

# MINUTES OF THE HISTORIC PRESERVATION BOARD

## PUBLIC HEARING/REGULAR MEETING

CITY OF DELRAY BEACH  
DELRAY BEACH, FLORIDA

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MEETING DATE: March 20, 2013

LOCATION: CITY COMMISSION CHAMBERS

MEMBERS PRESENT: Annie Adkins Roof, Annette Smith, Samuel Spear, Ana Maria Aponte, Ronald Brito, Iris McDonald, and Reginald Cox

MEMBERS ABSENT: None

STAFF PRESENT: Amy Alvarez, Janice Rustin (Asst. City Attorney), Diane Miller

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### I. **CALL TO ORDER:**

The meeting was called to order by the Chair, Ms. Annie Adkins Roof at 6:00 p.m.

### II. **ROLL CALL:**

Upon roll call by Ms. Miller it was determined that a quorum was present.

### III **APPROVAL OF AGENDA:**

Motion made by Reginald Cox, seconded by Annette Smith, and approved 7-0.

Chair Ms. Roof read the Quasi-Judicial Rules for the City of Delray Beach and Ms. Miller swore in all who wished to give testimony on any agenda item.

### IV. **ACTION ITEMS:**

#### **A. Conditional Use (2013-103)**

#### **401 West Atlantic Avenue, "Breathe", West Settlers Historic District**

**Authorized Agent:** HSQ Group, Inc., Jay Huebner

**Applicant:** 401 West Atlantic LLC., Amjad Hammad

#### ***Exparte Communications***

Reginald Cox – I have seen this project when it came before the WARC Board.

Samuel Spear – I have been on WARC and have seen this project before.

This is a conditional use request to permit Breathe, located at 401 West Atlantic Avenue, to operate past the hour of 12:00 am and no later than 2:00 am. The restaurant is located on the ground floor within Atlantic Grove, a mixed-use development on the north side of West Atlantic Avenue between NW 4<sup>th</sup> and 5<sup>th</sup> Avenues.

The conditional use approval would be required in order to operate past midnight as the property was determined to be within 300' of residentially. Part of the conditional use is to also make sure that a security plan, sufficient buffering and that you can make positive findings regarding the housing element from the comprehensive plan. Also, they have submitted a statement stating that "the restaurant currently has four security personal (sic) roaming the premise and two security persons at the front door checking IDs. For busy events the owner has hired local off duty police officers to work security detail. This security plan is currently in use and has been sufficient to protect the health and safety of the restaurant patrons." This security plan would appear unusual for a restaurant operation and is more for a night club operation which is prohibited at this location.

In regards to the buffering, while the property is within 300' of the residentially-zoned property, the tenant space is farther from those properties, and is contained within a building which faces West Atlantic Avenue. Therefore, a buffer of the use space is already provided.

The housing element requirements we are reviewing are if this is a restaurant, and if they were in fact operating as a stand-alone bar, which they are not permitted to because of the distance requirement. As a night club we cannot make positive findings but as a restaurant we can make that finding as long as they comply with the definition of restaurant part of which is a full menu at all hours of operation.

Other review boards that have seen this request is as follows:

**The Downtown Development Authority (DDA)** considered the subject request at its March 11, 2013 meeting, when a recommendation of approval was made noting that tenants in the building have raised concerns that the rear parking lot is too dim, and should be addressed to provide lighting levels that are perceived to create a safer feel.

**The West Atlantic Redevelopment Coalition (WARC)** considered the subject request at its March 13, 2013 meeting; the Board did not express any specific concerns with the request.

**The Community Redevelopment Agency (CRA)** considered the subject request at its March 14, 2013 meeting, when the consensus was to recommend approval subject to a vote of approval by the Condo Board and meeting the conditions of approval in the P&Z Board Staff Report, including they show that they are a restaurant.

**The Planning and Zoning Board** considered the subject request at its March 18, 2013 meeting, when a recommendation to the City Commission was made. The recommendation will be provided to the Board during presentation of the subject item.

Courtesy notices were sent to the **Neighborhood Advisory Council**, Delray Citizen's Coalition, and the West Settlers HOA.

Formal public notice has been provided to property owners within a 500' radius of the subject property. Letters of support or objection submitted prior to Board packet

distribution are attached; all others submitted thereafter will be presented at the meeting.

**APPLICANT PRESENTATION**

Jay Huebner, HSQ Group, Inc. for the applicant

The owner has many properties, lives in the City of Delray Beach and works closely with the police department. He has bought out this property and changed it to a eat in restaurant and has been a difficult property to market as a lot of people like to go to East Atlantic. They are trying to change that and incorporate different ideas. Unfortunately they thought they had approved to 2a.m. and as Ms. Alvarez pointed out the only reason that we are here tonight is because we barely clipped the residential zone district. The condo association of the building has their own security personnel and they have approved our request. (a letter from the Condo Board has been submitted to the record).

Any further questions that the Board has for us tonight, we are here to answer.

**PUBLIC COMMENTS** – None

**BOARD DISUSSION**

Ms. Aponte asked Ms. Alvarez how were the townhouses zoned and they are zoned CBD. Also, Ms. Aponte wanted to know what kind of alcohol license do they have? I am with the understanding that they have a 4COP which they are able to sell full alcohol.

Ms. Alvarez said that they have the 2COP which is cheaper which is beer and wine.

Ms. Roof asked if the applicant could explain what kind of license they hold.

Jay Huebner said that he was not sure but we have a full service bar.

Ms. Alvarez read that they have a 4COP active until March 31, 2013.

Ms. Aponte asked if they have a 4COP SRX, and Ms. Alvarez said that they only have a 4COP and this information is from "MyFloridalicense.com".

Another question that Ms. Aponte had was if the approval goes through and they get the license to operate till 2 a.m. and they stop serving food at 11p.m. and only have alcohol, can the license be revoked?

Ms. Alvarez answered and said that yes it can be revoked because it is only a conditional use and it could go back before the commission because they need to comply with all the conditions.

Ms. Aponte said one more question and that is if there are 112 police calls in 15 months and they are not for the restaurant, than what is causing all these calls.

Ms. Alvarez said that some of the calls are for the residents upstairs.

Mr. Spear interjected and said that if there is an accident or traffic violation and it is in front of the restaurant or close by, they might use the address of the restaurant as where the police were called.

Ms. Aponte remarked that the police call list is very misleading and hard to understand.

Ms. Smith wanted to have clarification on the hours of operation. Is the hour of 2 a.m. only for the weekend and not for the whole week?

Jay Huebner replied that she was correct.

Ms. Aponte asked for clarification that they cannot operate as a nightclub.

Ms. Alvarez said that was correct, because as a nightclub we have a 750' radius requirement.

Mr. Cox commented that West Atlantic is a challenge and he hoped that this restaurant will be successful.

Ms. Roof said that her concerns would be the letters that are reflected to the residence on the 3<sup>rd</sup> floor.

Mr. Cox said that would be the concern for the HOA of the building.

Mr. Brito was concerned that they might be having a hard time in season, what is going to happen when the seasonal people leave. Staying open till 2 a.m. might not bring in the people that we are looking for in Delray. When the season is over, is this the place where after 12 midnight that you want to go.

Mr. Spear commented that the restaurant has been open for a year and only had 5 calls come in, and they didn't have any trouble. Second, if they are operating till 2 a.m. this is a conditional use and we have inspectors that come in and check and if he is not complying he will be cited. I think the protection is in place.

Mr. Cox asked if Mr. Huebner is in favor of the 6 conditions that are noted in the report and he is fine but did ask about the music and Planning and Zoning did ask for definition of "live music". We do not have bands or DJ just music.

### **MOTION**

Recommend approval to the City Commission of the conditional use request for a 24-hour or late night business to operate at Breathe, 401 West Atlantic Avenue, based upon positive findings with respect to Chapter 3 (Performance Standards), Section 2.4.5(E)(5) (Required Findings), and Section 4.3.3(VV)(2)(c) (24-Hour or Late Night Business Findings) of the Land Development Regulations, and consistency with Housing Element Policy A-11.3, subject to conditions:

1. That a CCTV or camera is installed both outside and inside, with a revised floor plan and site plan indicating their locations;
2. That confirmation that security will patrol until 3:00am be provided;
3. That confirmation be provided by the applicant that the consumption of alcoholic beverages on the premises after 2:00 a.m. is prohibited;

4. That no music or outdoor speakers will be allowed outside the building or tenant space;
5. That any live music will stop by midnight, on all nights of the week.

That the owner provide sufficient evidence that “Breathe” operates as a restaurant and meets the definition of restaurant, during all hours of operation, prior to consideration of the request by the City Commission

Motion by Mr. Cox, seconded by Mr. Spear. Said motion passed with a 7-0 vote.

**REPORTS AND COMMENTS**

**PUBLIC COMMENTS** – NONE

**BOARD MEMBERS COMMENTS** – NONE

**STAFF** – Hold off the HPB Awards 2013.

VII. **ADJOURN**

The meeting adjourned at 6:45pm

The undersigned is the Secretary of the Historic Preservation Board and the information provided herein is the Minutes of the meeting of said body for **March 20, 2013** which were formally adopted and approved by the Board on **August 7, 2013**.

*Diane Miller*

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Diane Miller, Executive Assistant

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