

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

CITY OF DELRAY BEACH
DELRAY BEACH, FLORIDA

MEETING DATE: April 25, 2011

LOCATION: CITY COMMISSION CHAMBERS

MEMBERS PRESENT: John Miller, Mark Krall, Clifford Durden, Craig Spodak, Al Jacquet, and Connor Lynch

MEMBERS ABSENT: Cary Glickstein

STAFF PRESENT: Paul Dorling, Brian Shutt, and Denise Valek

I. CALL TO ORDER:

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

The Agenda was amended as follows:

Item IV.A. - is Quasi-Judicial

II. MINUTES

Motion made by Mr. Lynch, seconded by Mr. Krall, and approved 6 to 0 (Mr. Glickstein absent) to approve the Minutes of March 21, 2011 as written.

III. COMMENTS FROM THE PUBLIC: None

IV. LAND USE ITEMS

- A. Final Plat approval in conjunction with the creation of a four-lot single family subdivision for Seaside, located on the north side of Lowry Street, west of Andrews Avenue. Quasi-Judicial Hearing
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Ex-parte Communications: None

Mr. Dorling entered project file no. 2011-93 into the record. The 1.34 acre property consists of lots 5 and 6, Ocean Breeze Estates, according to the plat thereof, recorded in Plat Book 18, Page 36 of the public records of Palm Beach County, Florida. The plat was recorded on January 8, 1938. Lot 5 (1153 Lowry Street), contains a 4,470 square feet, 2-story single-family home and Lot 6 is undeveloped. Both lots are under common ownership, but there is no unity of title tying the lots together.

The replat of the subject property will allow for the development of four (4) single-family homes. The property will be divided into 4 single-family lots and Tract "A", which is a 50' wide access tract with a 100' diameter cul-de-sac being dedicated as a private street (Sea Lane). Water and sewer service will be provided within exclusive easements for that purpose. Drainage will be provided within Tract "A" and other utilities (electric, phone, cable TV and gas) will be located within a 10' General Utility Easement on the west and north sides of Tract "A".

Review By Others:

The subject property is not located within a geographical area requiring review by the CRA (Community Redevelopment Agency) or the DDA (Downtown Development Authority).

Courtesy Notices:

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

- Neighborhood Advisory Council
- Beach Property Owners
- Delray Citizen's Coalition
- Casa La Brisa

Board Comments:

Mr. Miller inquired what was going to happen to the house. Mr. Dorling advised it will come down.

Mr. Durden inquired if the sidewalk was 4 feet. Mr. Dorling advised we are recommending approval subject to the comments in Appendix B., a 5 foot sidewalk easement, and the ability to have that sidewalk deferred to a point where it is necessary when there is connectivity between the adjacent sidewalks.

Mr. Miller inquired what year the home was built.

Applicant:

Gary Eliopoulos, Architect, 205 George Bush Boulevard, advised they concurred with everything in the staff report. He advised that on the overhead it does say a 5 foot sidewalk will be provided. The plat is being corrected to show the 5 feet. We will only be constructing the sidewalk around the cul-de-sac at this time. To answer Mr. Miller's question, the house was built in 1940. We are trying to save the structure. We have two individuals interested in it. We are doing what we can to save the structure. It is a great house, and I am going to assume it is all original construction.

Public Comments: None

Mr. Dorling advised that on the sidewalk along Lowry the City is going to support a deferral of that improvement. There is an agreement if and when it is desired in the future it will be constructed at the owner's expense.

Board Discussion:

Mr. Lynch indicated he was pleased that steps were being taken to save the house given its historic nature.

Mr. Jacquet advised he had two concerns: 1. Compatibility, and 2. distance from the center of the lot having an 85 foot depth while the average width is in the range of **104** feet. Mr. Dorling advised that the average depth was used as a rationale to support the reduction to the 85 feet. Mr. Jacquet inquired why we measured from the center line and not the average depth. Mr. Dorling advised it is just to make sure we are consistent from the parcel to parcel and measure from the same point on each lot. It is not written that way to exclude the possibility of averaging.

Mr. Miller inquired when was the other cul-de-sac north of this site was put in. Mr. Dorling advised 10 to 15 years ago.

Motion:

Motion made by Mr. Jacquet, seconded by Mr. Lynch, and approved 6 to 0 (Mr. Glickstein absent) to move a recommendation of approval to the City Commission of the Preliminary Plat and certification of the Final Plat for Seaside, by adopting the findings of fact and law contained in the staff report, and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(J) (Major Subdivisions), Section 3.2.3 (Standards for Site Plan and/or Plat Actions) and Section 3.1.1 (Required Findings for Land Use and Land Development Applications) of the Land Development Regulations, subject to the following condition:

1. That all comments under the "Technical Items" section (Appendix "B") of the report be addressed prior to scheduling the plat for City Commission action.

V. PUBLIC HEARING ITEMS

- A. Conditional use request to allow the Veterans of Foreign Wars (Post 4141) to establish a fraternal lodge with restaurant facilities within an existing commercial building located at the southwest corner of SE 5th Avenue and SE 8th Street. Quasi-Judicial Hearing

Ex-parte Communications: None

Mr. Dorling entered project file no. 2011-95 into the record. The item before the Board is making a recommendation to the City Commission on a request for conditional use approval to establish a Fraternal Lodge to be known as VFW Post 4141, pursuant to Land Development Regulations (LDR) Section 2.4.5(E). The subject property is located at the southwest corner of SE 8th Street and SE 5th Avenue and is zoned General Commercial (GC).

The subject parcel contains 0.6648 acres (28,959 sq. ft.) and a 2,783 sq. ft. commercial building with 43 existing parking spaces and associated landscaping. The site was developed in 1976 as a commercial property for restaurant use. This use has continued since the most recent owner (Arlette's Kitchen) vacated the property in late November 2010.

The applicant recently acquired the subject property for conversion of use. The existing fraternal organization (O'Neal Priest Post #4141) is currently located on the east side of SE 2nd Avenue, south of East Atlantic Avenue (5 SE 2nd Ave). The current location has been Commander Post 4141 for the Veterans of Foreign Wars of the United States since its construction in the early 1940's.

Review By Others:

The subject property is not located within a geographical area requiring review by the Downtown Development Authority (DDA) or Historic Preservation Board (HPB).

At its meeting of March 24, 2011, the Community Redevelopment Agency (CRA) reviewed the proposed site plan for VFW Post 4141 and recommended approval.

Courtesy Notices:

Courtesy notices have been provided to the following homeowner's and/or civic associations which have requested notice of developments in their areas:

- Neighborhood Advisory Council
- Delray Citizen's Coalition
- Domain Delray
- Harbourside
- Churchill
- Barton Apartments
- Banyan Tree Village
- Delray Beach Harbour Club E View

Public Notice:

Formal public notice has been provided to property owners within a 500' radius of the subject property.

Applicant

David Schmidt, Esquire, representing the applicant, advised he does not have any objections to anything Mr. Dorling has stated. My clients are fine with the conditions. As a restaurant operation there are ten (10) more parking spaces provided over those required by Code. The Post has existed for sixty-five years with no parking in its current location. They have relied on public parking and there have not been any parking issues. We do not anticipate any problems with the parking at this location.

Mr. Jacquet inquired when they were downtown was there a restaurant component. Mr. Schmidt advised there was.

Mr. Durden inquired if there was a change in the traffic impact. Mr. Dorling advised there will be less of a traffic impact than the previous restaurant use.

Public Comments: None

Motion:

Motion made by Mr. Lynch, seconded by Mr. Jacquet, and approved 6 to 0 (Mr. Glickstein absent) to move a recommendation of approval of the conditional use request to allow for the establishment of a Fraternal Lodge for VFW 4141, by adopting the findings of fact and law contained in the staff report, and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Sections 2.4.5(E) (5), 4.4.9(D)(5) and Chapter Three of the Land Development Regulations with the following conditions:

1. That all activities occur indoors, including but not limited to the semi-annual thrift sale.
 2. That either the parking reduction be approved or other alternative parking options be pursued.
 3. That any deteriorated landscaping, irrigation systems and landscape island curbing shall be reinstalled to comply with the approved landscape plan for the site.
- B. City initiated amendment to the Land Development Regulations Section 4.3.3(I), "Community Residential Homes and Group Homes" to remove an out-of-date reference to Section 4.3.3(D).
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Mr. Dorling entered the project file into the record. The item before the Board is that of making a recommendation to the City Commission regarding a City-initiated amendment

to Land Development Regulations Section 4.3.3(I), "Community Residential Homes and Group Homes", to remove an out of date reference to Section 4.3.3(D), pursuant to LDR Section 2.4.5(M). Pursuant to Section 1.1.6(A), an amendment to the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

The proposed amendment to Section 4.3.3(I), "Community Residential Homes and Group Homes", is to remove an out of date reference to Section 4.3.3(D), which was repealed by the City Commission on April 5, 2011 via Ordinance No. 10-11. The reference to this Section should have been deleted with that Ordinance, but was missed in error. The purpose of this Ordinance is to correct that error.

Board Comments:

Mr. Lynch inquired what section will be affected. Mr. Dorling advised there was a combination of changes and residential license service providers are now allowed in residential districts similar to other residential uses. The sections that were eliminated called them out and treated them differently. This particular reference to the LDR section was not removed and should have been. The previous changes also created an area for medical uses where the more intense, institutional types of uses can locate.

Public Comments: None

Motion:

Motion made by Dr. Spodak, seconded by Mr. Jacquet, and approved 6 to 0 (Mr. Glickstein absent) to recommend to the City Commission approval of the amendment to Land Development Regulations Section 4.3.3(I), "Community Residential Homes and Group Homes", to remove an out of date reference to Section 4.3.3(D), by adopting the findings of fact and law contained in the staff report and finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations.

- C. City initiated amendment to the Land Development Regulations Section 4.4.29 "Mixed Residential, Office and Commercial (MROC) District to clarify allowable densities."

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 Land Development Regulations (LDRs) that will clarify allowable densities in the Mixed Residential, Office and Commercial (MROC) zoning district.

The current introductory statement to regulate multi-family dwelling units in the MROC zoning district opens by stating that multi-family uses (excluding duplexes) are allowed at densities between 40 and 50 units per acre. There are three (3) scenarios that allow varying maximum densities, each of which is based upon the distance from the Tri-Rail Transit station.

The introductory statement has been interpreted to mean only densities between forty and fifty are allowed rather than maximum densities of 40 and 50 depending on the properties proximity to the Tri-Rail Station. This amendment clarifies this point.

Courtesy Notices

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

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

Public Comments: None

Board Comments: None

Motion:

Motion made by Mr. Lynch, seconded by Mr. Durden, and approved 6 to 0 (Mr. Glickstein absent) to recommend approval of the amendment to Land Development Regulations, Section 4.4.29(B)(4) In Order To Clarify The Allowable Maximum Densities In the MROC Zoning District Depending Upon Proximity To A Transit Station, 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. City initiated amendment to the Land Development Regulations Article 4.4 to add community gardens as a principal use and amending Section 4.3.3 "Special Requirements for Specific Uses", to establish specific regulations pertaining to the development of Community Gardens.

Mr. Dorling entered the project file into the record. Community Gardens are proposed to be allowed as a permitted use in the following zoning districts: R-1 - Single Family Residential Districts, FL - Low Density Residential Districts, and RM - Medium Density Residential Districts and as an accessory use also in the RM subject to special regulations. This use is not to be a commercial venture. Selling the products is prohibited and they are for personal consumption only. The sale of poultry, live stock, fish and the keeping of bees is prohibited. The use will require administrative approval by Community Improvement Department for single-family lots and site plan modification approval by the Planning and Zoning Department for RM properties.

Courtesy Notices

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

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

Advisory Boards to which the proposal was sent for review and recommendation include the Community Redevelopment Agency and the West Atlantic Redevelopment Coalition.

Board Comments:

Mr. Durden inquired if the person who purchases the property within a community and develops a garden can sell the products. Mr. Dorling advised it is not envisioned to be only one user, it is for several users and food is for their own consumption. This is a temporary infill use and is to have minor impact on the neighborhood.

Mr. Jacquet clarified the produce is not for sale on the site. Mr. Dorling advised they can choose to grow it and go somewhere else to sell it. This is going to be for lots in single-family neighborhoods and may be between two single-family homes and you don't want that type of commercial activity going on. Mr. Jacquet inquired if this was a developing trend. Mr. Dorling advised it is an international trend. West Palm Beach has both community gardens and urban gardens. At urban gardens you can sell on site and they have parking for a larger scale operation. Mr. Jacquet inquired as a homeowner in Delray Beach can I grow potatoes on a private lot. On single-family lots residents could have private gardens.

Dr. Spodak inquired what classification is the Community Gardens under right now. Mr. Dorling advised there are four or five locations that have done it and it is currently not designated as an allowed use in any district. Dr. Spodak inquired what type of fence or hedge would be installed. Mr. Dorling advised it is required to be a minimum of 2 feet high and a maximum of 6 feet. You can't have a hedge 10 feet high. The garden has to be screened given the potential to have an aesthetically diverse environment.

Public Comments:

Ms. Alice Finst, 701 Place Tavant, distributed literature from the University of Florida to the Board (copy attached). Ms. Finst advised she is a Master Gardener, and has over 120 hours of training. There is a booth at the Delray Beach Green Market where you can obtain any kind of literature. My main interest is that you meet the criteria established by the University of Florida so you cover everything. I am not sure I heard anything about a registered agent. Do we have that covered? If you need additional information there are contracts, etc. that are available. Is there anything in there that we have acquainting the adjacent property owners or getting information from them. Some gardens do sell their products and turn the money back into supporting the garden.

Mr. Durden inquired who would be legally responsible as different organizations like to do this. Would the organization or individual who has that property be legally responsible for whatever happens there? Mr. Shutt advised the City would not be responsible. Mr. Dorling advised the owner of the property would be responsible for maintaining the property. The application requires property owners consent and submittal of layouts, plans, and water supply and would be subject to established operating rules. Contact information is required and maintained by the City so the City can contact the individual responsible for each garden.

Mr. Durden inquired about the legality of restricting certain things like bees. We just allow the use in the ordinance the City is not responsible for the conduct at the site. The owner of the property is responsible to monitor operations. Let's say we allowed bees and someone got stung and they were allergic. The ordinance provides what is and is not allowed. However, if you are doing something where you are grading or digging and people fall that is the responsibility of the property owner or the person who did the work, it is not the City. I don't see any liability enacting this ordinance.

Mr. Lynch inquired if there was something in another section that deals with trash. Ms. Butler advised not specifically, it is all encompassed in maintaining the property.

Mr. Miller inquired if there are 120 days in which 50% of the parcel should be in production. Ms. Butler advised that in a normal season they take everything out and start in the fall. Mr. Miller inquired if there would be active policing regarding the use of

synthetic chemicals. Ms. Butler advised the reason we put that in there is that we had vendors who contacted us and wanted to form partnerships with local organizations and we wanted to discourage that.

Mr. Durden advised he had a concern with the legal aspect regarding pesticides, etc. in terms of supervision and responsibility. Can we see that that is carried out? Mr. Dorling advised the City covers that and it is prohibited. When the applicants break the rules they are responsible as we have prohibited it by this ordinance.

Dr. Spodak inquired regarding fences or hedges, the fact you enclose it may prohibit community involvement. In other Cities they are never obscured by a fence. Mr. Dorling advised if you have no control over what people plant, and you could get something that is aesthetically challenging. We need visual continuity around the site.

Ms. Butler advised the fencing also addresses the issue of security which came up at meetings. The fence will be a deterrent to someone entering the site that should not be there.

Board discussion ensued relative to fencing, etc. Ms. Butler advised that some individuals have asked for a 3 foot white picket fence, and if others want a larger fence this ordinance would allow both options.

Mr. Jacquet advised the Federal Government has exclusive rights in dealing with this area of commerce. When people are growing corn or wheat or other products and they are selling it, it affects commerce and Congress could step in. However, in this case the primary use is not for sale or economic gain it is for community use. Mr. Shutt advised he does not think there would be subject to this oversight as sale of any products on the site is prohibited. Mr. Shutt advised something like this would not come into play given the amount of produce we are talking about; it is not like a Cheney Brothers operation.

Motion:

Motion made by Dr. Spodak, seconded by Mr. Jacquet, and approved 6 to 0 (Mr. Glickstein absent) to recommend approval of the amendment to Land Development Regulations, Article 4.4 To Permit "Community Gardens" In Specified Zoning Districts, And To Section 4.3.3, "Special Requirements For Specific Uses", 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).

VI. REPORTS AND COMMENTS:

A. Board Members

- Parking Management Advisory Board (PMAB) - Mr. Krall advised Chapter 10 and 11 of the Parking Study is being worked on. At the last meeting an optician came in for one space at Waterway East.

B. Staff

Mr. Dorling advised the Board in the next few months they will be seeing text amendments regarding the parking study.

Mr. Miller inquired who was locating to the former VFW site. Mr. Krall advised the VFW sold the property and bought the property on Federal Highway and they have \$100,000 for improvements. No development plans for the old site have been finalized.

Meeting Dates for May

City Commission Meetings

Tuesday, May 3, 2011, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Tuesday, May 17, 2011, City Commission Regular Meeting, 6:00 p.m., City Commission Chambers

Planning and Zoning Board Meeting

Monday, May 16, 2011, Planning and Zoning Board Regular Meeting, 6:00 p.m., City Commission Chambers:

1. Conditional use request to allow the establishment of an automobile repair shop within an existing industrial building, for Motion Auto Care, located at 1208 Georgia Street.

C. Board Members - no comments

VII. ADJOURN

The meeting adjourned at 7:00 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 April 25, 2011 which was formally adopted and approved by the Board on May 16, 2011.

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.