

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

CITY OF DELRAY BEACH
DELRAY BEACH, FLORIDA

MEETING DATE: December 19, 2011

LOCATION: CITY COMMISSION CHAMBERS

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

MEMBERS ABSENT: Clifford Durden

STAFF PRESENT: Paul Dorling, 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

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

III. COMMENTS FROM THE PUBLIC: None

IV. PUBLIC HEARING ITEMS

- A. Consideration of a City-initiated amendment to the Land Development Regulations (LDR), amending Subsection 4.3.3(ZZZ), "Transient Residential Uses", in order to clarify prohibitions, exemptions/exceptions, waivers, and penalties for same and amending Appendix "A", "Definitions", in order to amend the definition of "Transient Residential Uses"

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 amend prohibitions, exemptions/exceptions, waivers and penalties for transient residential uses; and will amend the definition of 'transient residential uses.'

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.

Concerns have been raised that allowing use of single-family residential dwelling units for transient residential use elevates the use to one that has characteristics of a non-residential activity and is not considered incidental and subordinate to the primary purpose of a 'single family dwelling.' Transient residential uses have caused the following impacts and concerns:

- Transient residential uses often maximize occupancy causing increased pressure on infrastructure.

- Transient residential uses can be incompatible with permanent and seasonal residential uses if not properly planned, controlled and regulated.
- Rapid turnover in occupancy associated with transient residential uses can be a disruptive influence on the peaceful use and enjoyment of single family residential areas.
- Transient residential uses can displace permanent single family residential dwellings and thus reduce the number of permanent residents in the City and cause a reduction in state revenue sharing funds necessary to support the services that influence the quality of life for residents, commercial interests, and visitors.

In July of 2009 an Ordinance was passed (Ordinance 29-09) which included a new definition for Transient Residential Use defining it as a dwelling unit that is operated or used in such a way that it has a turnover in occupancy of more than 6 times in any one year. While a consensus was ultimately reached by City Commission that a turnover rate of six times a year would be adequate to retain neighborhood stability within the Single Family and PRD districts, one and a half years after implementation of the Ordinance 29-09, reconsideration of this threshold is now being considered. Further, additional clarification is being provided as to how the turnover rate applies to multiple leases or multiple tenants within a single dwelling unit.

The attached ordinance clarifies prohibitions, exemptions/exceptions, and waivers and penalties for transient residential uses along with modifying the existing definition of transient residential uses to limit occupancy turn over to no more than three (3) times per year for any dwelling or any part thereof.

Courtesy Notices:

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

- Neighborhood Advisory Council

Board Discussion:

Mr. Glickstein inquired who the City Manager delegated to deal with this issue. Mr. Dorling advised he was designated. Mr. Glickstein inquired how many RAR have been made. Mr. Dorling advised forty-six (46) RARs have been granted for single family homes and eighty-two (82) units for multi-family units. Mr. Glickstein inquired under the ordinance it is left to the City Manager or his designee. Is there a way to elevate this to some panel or Board and do require public notice? Mr. Shutt advised under the ADA and Fair Housing, RAR procedures cannot be required to go before a panel. You cannot place upon disabled folks a burden. Therefore, we are prohibited by law to require them to appear before a panel. If they do not like Mr. Dorling's decision the RAR applicants can appeal it to the City Commission and the Courts. Ms. Pyburn advised you cannot require somebody who is disabled to pay money to get Reasonable Accommodation to require them to go share before a panel or a require notice to the general public. That is not within the regulations of the ADA.

Mr. Glickstein inquired if you have a disabled person that is making the application vs. or is it the individual providing services. Ms. Pyburn advised if the person who is making the application representing a disabled person they can apply for an RAR. Mr. Glickstein inquired if anyone owning a single-family home wanted to rent their home had to appear before a Board could we also require RAR to also appear before the Board. Ms. Pyburn advised it is across the board regarding the status of the applicant.

Mr. Lynch advised we obviously have certain issues on the table but we are talking about transient residential uses. What if they apply this across the board it should not affect the ADA. Ms. Pyburn advised we drafted this for you tonight with the assistance of outside council. We are still looking to see if we have conflicts with State law (509 FL Statutes) which relates to vacation rentals to determine if this draft conflicts with the regulations therein.

Mr. Franciosa inquired about the reference in to exemptions for Group Homes. Ms. Pyburn advised that exception was already accommodated in the previous ordinance. There are regulations that apply under State Statutes, DCF, ALF, and nursing homes. A home for abused individuals or a group home for persons with mental disabilities licensed and regulated by the state. That is exempt from this section. It is not an issue tonight. That use is already addressed in our LDRs and that part is not changing.

Public Comments:

Ms. Pyburn advised she wants to clarify that we are not here tonight discussing sober houses or half way houses. We are here for an ordinance dealing with Transient Residential Uses.

Mr. Warren Roy, 329 Andrews Avenue, member of the BPOA, advised this is a very important and emotional issue. We request that people keep that in mind. The way this is going to be resolved is working with the Board.

Mr. Philip Renaud, 1017 Bucida Road, advised he was here tonight to speak on behalf of the residents and maintain the cohesiveness and safety of our long term single family neighborhoods. I am here to express my support for the proposal that limits the turnover rate in rentals. The City must consider not only the costs to the City but costs to the neighbors of that property. A non-profit organization would be exempt from paying real estate and other taxes. This would reduce the money being collected. We urge the Board to apply this to single family homes that are located in those residential neighborhoods.

Mr. Gary Eliopoulos, 314 NW 7th Street, advised this is an emotional issue. You need to peel it back and focus on the zoning. I am speaking because I was on the Commission, and staff worked hard to put the right things in place in the past to protect single-family zoning within the City. The issue is important and we need to direct this Board to speak to the City Commission regarding the 6 to 3. That is what is before you tonight. We need to tell City Commission we need to go back to outside legal counsel and find out what all our options are. We have been accommodating everybody. As an architect when we do commercial we put in fair housing and ADA requirements. We need accountability and need to be able to audit RARs that had previously received RARs. We need to push this thorough to the City Commission and have them seek guidance from outside council to make sure we have procedures in place.

Public Comments:

Mr. Bill McCauley, 777 North Ocean Boulevard, advised he lives across from the house located at 740 North Ocean Boulevard that was purchased by Michael Weiner, Esquire. I am a local businessman. The previous owner was Rick White who passed away last December, and he was a great neighbor. If eight or more people live in a house for two

months (six time turnover) at a time that is forty-eight or more different tenants. This will change the character of my neighborhood. This is not suitable for a private residential neighborhood. This is big business at work. Please pass this ordinance.

Ms. Jayne King, 3400 Place Valencay, advised she is representing the Delray Citizen Coalition. There should be no commercial activity allowed in the residential zone. The requirements for the landlord permit should be tightened up. It is very important for the safety of the residents in the neighborhood.

Ms. Pat Archer, 380 Sherwood Forest Drive, advised one of the things we need to consider whether it is a for profit business or not for profit. To rent a bed six times a year is a rooming house. They are not even renting a room they are renting a bed. This should not be allowed in a single-family neighborhood whether they are disabled or not.

Lainie Lewis, Lake Ida Property Owners Association, advised please take care of the problem. Please get together with the Commissioners and take care of this problem.

Ms. JoAnn Peart, 107 NW 9th Street, advised we worked on this issue in Lake Ida, Seacrest, and Osceola Park. We made progress but apparently not enough. One of the big problems is going to be enforcement. The neighbors will have to call to say there is a problem. How do you check how many cars are in the driveway unless you go by all the time you don't know what the situation is.

Mr. John Cote, 321 N. Swinton Avenue, advised if we have more transient housing we will have a problem with homeless people. They lose their jobs they can't afford their home or car. They are pan handling at night; they are sleeping by the dozens up and down the beach on the chairs. I say no to transient housing.

Mr. Jeffrey King, 501 Palm Trail, advised this is not about seeking to find a RAR for the handicapped. This is a about people coming into the neighborhood and making a lot of money.

Dr. Victor Kirson, 2050 Alta Meadows Lane, inquired about how this ordinance was going to be enforced. It is my opinion once you let them in you will not be able to enforce it. Code Enforcement can't handle it and if they can't who is going to do it. In my condominium we allow rentals twice a year for a minimum of seven months. They have stickers for their cars. You have to go to Code Enforcement and they will not be able to handle it. Stop them before they get in.

Mr. Joseph Collard, 1004 Brooks Lane, advised he is concerned about the neighborhood and parking. Is there a way to restrict this? No one wants a boarding house next to them.

Mr. Adam Schlesinger, 1010 Beach Drive, advised he is against the opening up of the zoning in residential neighborhoods for private and a not for profit business. I read about the group that bought the house on Ocean. If the City permits that to happen they will expose themselves to other organizations and open the neighborhoods for other businesses as well.

Ms. Christina Morrison, 2809 Florida Boulevard, advised she is a Realtor in Delray Beach. Dr. Kirson mentioned that there is never a lease less than seven months. However, those are association restrictions. The City put into effect three unrelated

residents in a home. Why is that not being enforced? I live in Tropical Isle. Can I apply to put a CVS in Tropic Isle for that population? How are we protecting the RAR of our long term residents and our children? It is a family friendly city. We are putting strangers in our neighborhoods. We have to think about reasonably accommodating our residents.

Mr. Capobianco (address unknown), advised his street is private, and a dead end street. We have a number of people coming down and turning around in large trucks. The street is not big enough for two vehicles. There is limited parking. We have problems with people parking on our street to go to the beach. We have called the PD and they have removed the cars. They also park illegally on our lawns. We are unable to get into our own homes.

Mr. Bob Ganger, 1443 N. Ocean Boulevard, Gulfstream, advised as you know this meeting started with public comments at the last Commission meeting. We all understand that enforcement or whatever we come up with on this matter is a difficult task. If we don't spend money on enforcement and this gets out of hand the costs will be much greater. This City cannot afford to have its property values erode because of something we did not do. The ball is in your court.

Ms. Heidi Sargent, 1227 Southways Street, advised she is the next door neighbor, and advised she is vehemently opposed to transient housing. I am raising my family and I hear there is going to be transient housing next door to my home. I am appalled. One of the driveways goes out to Southways which is a private road. Where are we going to put the eight cars? Limit the transient housing. I am concerned about the value of my home.

Mr. Mark Field (address unknown), thanked the Board for doing a great job. In regard to outside counsel do it right and make it fair. You don't want to discriminate. This is about what is fair and right according to the law. We should setup a legal fund and help the City out

Mr. Martin Gregory, 1126 Island Drive, advised as someone who just made an investment, if I would have known what was contemplated down the street I would have found some place else to live. It is too late for me but what about other people will be attracting to this town.

Mr. Richard Sasso, 1042 Seaspray Avenue, advised he does not like seventy people living in the house next door to me. If it is about having that many people moving into our neighborhoods we have to find the other solutions.

Mr. Stephen Kornfeld, 719 North Ocean Boulevard, advised this is out of control and it is important the government protect us

Mr. George Jahn 1021 E. Heritage Club Circle, advised Mr. Dorling was involved in 2009 with this issue with the City Commission. The City came in with a new definition of family. It is easy to see a problem and trying to change it and create a myriad of other problems. Please research local and Federal law.

Mr. Scott Richman, 325 Sandpiper Lane, advised at some point people have to take a stand. Boca Raton lost their case. What you have to do is have a rational basis pertaining to the zoning laws. The reality is there are going to be more lawsuits. The

residents are looking to you to make it as restrictive as possible. This is a slippery slope. I think you should protect the citizens of Delray Beach. You have to put measures in place and it has to be very well thought out and it needs to be ongoing.

Mr. Glickstein advised he would like to see a show of hands of who are in favor of this ordinance. To be fair I want to see a show of hands of those who are not in favor of this ordinance.

Public Comments closed.

Board Discussion:

Mr. Jacquet advised he was at the meeting when we last visited this definition. I do believe the Board and City Commission did a great job in addressing the issue. The issue we have is about enforcement. I also agree with the gentleman who said either way we are going to lose money. I am in favor of this ordinance because it is protecting our single-family areas. Our LDRs and everything that we have written has been toward protecting our single-family area. I think we have a great opportunity with this Board and we do need to go even further.

Mr. Glickstein advised there is confusion between the RAR regarding beds vs. dwelling units. How are we making this calculation. Is there anything that is not in this ordinance.

Mr. Dorling advised that most RARs are to the definition of families are to the definition and the number of unrelated people allowed (requests are for over the maximum unrelated of three). The ordinance now clarifies the turnover rate applies to the unit. Three times whether it is one person or everyone, and it provides clarification. We have talked about enforcement. Since last Tuesday's meeting the Community Improvement Department has hired a retired police officer that is very familiar with transient housing and he will be working on this issue thirty hours per week. There was a RAR in absence of an address from the Caron Foundation. Mr. Glickstein advised it seems absurd that you could grant any kind of approval without an address. I don't understand the nuances of Federal law. I can't believe that the City is usurped over some rouse of a handicapped individual with no address. The issue regarding the address is something that possibly could be under 42 USC, 290CC or 2.11, and that is something that we are looking at more closely at this point in time.

Mr. Glickstein inquired if the Boca Raton case was Federal.

Mr. Lynch advised we are taking it to three. Is there something magic about three and not one or two? Mr. Shutt advised there was a case decided in 2010 on the west coast of Florida. They talked about single-family zoning districts. They upheld three persons and the court said OK. We take direction from the City Commission and their direction was to look at three. We are still looking at the ordinance in front of you and there may be other issues. We need to take our time and we have consulted with outside counsel. There may be other changes coming before this Board regarding this issue.

Mr. Lynch advised lots of homes for tax purposed are owned by LLC, but not typically by non-profits. Mr. Shutt advised that is one of the things we will be looking at. There is a lot of research we need to do. Mr. Shutt advised anything that we do here because of the protection of Federal law we have to treat everyone the same way. Mr. Lynch

advised we are looking at a code for transient use across the board. Has this been compared to other cities? Mr. Shutt advised we looked at a couple of other cities. Mr. Lynch has concerns with transient housing and the impact on single-family neighborhoods.

Dr. Spodak advised he is in agreement with Mr. Lynch. People are not going to be interested in the neighborhood if they are there for a short time. It comes down to generating a business in a residential area.

Mr. Lynch advised he read through the ordinance and regarding parameters for violations it does not mention parameters, what are the actual parameters? Mr. Shutt code involvement would decide the penalty. Ms. Pyburn advised per FL Statute 716 the maximum would be \$500.00 per day.

Mr. Krall asked Ms. Pyburn in regard to the Boca Raton case do you recall offhand where they were and what their basic zoning was for a multi-family or single-family. It was a large home, and I believe there were fifty people in there. Mr. Krall inquired is there a risk from a Federal standpoint regarding the ordinance before us now. Mr. Pyburn advised that is definitely a concern.

Mr. Glickstein inquired about going from three to two turnovers per year. Ms. Pyburn advised Federal upheld two in South Florida and multi-family not single family. Mr. Glickstein inquired when it was decided two was not enough. Ms. Pyburn advised because they did not have a RAR process there were liabilities for fair housing and ADA laws. We are considering the vacation rental statute, and its potential limitation on the number of days you can turn something over.

Mr. Krall advised he agreed with Gary. We need to seriously consider if we need to hire an outside help on this. This got everyone by surprise. This is a very unique situation. I am sympathetic with staff and the City Attorney's office.

Mr. Franciosa inquired how many individuals can occupy a residence. Mr. Dorling advised the current code allows up to three unrelated persons. You could have multi sober houses that have fewer than three and they would not require a RAR. The number over and above is subject to the RAR requests. Mr. Franciosa asked about the status of the address. Mr. Dorling advised the Caron Foundation was granted an RAR with information on the size of the bedrooms, number of bedrooms, number of bathrooms and parking. Transient residential uses are not allowed in single-family districts. A transient use is one that exceeds six turnovers a year which is being reduced to three turnovers a year. It is clarifying the turnover rate which is now specific to any turnover in the future. Mr. Franciosa inquired if this bound people who have disabilities. Mr. Dorling advised they would be subject to the RAR and they would be bound by this ordinance. Mr. Shutt advised there is no way if we reduce it from three to two it will affect people under our disabled clause. The City Commission gave direction to staff to look at three. Mr. Jacquet advised we should go to two, and we can be more forward thinking we are much smarter and sharper. We don't have to follow some other cities footsteps. We can be a little more proactive this time around and recommend two to City Commission.

Mr. Glickstein inquired regarding the Ocean Avenue house, was there misrepresentation or fraud. Mr. Dorling advised he was not aware of any. The fact that we can't get our arms around it we are being taken advantage of. This is a commercial

enterprise that had sixty-five million dollars in revenue last year. They are using attorneys to take title in properties to keep this from public view. They hire partners and architects to work under confidentiality agreements. This denigrates the neighborhood. There could be forty-eight people that will occupy that house in one year. I cannot believe the courts and legislatures in this State are going to stand for this. If the Mayor made this comment that enforcement is going to be difficult. If the City Commission is subscribing to that view that is a travesty. Mr. Ganger pointed out that properties affected by this kind of use are staggering. As a tax payer in this City I would contribute to a legal fund. In terms of specific changes as a developer in every community that we have built we only lease them two times a year, and there is never a problem with that. I fully support this reduction to two. It is personally insulting that they would come into this community using something as a handicapped rule to promote what they are doing in this town. It has to stop. It is a privilege to do business in this town. I think people with no vested interest in this town other than their pocketbook are running us over. I hope the City Commission wakes up and does something more than reacting to a problem. I support the reduction to two.

Mr. Lynch inquired about the maximum of three unrelated people in a single-family residence per year. Does that mean if the house is turned over there can be a total of six or nine people? One of the tenants is there for the year and we come in and then leave and two more come in and they leave. Are we saying three maximum turnovers? It is not clear. Mr. Shutt advised this is going to take some work. We got this in front of you; however, we went to other councils and want them to look at this and provide their input. There will be changes and we are tightening up some of that language. Mr. Lynch inquired is there some verbiage we can put in relating to the multiplication? How many times can this single-family house turn over? Mr. Shutt advised you have three people in there, one person leaves, the other two people are staying there that is one turnover. Mr. Lynch advised there is a gray area.

Mr. Glickstein inquired is there a way to establish a rental application. Ms. Pyburn advised we already have one and if you rent anything in the City you have to fill out the application. Mr. Glickstein we can play on that in terms of enforcement where there is an annual affidavit required. Mr. Shutt advised we already have a lot of stuff in place. We are looking at enforcement of what we have on the books. We have rental permits and we have other mechanisms in place. We need to enforce what we have now.

Dr. Spodak inquired what is the cost of the application fee. Mr. Dorling advised it was \$50.00. Dr. Spodak advised maybe we could add something regarding code enforcement. Mr. Dorling advised that is Community Improvement, and I will convey that to Ms. Lula Butler. Mr. Glickstein advised that is tied to frequency. If you rent your house for a year the fee is unchanged if you change it over three times maybe it could be more as they are using more City services. Mr. Dorling advised yes for the unit.

Mr. Glickstein advised if this passes in its current form does the currently approved RAR last for a year. Mr. Dorling advised no, once established there is no limitation. If things change three times or time times per year then it would apply. Mr. Glickstein inquired if the home on Ocean Avenue had been given a RAR. Mr. Dorling advised it had been granted one. This is considered a transient use. The change will only to go the number of times they could lease over a year (six to three). It will not affect the number of people allowed.

Mr. Jacquet inquired if there were any concerns with existing uses and the change in the definition of transient. Ms. Pyburn advised the ordinance provides a clause that we have on the books, residential multi-family and single-family, and given then one year. The RAR is tied to the applicant that requested it and is not transferable. I would suggest that we get to work with outside counsel on modifying the RAR as we have not been aggressive enough with this type of use. This ordinance will go to City Commission on January 3, 2012. Pending the additional information these attorneys will have to look into this. Mr. Shutt advised we would like to take it to City Commission as soon as possible, but we want an ordinance that complies. Mr. Glickstein advised you have a chamber full of reasonably educated benefactors of this City and they are telling you that they want you to suggest they want you to get ahead of this problem. I think there is a feeling we have languished, what is everybody else doing.

Motion made by Mr. Jacquet, seconded by Mr. Franciosa, and approved 6 to 0 (Mr. Durden absent) to recommend approval to the City Commission of the amendment to Land Development Regulations, modifying Subsection 4.3.3(ZZZ), "Transient Residential Uses", in order to clarify prohibitions, exemptions/exceptions, waivers, and penalties for same; amending Appendix "A", "Definitions", in order to amend the definition of "Transient Residential 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).

A. Staff

Parking Management Advisory Board – Mr. Krall advised there have been a lot of problems with the valet queen in front of Cuigini Grill. There have been a lot of issues regarding the parking queue. That particular restaurant had gone beyond the intent. They were trying to make it a money maker. The problem was the restaurant was for sale and they were advertising the queue as part of the assets. The final straw was when they shut down for more than six months. Vic and Angelo's is now interested in assuming the responsibility of running the queue. However, Cuigini Grill is still interested in operating it and plans to reopen soon.

Meeting Dates for January

PLANNING AND ZONING BOARD MEETING

Monday, January 23, 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. Conditional use request to allow outdoor dining during night time hours for Swinton Social, 27-43 South Swinton Avenue.
3. Abandonment of the 16' alleyway located south of 5 SE 2nd Avenue (former VFW building).
4. Amendment to the Land Development Regulations Section 4.6.16 "Landscape Regulations" (continued from November 21, 2011)
5. Amendment to the Land Development Regulations Appendix "A" Definitions modifying the definition of restaurants.

6. Amendment to the Land Development Regulations Appendix "A" Definitions to add a definition for deli.
7. Amendment to the Land Development Regulations to define the spatial arrangement of uses in mixed-use developments.
8. Amendment to the Land Development Regulations regarding the undergrounding of utilities.
9. Amendment to the Land Development Regulations Section 4.4.13 "Central Business District" pertaining to the parking requirement for offices

Citizen's Roundtable Meeting: Tuesday, January 24, 2012, 7:00 p.m. at Old School Square.

Above Meeting Cancelled

V. ADJOURN

The meeting adjourned at 8:30 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 December 19, 2011 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.