand on the property for the purpose of viewing the meter. The records from the on-site meter, computer generated reports, or online records will be admissible in any code compliance case; and**
 - **The applicant will maintain a contract with the Audio Bug or a similarly qualified acoustical consultant for maintenance of the system;**
- was made by Mr. Browning and seconded for discussion by Mr. Oropeza.**

Mr. Barroso asked Mr. Young what the time frame is after a violation is found. Mr. Young stated that the process takes 30 days before it is heard in front of the magistrate.

Motion carried by 6-1 vote (opposed by Mr. Root). Motion carried by unanimous voice vote.

SO ORDERED.

ITEM 5. PLANNER'S REPORT

A Planner's report was not given.

ITEM 6. ADJOURNMENT

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

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Motion was carried by unanimous voice vote.

SO ORDERED.

Meeting adjourned at 10:30 pm.

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