

MINUTES OF THE PLANNING AND ZONING BOARD
PUBLIC HEARING/REGULAR MEETING

CITY OF DELRAY BEACH
DELRAY BEACH, FLORIDA

MEETING DATE: January 23, 2012

LOCATION: CITY COMMISSION CHAMBERS

MEMBERS PRESENT: Mark Krall, Cary Glickstein, Craig Spodak, Al Jacquet, Connor Lynch, and Gerry Franciosa, and Clifford Durden

MEMBERS ABSENT:

STAFF PRESENT: Paul Dorling, Mark McDonnell, Brian Shutt, Terrill Pyburn, and Denise Valek

I. CALL TO ORDER:

The meeting was called to order by Chairman Glickstein at 6:00 p.m. Upon roll call it was determined that a quorum was present.

II. MINUTES

None

III. COMMENTS FROM THE PUBLIC: None

IV. PUBLIC HEARING ITEMS

- A. City-initiated amendment to the Land Development Regulations (LDR) amending Chapter Two, "Administrative Provisions: of the Land Development Regulations of the City of Delray Beach by amending Section 2.4.7(G). "Request for Reasonable Accommodation".
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Mr. Dorling entered the project file into the record.

The item before the Board is to make a recommendation to the City Commission regarding a city-initiated amendment to the Land Development Regulations (LDRs) that will provide clarification with respect to current information requested on the "Request Form for Reasonable Accommodation."

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

Courtesy Notices

Courtesy notices were provided to the Neighborhood Advisory Council.

Letters of objection and support, if any, will be provided at the Planning and Zoning Board meeting.

Mr. Dorling advised that we would like to add one item, which refers to the requirement that a Reasonable Accommodation Request (RAR) must be established within 180 days.

Mr. Dorling advised it would require the establishment of the RAR within the 180 days if not it would expire, unless an extension was granted. Currently if the RAR is requested the initial request is to be considered within 45 days. The applicant has 15 days to respond if additional information is requested and staff will have another 30 days to make a decision. Mr. Glickstein inquired if Planning and Zoning does nothing is it approved or rejected. Mr. Dorling advised the current language does not specify one way or another. Mr. Glickstein inquired on the flip side can we then assume that it is not approved if no action is taken. Mr. Dorling advised the LDRs are mute to the actual status. Mr. Glickstein inquired if that is being dealt with regarding this change. Mr. Shutt advised that is something that we are looking into.

Mr. Franciosa inquired about no. 7. and how will we be enforcing that. Ms. Pyburn advised the applicant will have to sign that certifying that they are perjuring themselves. If they are cited by Code Enforcement and information is incorrect it will be brought up in a court of law. Mr. Franciosa inquired who would enforce this. Mr. Shutt advised if somebody signs something and we get word that it is not right we can look at the document. It depends on how they sign and affirm something.

Mr. Jacquet inquired about no. 10. regarding who verifies the form? Ms. Pyburn advised the applicant would provide the form which could if necessary be verified by their Doctor or therapist depending on the request for accommodation.

Mr. Glickstein advised there are a lot of moving parts to this issue and this is one small part to what is being worked on both by legal and out of state council to come up with something that works for the City. This RAR process is being looked at as part of a lot of other things that impact this RAR approval process. With that said, if anyone wishes to address the Board you have three minutes.

Public Comments:

Ms. Christina Morrison, 2809 Florida Boulevard, No. 207, Delray Beach, FL, advised she has 20 years of portfolio information, review and permit experience. In regard to no. 7. do you want to include not only a penalty but a requirement that the RAR becomes null and void if information is not correct?

Mr. John Barrette, 1201 Seaspray Avenue, advised this group is doing the right thing to amend this language. We do have to know the address. This change is a positive one and in the right direction. We appreciate that. Is there a stipulation

that there will be a public hearing for RAR requests? In general the neighborhood is concerned about the granting for 740 North Ocean Boulevard without the knowledge of the neighborhood, and another is pending for 1232 Seaspray Avenue. The public should know the address.

Ms. Lucy Kizirian, 1210 Seaspray Avenue, advised I took in a number of men to help me take care of my pets when I went on vacation. Two were alcoholics and one was a crack addict. They stole my car, television and computer. We have had a robbery in our neighborhood already. I don't want to lose the value of my home and be terrified all the time.

Mr. Glickstein advised he does not think it is too late.

Mr. Peter Cross, 1132 Seaspray Avenue, advised he loves the area, and the neighbors. I am spending a lot of money on my property and trying to be a good neighbor. I am appalled to think that this neighborhood which consists of good neighbors could possibly turn into something very different very fast. They will bring friends and visitors, and the more people you are exposing to the neighborhood of questionable character the more people will break in, etc. The City would be well deserved to encourage them to build a new structure where transient uses are more appropriate and not in a million dollar neighborhood. I worked hard for my money. It would be a detriment to Delray Beach and the people in the area.

Mr. Richard Sasso, 1042 Seaspray Avenue, inquired about the upside and the downside. What is the worst case scenario? How many people, how often, what is the best case scenario. Can we put in the ordinance we are allowed to elect surveillance cameras or have the City do that? Are cities allowed to monitor these homes so we can see what is going on? I don't want to have to call the Police Department. Mr. Glickstein advised if you asked 100 people who live in the beach area they are going to give you the same answer. As far as the worst and best case scenario I don't think we can answer that as a Board. I think you can probably draw your own conclusions as far as a worst case scenario. At the outset there are a lot of moving parts to this issue and the City is working very hard.

Dr. Victor Kirson, 2050 Alta Meadows Lane, advised from what I understand we are discussing RARs for transient use. It is very serious, and the issue is being brought up in Tallahassee.

Mr. Stephen Alport, 1149 Beach Road, advised he is representing other people and has the following concerns: 1. Does the RAR ever expire, and is there a time limit that they are reviewed. 2. This represents an infringement on the single family neighborhood, and he supports continuing to work to reduce the turnover rate from 6 to 3 a year.

Mr. Glickstein advised the City is working on a proposed ordinance approved by this Board restricting tenants.

Public Comments Closed.

Board Discussion:

Ms. Pyburn advised as far as conflicts, a whereas clause was removed. We are asking for the address of the RAR request on the form. It used to say address of the applicant (older version). Mr. Lynch inquired if there is ever a time when the address would not be provided. Ms. Pyburn advised they have to provide the address or the application would not be processed further. Mr. Lynch advised this ordinance is general but refers to a form which is more specific with respect to information which is to be required. Is there a summary that breaks out all the details. Ms. Pyburn advised if they don't fill out the form it will be returned as an incomplete application request. A copy of the form is attached to this agenda item.

Ms. Pyburn advised that we have followed the format more or less as provided on the Department of Justice's web site. Mr. Glickstein inquired if there was something we could do if false information was provided like prohibit someone from reapplying. We would have to be able to verify that it was not a legitimate mistake which would need to be removed from the form. Mr. Glickstein inquired if there was something more egregious could there be consequences.

Mr. Shutt advised that this is more on the enforcement side. At that point they have to come in to compliance or it could be a code case. Mr. Jacquet advised we should be a little stricter. If they knowingly give false information there should be consequences. Mr. Shutt advised I agree and we should be looking into that. Ms. Pyburn advised this does not only apply to transient rentals but all RAR requests. For that reason we are a little more general and this plays into restricting someone from reapplying.

Mr. Glickstein asked does the RAR have expiration? There is no expiration unless the property changes hands the accreditation does not stay with the property. We are following the procedures listed on the Department of Justice website. Ms. Pyburn advised if you are requesting a RAR it is because you are disabled. You are a protected class of people. This is an application handled by the City Manager or its designee the applicant can appeal it to the City Commission and then they can appeal to the circuit court.

Mr. Shutt advised that public notice of the RAR is problematic as anything that Mr. Dorling or the City Manager makes a determination on you would also have to give public notice. The process would be so onerous it would be difficult to conduct. That is something we can look at, but I would not recommend it.

Mr. Glickstein advised that a lot of you are not comfortable with the statement that staff is doing everything they can on this. I think at this point they are moving in the right direction but there are a lot of moving parts to this. Enforcement is one of them surveillance is another. I think they are working on a lot of different fronts to come up with something that will be the best possible solution. Ms. Pyburn advised tenant turnover is something that may go to City Commission in February.

Mr. Jacquet asked if that ordinance could be presented to the Commission without the recommendation our Board makes two turnovers per year. Ms. Pyburn advised

the changes you recommended would be presented at the City Commission meeting.

Ms. Pyburn advised there have been Federal court cases dealing with RAR turnover and definition of family, where one person would apply on behalf of the folks living there.

Dr. Spodak inquired what was the result of that Federal case. Ms. Pyburn advised basically the courts have upheld one person can apply as a representative for a group of folks.

Ms. Pyburn advised regarding surveillance, we could look into it with regard to the public area only. You cannot put it on private property to look into someone's home. However, we can look into a public street.

Mr. Durden inquired about the case Ms. Pyburn mentioned one person is able to file on behalf of that person if you have different disabilities.

Mr. Shutt advised we are looking at everything. I cannot tell you how many times other cities have called us and they want to know what we are doing on this matter. They are doing nothing because of certain laws that everybody has to deal with.

Mr. Franciosa inquired if they have to identify those disabilities and number of people in the RAR requests. Ms. Pyburn advised within the confines of the law we are stressing that. We are requesting information be given regard disabilities and the address. Due to HIPPA (Health Insurance Portability and Accountability Act) it is something that we are looking at. We are not totally sure if we can request the names of every individual. Mr. Shutt advised we are looking at the form to see exactly what we can ask. We are looking nationwide and we will come up with the right form. We cannot give you those specific answers as of now. The form we are going with is currently on the Department of Justice web site.

Mr. Glickstein inquired when an applicant is claiming a disability for a person in recovery, is that different than a person who is blind. Are there insurance laws that define recovery? Who is looking at this? This is somewhat of an amorphous disability Federal protection but for how long. Ms. Pyburn advised under Federal law as long as it affects a major life activity it is classified as a disability. The ADA (American with Disabilities Act) has the list.

Mr. Glickstein advised in regard to the comment about making a false statement, if we are relying on a for profit company to be truthful there may be an incentive to stretch the truth and we need to verify information. There has to be some significant consequences if the information is found to be false. Ms. Pyburn advised that is something that we will address with them at that time.

Dr. Spodak advised he does not think this Board is fit to define who is disabled. There are well defined Federal laws that describe what a disability is. I caution the Board to be diligent and think about the full scope of this Ordinance which addresses much more than transient housing.

Mr. Durden advised he wants to be clear, it is my opinion that we are looking at an implementation process rather than a specific issue. We should be dealing with the procedural aspect of the situation.

Mr. Jacquet advised he agrees with his two Board members. I caution us to be careful what we do and how it is going to affect our City in the future. This is a huge problem that we are facing. Staff is doing an excellent job addressing the issue. I don't think this goes far enough. It is a step in the right direction. I am in support of this for that reason. I do agree this is a process and we should not be defining what disabled is. Since we hired a firm in Boca Raton and Washington, DC, they should look into that.

Mr. Franciosa advised he thinks you need to be more specific on a lot of these items. Mr. Shutt advised they are more specific on the form, the ordinance is more general as it applies to many categories of RAR requests.. Ms. Pyburn advised they have to give us that information on the form which is specific to their particular RAR request. It depends on the facts of the situation and why they are requesting the RAR.

Mr. Durden inquired as a procedural issue, would it be possible that the suggestion they have made be incorporated and the item return to the Board for re-review. Mr. Shutt advised the procedure is this Board recommends to City Commission who can incorporate your changes if they desire. You can include anything you want in that recommendation. We would not be coming back to this Board.

Mr. Glickstein advised he would suggest that there is a great sense of urgency, and we should put a motion forward and get this to Commission with our recommendations.

Motion made by Mr. Jacquet, seconded by Mr. Lynch, and approved 7 to 0 to recommend approval of the amendment to Land Development Regulations, Section 2.4.7(G), "Requests for Reasonable Accommodation", by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M). With changes in Section 7 relating to anyone who knowingly makes a false statement, and language that if the RAR is not established within 180 days after approval it would be null and void unless an extension is granted.

- B. Amendment to the Land Development Regulations Section 4.6.9"Off-Street Parking Regulations", Subsection 4.6.9(C) "Number of Parking Spaces Required", Sub-subsection 4.6.9(C)(1)(c) "Bicycle Parking" to establish new regulations for bicycle parking and amending Appendix "A" "Definitions" to provide definitions for short term, medium term and long term parking facilities.

Mr. Dorling entered the project file into the record.

This amendment implements one of the recommendations of the City of Delray Beach Parking Management Plan of August 2010. This amendment expands the

bicycle parking requirements, establishes number of required spaces, and provides locational requirements. The amendment also provides related definitions for short, medium, and long term parking facilities.

Public Notices:

The Downtown Development Authority (DDA): reviewed the item at their January 9, 2012 and tabled the item. Their main concerns were that no parking would be provided if the use required less than 20 vehicle parking spaces. This is not the case and additional clarifying language has been added to require a minimum of one space under 20 vehicle spaces. Further language has been provided to address rounding up all fractions.

The West Atlantic Redevelopment Coalition (WARC): reviewed the item at their January 10, 2012 meeting and recommended approval subject to conditions. These include recommendations that incentives be offered for existing businesses to participate. Further a recommendation was made that the city be proactive with the placement of bike racks at public facilities.

The Community Redevelopment Agency (CRA): reviewed the item at their January 12, 2012 meeting and recommended denial. They felt the current requirements were adequate and they were also concerned that long term facilities would be unduly required of all employers. The regulations have been modified to limit mandatory long term facilities to schools, transit station and public parking facilities.

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

- Neighborhood Advisory Council
- Progressive Residents of Delray (PROD)

Dr. Spodak inquired why did you want to do the 5% vs. 10%. Mr. Dorling advised these are minimum requirements. Mr. Dorling advised this was consistent with how other communities access bicycle parking requirements.

Mr. Lynch inquired if you are just building a parking lot are you subject to this. Mr. Dorling advised it is based on required parking of the use. In a parking facility there is a requirement to provide bicycle options. Mr. Lynch inquired is it the 1/20? Mr. Dorling advised under the parking facilities you would not be subject to the 1/20 but would have to provide a bicycle component which would be determined at the site plan approval stage. Mr. Lynch inquired based on the CRAs response and my initial review, what is the reasoning between the short and medium term. They look like the same type between short and medium. Is there a reason to break those out? Mr. Dorling advised they had been defined in other cities. It relates to the ability to lock an entire bike up with or without a cable. The difference between medium and short term are very minor and we can modify the language to address your concerns.

Public Comments: None

Dr. Spodak advised he is in support in keeping with the Downtown Master Plan threshold regarding being pedestrian friendly, less congestion of cars, and a more community type atmosphere. When I go through downtown I see bikes parked in places where they are not supposed to be parked. I personally think the recommendation is weak and it should be 10% of the vehicular requirement. We have an opportunity to set the bar a little higher. We are interested in people biking and walking. From a cost standpoint it is minimal. I would like to set an example for the City to follow. Raise the second part to 10% (commercial office and industrial). Mr. Lynch advised I support that and I would also like the short and medium term categories to be combined.

Motion:

Motion made by Dr. Spodak, seconded by Mr. Lynch, and approved 7 to 0 to recommend approval of the amendment to Land Development Regulations, by amending Section 4.6.9, “Number of Parking Spaces Required”; Subsection 4.6.9(C)(1)(C), “Bicycle Parking”, and Amending Appendix “A” to Enact New Definitions for Short, Medium, and Long Term Parking Facilities, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M) subject to two conditions. These included increasing the bicycle parking requirement from 5% to 10% of the vehicular parking requirements for commercial, office and industrial uses as recommended in the Parking Management Plan, and modifying the time frames associated with short and medium term facilities categories.

- C. City-initiated amendment to the Land Development Regulations (LDRs) by amending Section 4.6.16, “Landscape Regulations” to provide an updated Landscape Code (Continued from November 21, 2011).

Mr. McDonnell entered the project file into the record.

The proposed ordinance was considered by the Board on November 21, 2011. After significant discussion the Board tabled the ordinance on a 7 to 0 vote. The Board directed staff to be more creative in an effort to further upgrade the regulations within the landscape code particularly in the downtown core area.

The Board meeting recommended the following:

- Increase the size specifications for plant material, especially within the Central Business District (CBD);
- Push the landscape envelope out into the street with the use of on-street landscape islands (specifically addressing properties located within CBD);
- Add additional requirements for plant material located within parking lots.

In response to these recommendations the following modifications are proposed:

- Revision to the required tree height specifications within CBD from 12’ to 16’ in overall height. Adds requirement of increasing size further, to 18’, if option to increase the number of parking spaces between islands is chosen;

- Adds language to require understory plants in every landscape island;
- Adds language to require a 2' hedge in landscape strips between parking tiers;
- Adds language to require on-street landscape islands in locations where on-street parking exists.

Review By Others

The following advisory boards reviewed the proposed amendment and made the following recommendations to the City Commission:

The Site Plan Review and Appearance Board (SPRAB): on October 12, 2011 recommended approval of the proposed text amendment.

The Community Redevelopment Agency (CRA): on October 13, 2011 recommended approval of the proposed text amendment. The Board and the CRA Assistant Director had some concerns. These included the proposed:

- Landscape island expansion from five (5) feet to nine (9) feet within the limits of the Central Business District;
- Removal of compacted rock within the landscape islands and its effect on the integrity of the curbing and asphalt;
- Requirement for upgrading tree height as it relates to structure height for all required trees;
- Cap on the percentage of required trees that will be allowed in the form of palm trees;
- Requirement for the installation of street trees within residential developments

The Landscape Code has been modified to address these comments.

Pineapple Grove Main Street (PGMS): on November 2, 2011 recommended approval of the proposed text amendment.

The Downtown Development Authority (DDA): on November 15, 2011 recommended approval of the proposed text amendment. The Board chose to adopt the same concerns as the CRA. One additional suggestion was to increase the maximum maintained height of hedges for residential properties.

The West Atlantic Redevelopment Coalition (WARC): on November 15, 2011 recommended approval of the proposed text amendment. The only suggestion made was to add a provision to review the landscape code every five years for updating purposes.

Courtesy Notices

Courtesy notices were not provided.

Public Comments: None

Mr. Peter Anuar highlighted the changes to the Landscape Plan presented at the December 19, 2011 meeting as listed below:

Comment: Increase the size specifications for plant material, especially within the Central Business District (CBD).

Resolution: Tree height has been increased (CBD only).

- Minimum height of all trees (both canopy and palms) will be 16' overall height with a 7' spread.
- Minimum height for both trees and palms will be increased to 18' overall height if option to increase the # of parking spaces between islands is chosen.

Comment: Push the landscape envelope out into the street with the use of on-street landscape islands (specifically addressing properties located within CBD).

Resolution: A new regulation specifically dealing with on-street landscape islands has been created (CBD only).

❖ Three types of islands have been designated:

Driveway Islands

Intersection Islands

Parallel Parking Islands

- All islands to be curbed with type 'F' curbing
- Requirement will be tied to Class IV and higher submittals
- Excludes Atlantic Avenue
- Flexibility with respect to location and size of islands will be considered during examination of existing site conditions

Driveway Islands

- Shall be required on each side of the driveway apron leading into the property
- Islands will be a minimum of 8' in length
- Contain one accent tree or palm and understory plantings
- Planting scheme will be determined by existing streetscape plantings

Intersection Islands

- Shall be required at the corners of intersecting streets
- Islands will be a minimum of 10' in length
- Contain one palm and understory plantings
- Planting scheme will be determined by existing streetscape plantings

Parallel Parking Islands

- No more than 6 parking spaces between islands
- Spaces will be counted from nearest intersection
- Islands will be a minimum of 22' in length
- Contain one canopy tree and understory plantings
- Planting scheme to be consistent with existing streetscape plantings

Comment: Add additional requirements for plant material within parking lots.

Resolution: Increased amount of required plant material within landscape island and strips.

- All landscape islands shall have a minimum of 75 square feet of shrubs and groundcovers.
- In addition to canopy trees, all landscape strips between parking tiers shall have a 2' continuous hedge. Pedestrian aisles are permitted to allow access through the hedge.

Mr. Durden inquired as part of this plan is there a time table. Mr. Anuar advised it would be enacted as soon as it is signed off by City Commission.

Mr. Glickstein advised that developers would have to comply with this. Mr. Glickstein advised we wanted to see more contributions by the developers. Mr. Durden advised he thought that it would be the downtown area that the City would provide. Mr. Anuar advised we enacted certain regulations to the CBD. We don't have restrictions that are just for the CBD.

Mr. Jacquet inquired if this affected single-family property owners. Mr. Franciosa inquired how this affected narrowing Federal Highway. Mr. Anuar advised it would not affect it. I would be looking at the landscape efforts within the CBD. Mr. Lynch inquired if Atlantic Avenue was excluded. Mr. Anuar advised that is a parking issue, and we wanted to make as many parking spaces as possible. The only part I remember talking about when we gained more width is the island. We were getting the same size trees. The spread had to be 7 feet. Can we require shading trees?

Mr. Lynch advised within all the standards you had recommendations about the rock and curbing is that all the same within the islands. Mr. Anuar advised it is City wide. Dr. Spodak inquired when you do have sprawling asphalt can you put a sable palm, and is there some wording in this change that mandates more shading in the parking lots. Mr. Anuar advised it limits palms to the number of trees in the parking lots. That would be accomplished through the plan review process when we increase from 25% to 50% more palms along the front of the building. Dr. Spodak inquired if there were canopy trees in the island. Can you use a palm tree in the islands or in the parking lots? Mr. Anuar advised we can include that in the parking lot islands.

Mr. Glickstein advised rather than tie the installation of landscape islands to 4 or 5 can we make future parking part of a development proposal. I understand you are not going to require Class III and below to deal with these islands. If off-street parking is part of the plan do they have to follow these requirements? Mr. Anuar advised the builder or designer would put it into the plan.

Mr. Glickstein advised a previous code allowed somebody to construct a larger island. If they get that they will put in a larger tree. Mr. Lynch advised maybe we could have something in the spread. Mr. Glickstein advised the spread should be commensurate with the height of the tree. Mr. Glickstein inquired what does a Class III have to do with the application on future parking? Mr. McDonnell advised if there were islands required they would need to conform. Mr. Glickstein inquired why is anything we are doing in the CBD should not be applied City wide? Mr. Anuar advised they don't want a lot of trees in the downtown area. Mr. Glickstein inquired why does downtown have special needs that might not apply to suburban

development. Why don't we have this city wide in the Four Corners and Congress Avenue. Do you see anything structurally making use city wide? Mr. Anuar advised it would increase the cost.

Dr. Spodak advised I am not concerned about the cost. We should be requiring more. What is the typical landscaping of a development. Mr. Glickstein advised putting it city wide is important. This should be city wide and it makes it easier for staff. Mr. Glickstein advised he had one concern. There has always been this classification grading the quality of tree standards for canopies, tree central leader one. There are a lot of beautiful trees without a central leader. A central leader tree is a strong tree. For example, those trees you used as an example at Cannery Row, I don't think we have one central leader tree. Mr. Anuar advised there are fifteen steps in trees.

Motion:

Motion made by Mr. Lynch, seconded by Mr. Krall, and approved 6 to 1 (Mr. Jacquet dissented) to recommend approval of the amendment to Land Development Regulations Section 4.6.16, "Landscape Regulations", to modify the requirements of the landscape code, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

- D. Conditional use request to permit outdoor dining to operate at night at 27-43 South Swinton Avenue, Swinton Social, as required for properties located within the Old School Square Historic Arts District. Quasi-judicial Hearing

Ex-Parte Communications: None

Mr. McDonnell entered project file NO 2012-038- USE CCA into the record.

The subject properties, which are zoned Old School Square Historic Arts District (OSSHAD), consist of Lots 11, 12, 13, 14, and 15, Block 69, Town of Delray Beach. The 0.74-acre property presently contains four one-story, frame vernacular, single-family residences constructed between 1937 and 1950, which have been vacant for a number of years. One accessory structure (garage) remains on the southernmost property. The properties are located within the Old School Square Historic District, and are all classified as contributing.

On November 16, 2011, the Historic Preservation Board approved a Certificate of Appropriateness and Class V Site Plan Application for the adaptive reuse of the structures from single-family residential to spa and restaurant uses. The development primarily consists of the following:

- 27 South Swinton Avenue: Conversion of single-family residence to spa with the following accessory uses:
 - Raised "Smoothie/Juice Bar"
 - Jacuzzi
 - Swimming Pool: Measures 100' x 15', and is 5' deep, with a stepped entry area at each end, and two centrally located "shallow swim outs";

- 31 South Swinton Avenue: Conversion of single family residence to restaurant; referred to as “Grille” on the plans;
- 35 South Swinton Avenue: Conversion of single-family residential to restaurant; referred to as “Kitchen” on the plans;
- 43 South Swinton Avenue: Conversion of single-family residence to restaurant; referred to as “Café” on the plans;
- Additions between each of the structures will provide both open-air covered dining and enclosed dining spaces along the rear of the café and kitchen;
- Addition of a connected “poolside bar” at the rear of #43,
- Provision of a one-way drive aisle with 7 parking spaces parallel to South Swinton Avenue with the ingress located in front of 43 South Swinton Avenue, and the egress located in front of 27 South Swinton Avenue;
- Additional site improvements such as smaller accessory structures, fountain, 6’ high stucco-finished, masonry wall and a significant amount of landscaping throughout the site.

The hours of operation for the development are provided in the chart below, as they vary between the different uses and spaces:

	<u>Sunday</u>	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>	<u>Saturday</u>
<u>Spa</u>	Daytime Hours Only (Including accessory uses: Juice Bar, Jacuzzi, Swimming Pool)						
<u>Grille</u>	8 a.m. - 1 hour past sunset					8 a.m. - 2 a.m.	
<u>Café</u>	10 a.m. - 3 p.m.		5 p.m. – 12 a.m.			10 a.m.- 3 p.m.	
<u>Sidewalk Café</u>	Same as Café (See Above)						
<u>Poolside Bar</u>	Same as Café (See Above), when Pool is closed.						

Review by Others

The Community Redevelopment Agency (CRA): reviewed the request at its January 12, 2012 meeting, and recommended approval.

The Historic Preservation Board (HPB): reviewed the request at its January 18, 2012 meeting, and recommended approval on a vote of 7-0, subject to the following conditions:

1. That the Outdoor Dining seating not be expanded in quantity or floor area from what is indicated on the submitted plan, which includes 56 seats behind the kitchen, 25 seats at the poolside bar, 12 seats between the café and poolside bar, and 42 seats within the Sidewalk Café area;
2. That a Sidewalk Café permit be obtained which indicates no more than the twelve seating areas and 42 seats indicated on the submitted plans;
3. That the Valet Parking Agreement be accepted by the City Commission prior to issuance of a Building Permit; and,
4. That if complaints are generated, pedestrian and/or vehicular incidents occur to impact the area, the valet fails to function, and/or undue congestion results, the Sidewalk Café permit will be reconsidered and possibly rescinded.

Mr. Jacquet inquired if outdoor dining at night is allowed in a residential area. Mr. McDonnell advised it is allowed. When this use takes place it will allow attractive redevelopment the area further south of Swinton Avenue and this may be a catalyst. The main concerns are the potential for congestion and the valet service.

Dr. Spodak advised when you have an outdoor café people will walk there. Why are you not looking at this with the same regard? This could be a catalyst for development. Why is the parking a concern? Mr. McDonnell advised only seven of the fifty-three are on site and they have to use the valet service. Only some spaces are on SE 1st Avenue. We want to see how it is going to function. It is taking the vehicles and the timing that occurs. The further away from the parcel the valet is going to be running back and forth. Dr. Spodak advised it will be a more dining urban environment.

Applicant:

Mr. Robert Currie, Architect, Currie Sowards Aguila Architects, 134 NE 1st Avenue, advised this project finally brings redevelopment to that area, and the Historic staff and we have worked hard to make this work. There are seven parking spaces on the street, the parking lot has twenty-eight spaces and we will contract with a valet service for twenty more spaces. The lot has already been purchased for the valet service. There are more valet parking spaces available than what was required. The spa will only be opened during the day, and will be closed at night. This will be a visual enhancement for the dinners. This has come before every Board, and the Historic Preservation Board has unanimously approved this project. There was no objection from any Board.

Mr. Franciosa inquired where was the valet parking taking place. Mr. Currie advised it is off site.

Public Comments: None

Mr. Durden inquired if any consideration has been given to the possibility of encroachment to residents in the area. Mr. Currie advised a notice has been sent to people within 500 feet. Mr. Durden asked how many responses did you get. Mr. Currie advised there were no concerns.

Mr. Lynch advised he thought it was great that this site was rehabilitated as it was the missing link.

Mr. Jacquet advised he lives close to that area and it is positive for the neighborhood. As we watch that development progress I think it is going to enhance Delray Beach. My only concern is that you reach out to the folks near that site. I do understand notices were sent out. The neighbors there love Delray Beach. I would encourage the owners to reach out to those local business owners east of the church and south of the site. I think it is beautiful and a great addition to our City.

Mr. Krall inquired if the owners were comfortable with condition no. 6? Mr. Currie advised they had that discussion at the Historic Preservation Board meeting. Mr.

Shutt advised staff has narrowed scope. The language was a little too broad. Bear in mind what happens if they get a Conditional Use request then there is certain criteria regarding the Conditional Use we can revoke that. That is something we will have to look it as it proceeds to City Commission to fine tune it. We will come up with better language.

Mr. Lynch inquired if anyone else has requirements. Mr. McDonnell advised the Chez Mika was shut down. Mr. Jacquet inquired why. Mr. McDonnell advised they had three police calls. Mr. Jacquet inquired what was the intent, three phone calls, and three reports of an incident. Mr. McDonnell advised if a pedestrian gets hit or there are collisions vehicle to vehicle. Mr. Currie inquired is there recourse where they have the right to dispute the calls. Mr. Durden inquired about the last sentence; it would be reconsidered and possibly rescinded. Mr. Lynch advised there should be more guidelines to protect their investment. The other concern is staying open till 2:00 a.m.

Mr. Christopher Licata advised it does not necessarily happen at Swinton Social. Mr. McDonnell advised it was added as a condition by the Historic Preservation Board. Mr. Shutt advised it seems like staff is trying to give a recommendation of approval, and trying to put a condition on it. This deals with outside dining at night. The outdoor dining can be allowed without a Conditional Use but only during daylight hours. Mr. McDonnell advised the concern is when the use will be most popular because of the offsite nature of the parking. How does the valet get to the distant parking lot?

Mr. Lynch advised I feel comfortable asking staff for further review. Mr. Shutt advised if staff sees there is an issue within sixty days you are required to get a parking closer to the site.

Motion:

Motion made by Mr. Lynch, seconded by Mr. Franciosa, and approved 6 to 0 (Mr. Glickstein left the meeting early) to approve a recommendation of approval to the City Commission for the request of a Conditional Use associated with outdoor dining at night at 27-43 South Swinton Avenue, Swinton Social, based upon positive findings with respect to Section 2.4.5(E)(5), Conditional Use Findings, Chapter 3, Performance Standards, and consistency with the Future Land Use Element of the Comprehensive Plan, subject to the following conditions:

1. That the Outdoor Dining seating not be expanded in quantity or floor area from what is indicated on the submitted plan;
2. That a Sidewalk Café permit be obtained which indicates no more than the twelve seating areas and 42 seats indicated on the submitted plans;
3. That the Valet Parking Agreement for be accepted by the City Commission prior to issuance of a Building Permit;
4. That a Parking Management Plan be submitted which indicates all travel routes for the valet service to and from the subject location;
5. That all outside seating areas subject to this approval shall have hours of operation not exceeding 12:00 a.m. Sunday through Thursday, and 2:00 a.m., Friday and Saturday; and,

6. That if the conditional use for outdoor dining at night results in pedestrian or vehicular congestion for which more than three (3) Code Enforcement violations and/or civil violations are issued, the conditional use for outdoor dining at night shall be reconsidered and possibly rescinded.

E. Abandonment of a 16 foot wide alleyway that extends for 47', lying south of Lot 1, Block 85, Town of Delray and immediately south of the former VFW Building at 5 SE 2nd Avenue. Quasi-judicial Hearing

Mr. McDonnell entered project file no. 2012-042 ABR CCA into the record.

The item before the Board is that of making a recommendation to the City Commission on the proposed abandonment of the alley right-of-way located south of and adjacent to the former VFW building at 5 SE 2nd Avenue.

This right-of-way abandonment is being processed pursuant to LDR Section 2.4.6(M), Abandonment of Rights-of-Way.

The alley right-of-way was dedicated by the plat of the Town of Linton, which was recorded in Plat Book 1, Page 3, on March 25, 1910.

The proposed alley abandonment area is the remaining right-of-way following abandonment of the east portion of the alley to accommodate the redevelopment of the Grove Square project. The alley currently serves as a service court for the adjacent properties to the north and south.

The subject alley right-of-way is 16 feet wide by 47.7 feet long and is located between the former VFW building and the iL Bacio Restaurant.

Review by Others:

Development Services Management Group (DSMG): On December 22, 2011, the DSMG reviewed the alleyway abandonment request and recommended approval, subject to retention of a utility easement over the entire area to cover existing utilities.

Downtown Development Authority (DDA): On January 9, 2012, the DDA reviewed the alleyway abandonment request and unanimously recommended approval subject to: 1) the alley is to be used as service court ONLY; 2) continued use for utilities; and 3) no permanent structures be allowed in the alley.

Community Redevelopment Agency (CRA): On January 12, 2012, the CRA reviewed the alleyway abandonment request and recommended approval.

Courtesy Notices:

Courtesy notices have been provided to the following groups and neighborhood associations:

- Neighborhood Advisory Council
- Chamber of Commerce
- Delray Citizen's Coalition

Public Notice:

Formal public notice has been provided to property owners within a 500' radius of the subject property. The Planning Department has not received any letters of opposition to the abandonment. Additional letters of objection or support, if any, will be provided at the Planning and Zoning Board meeting.

Mr. Durden inquired if that was included in the existing easement they cannot build a structure in the area. Is that part of the recommendation? Mr. McDonnell advised that doesn't necessarily say they can't build in that area. Mr. Durden advised he would like to add that in.

Mr. Michael Covelli, Covelli Design Associates, advised they concur with the staff report. We are complying with all the requirements.

1. The abandonment was originally created by a plat. No deed was ever given,
2. We have provided the list of required documentation.
3. We followed all procedures in terms of application and Boards in terms of staff as the DDA and CRA.

It is truly going to function as a service court. You can require a replacement easement. We met all of the tests within the development code. A few points Mr. McDonnell talked about. A portion of the easement to the right-of-way previously abandoned. The small section is a piece of the alley. The VFW building and 16 foot alley adjacent is a 4 foot sidewalk that runs as an east and west easement (egress/ingress) is not affected. That we will maintain.

Mr. Franciosa inquired who owns the sidewalk. Mr. Covelli advised it is currently il Bacio's.

Public Comments:

Ms. Alice Finst, 707 Place Tavant, advised: There are two unsecured dumpsters and four cans – not very attractive. How does that get under control? Are we going to see service vehicles, and are we going to screen the dumpsters. Mr. Lynch advised now it will be their property. Mr. Shutt advised whatever is applicable at the Site Plan Review and Appearance Board. Ms. Finst advised a 4 foot sidewalk could go into the exterior property and people walk back around the dumpsters. The VFW approval for a second floor, how does that fit in with this proposal here as far as setbacks are concerned. This needs some more evaluation on what they are going to do. Maybe some barriers should be put in to screen the dumpsters. Mr. McDonnell advised he did not know whose dumpsters they are. I have not seen a vehicle parked there. With RACKS we will be looking at this area and make sure it is cleaned up. This is for SPRAB and they will look at all of those issues then. Ms. Finst advised if this can fix the problem in the alley, fixing it 8 feet that can go to SPRAB but continue on transfer of property. Mr. Shutt advised this Board does not have the capability to do that. Mr. Lynch advised if this property is split between north and south, north is coming in with site plan review, and south would be subject to code enforcement. Mr. Covelli advised in regard to putting a second

floor on this, we just paid \$180,000.00 for existing space. I don't think anyone is adding any more square footage.

Motion:

Motion made by Dr. Spodak, seconded by Mr. Lynch, and approved 6 to 0 (Mr. Glickstein left the meeting early) to move a recommendation of approval of the request for the abandonment of the east-west alley right-of-way located within Block 85 of the Town of Linton Plat, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.6(M)(5) of the Land Development Regulations.

V. A. Reports and Comments

Staff

Parking Management Advisory Board – Mr. Krall advised the next meeting is scheduled for next week.

Meeting Dates for February

City Commission Meetings

Tuesday, February 7, 2012, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Tuesday, February 21, 2012, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Planning and Zoning Board Meeting

Monday, February 27, 2012, Planning and Zoning Board Regular Meeting, 6:00 p.m., City Commission Chambers:

1. Master Development Plan for Bellantica Gardens, located at the southeast corner of West Atlantic Avenue and Military Trail.
2. Future Land Use Map amendment from Transitional to General Commercial and Rezoning from POC (Planned Office Center) to PC (Planned Commercial) for Delray Place, southeast corner of Linton Boulevard and South Federal Highway.
3. Abandonment of an alleyway lying south of SW10th Street and east of SW 10th Avenue, within the Wallace Drive Overlay Area.
4. Amendments to the Land Development Regulations primarily provide clarification of the Historic Preservation Board's (HPB) duties, review of variances by the HPB, and development review for properties located within a historic district or those which are individually designated.
5. Amendment to the Land Development Regulations Sections 4.4.26 "Light Industrial" to add neighborhood commercial retail and service uses as a principal use and amending the size of allowable display area; and amending setback requirements for LI zoned properties located in the Wallace Drive Overlay District.

6. Amendment to the Wallace Drive Redevelopment Plan to allow neighborhood commercial retail and service uses as a principal use.
7. Amendment to the Land Development Regulations Appendix "A" Definitions modifying the definition of restaurants.
8. Amendment to the Land Development Regulations Appendix "A" Definitions to add a definition for deli.
9. Amendment to the Land Development Regulations regarding the undergrounding of utilities.

VI. ADJOURN

The meeting adjourned at 9:15 p.m.

The undersigned is the Secretary of the Planning and Zoning Board and the information provided herein is the Minutes of the meeting of said body for January 23, 2012 which was formally adopted and approved by the Board on February 27, 2012.

Denise A. Valek

Denise A. Valek, Executive Assistant

If the Minutes that you have received are not completed as indicated above, then this means that these are not the official Minutes. They will become so after review and approval, which may involve some changes.