

## MINUTES OF THE PLANNING AND ZONING BOARD

### PUBLIC HEARING/REGULAR MEETING

CITY OF DELRAY BEACH  
DELRAY BEACH, FLORIDA

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MEETING DATE: January 29, 2013

LOCATION: CITY COMMISSION CHAMBERS

MEMBERS PRESENT: Clifford Durden, Jan Hansen, Connor Lynch, Derline Pierre-Louis, Thuy Shutt , Craig Spodak and Gerry Franciosa

MEMBERS ABSENT: None

STAFF PRESENT: Paul Dorling, Mark McDonnell, Janice Rustin and Diane Miller

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#### I. CALL TO ORDER:

The meeting was called to order by the Chair, Mr. Lynch at 6:03 p.m. Upon roll call it was determined that a quorum was present.

#### II. MINUTES:

Motion made by Mr. Franciosa, seconded by Dr. Spodak, and approved 4-0 to move approval of the September 24, 2012 minutes as written.

Motion made by Mr. Franciosa, seconded by Dr. Spodak, and approved 4-0 to move approval of the December 17, 2012 minutes as written.

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

#### III. COMMENTS FROM THE PUBLIC - None

Let the record show that Thuy Shutt and Jan Hansen joined the meeting at 6:04p.m. and Derline Pierre-Louis at 6:06p.m.

#### IV. LAND USE ITEMS:

A.This is a preliminary plat and certification of a final plat for a new 4-unit townhouse development to be platted as East Indies. The subject property is located on the west side of Venetian Drive, 72 feet south of Ingraham Avenue (208 and 212 Venetian Drive). This plat is being processed pursuant to LDR Section 2.4.5(J), Major Subdivisions. Quasi-judicial Hearing

Mr. McDonnell entered project files No. 2012-051-FSP-CCA into the record.

The proposed development consists of 4 three-story townhouse units with two-car garages fronting of Venetian Drive and swimming pools in the rear yards.

At its meeting of January 9, 2013, the Site Plan Review and Appearance Board approved the Class V Site Plan, Landscape Plan and Architectural Elevations for the project. As a condition of

approval, a plat for the subject property is to be recorded prior to the issuance of a building permit.

Based upon the information presented, it is appropriate to make a positive finding with respect to consistency with the Future Land Use Map.

At its meeting of January 9, 2013, the Site Plan Review and Appearance Board approved the Class V Site Plan, Landscape Plan and Architectural Elevations for the project. As a condition of approval, a plat for the subject property is to be recorded prior to the issuance of a building permit. When looking at concurrency, it is noted that an additional fire hydrant will be needed and that is attached as a technical item.

The 4-unit townhouse development will generate 28 average daily trips with 4 peak p.m. vehicle trips onto the surrounding roadway network. Since the existing 4 duplex units have the same traffic generation rate, there are no new net trips generate by this development

Since the existing duplexes were constructed prior to February 23, 1982, no credit shall be issued and a \$500 park impact fee will be required for each unit. Thus, an in-lieu fee of \$2,000.00 will be required of this development. There is no net increase in trash generation with the proposed development and Concurrency approval has been granted from the School District. Information on the setbacks, area or coverage is all stated on page 3 of the staff report.

**Courtesy Notices:**

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

- Beach Property Owners Association
- Neighborhood Advisory Council
- Delray Citizen's Coalition
- Seagate Towers Condo
- Via Marina
- Inner Circle Condo

Mr. McDonnell recommends approval of this Plat.

Applicant's Presentation – None

Public Comments – None

Board Discussion

Mr. Hansen feels that this is a pretty straight forward project.

Motion/Findings

Mr. Hansen moved a recommendation of approval to the City Commission of the Preliminary Plat and certification of the Final Plat for the **East Indies**, 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.

Motion by Mr. Hansen, seconded by Mr. Franciosa. Said motion passed with a 7-0 vote.

V. PUBLIC HEARING ITEMS:

A. Conditional Use Request associated with partial demolition and expansion of the existing 1,146 sq. ft. seven (7) room motel including removal of three (3) existing rooms totaling 718 sq. ft. and construction of a 2,930 sq. ft. building addition to accommodate an additional nine (9) rooms (total of 13 rooms), a new 138 sq. ft. manager's office, ten (10) new on-site parking spaces and associated landscaping and alleyway improvements for Beachway Motel located at 655 George Bush Boulevard. Quasi-judicial Hearing – Continued from September 24, 2012

Ex-Parte Communications – None

Mr. McDonnell entered project file No. 2012-078-Use Beachway Motel at 655 George Bush Blvd into the record.

Mr. McDonnell began his presentation by showing some images and layouts of the motel.

This is a revised conditional use request for partial demolition and expansion of the existing 1,960 sq. ft. seven (7) room motel including removal of three (3) existing rooms totaling 840 sq. ft., construction of a 2,930 sq. ft. building addition to accommodate an additional nine (9) rooms (total of 13 rooms), a new 138 sq. ft. manager's office, ten (10) new on-site parking spaces and associated new landscaping and alleyway improvements. Also, on page 1 of the Staff Report there is a detailed project description.

We have a positive finding of Concurrency that can be made as it relates to water and sewer, drainage, parks and recreation, open space, solid waste, and schools. The City has received written confirmation from the Palm Beach County Traffic Division that the development proposal meets streets and traffic standards.

The vacant parcel to the north of the existing Beachway Motel is to be utilized for the expansion. No unusual physical conditions exist that would prevent development of the property. Although, the property would be better suited as previously approved as a prime location for mixed-use, retail or future office redevelopment, the conditional use request to allow expansion of the existing motel is not inconsistent with the LDRs. The subject property is to be developed in a manner that would be complementary to the adjacent residential community to the north and the central business district to the south. Positive findings with Future Land Use Element Objective A-1 can be made, if the site is developed and operated as a motel rather than long-term stay rentals similar to residential-type inns which are not allowed within the GC zoning district. Further, minimum unit sizes would not be met and density maximum would be exceeded if these were long term rental units versus motel units.

Pursuant to the definition of motel, no provisions for cooking can be provided. The four (4) existing motel units have stoves, full-size refrigerators, washers and dryers. All of these items are more characteristic of permanent housing versus transient motel use. It is noted that the proposal would not meet several LDR requirements related to permanent housing including unit size or density. These items are to be removed with the renovation of these units and prior to issuance of a certification of occupancy for the motel expansion.

The existing six foot (6') perimeter fence must be removed. The fence extends across the front façade of the existing rooms and across the public alley. It was constructed without a building permit and is subject to City Code Enforcement action. Similarly, its current location encroaches within the adjacent 16' alley right-of-way and prohibits rear vehicular access to adjacent businesses along North Federal Highway. Several business owners have recently complained to the City about lack of access to the rear of their existing businesses. We have received some email from property owners in the area. There is a current, on-going code enforcement matter and we hope that we can get this resolved soon.

Some of the required findings that we have found were: immediately to the north is vacant RM zoned property. To the south, across George Bush Boulevard, is CBD zoned property containing a dance studio and offices. To the east of the subject property is the Sail Inn Night Club & Bar. To the west is a gasoline station situated on the northeast corner of the intersection at US1 (North Federal Highway) and George Bush Boulevard. We do not have any issues with this expansion as long as it remains a hotel. We have had previous reports of this place in the past being a rehabilitating facility and half way house.

**Courtesy Notices:**

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

- Delray Citizen's Coalition
- Neighborhood Advisory Council
- La Hacienda
- Palm Trail
- Kokomo Key
- Martell Arms
- Landing of Delray
- Inlet Cove
- Estuary

Mr. McDonnell recommended approval of this Conditional Use based on positive findings.

**Applicant Presentation**

George Brewer – Brewer Architect for Beachway Motel

Mr. Brewer stated that this project is more than an expansion; it is a beautification of George Bush Blvd. We were supposed to be here at an earlier meeting but we postponed it to look at staff recommendation. We were looking at what else could this be from a business point of view. We looked at medical offices, convenience store but none of them financially made any sense. So we looked at fixing up the existing building by fixing the parking and adding landscaping. The intention is that there is a buyer on the table; they want to fix it up and operate as a motel. There have been some concerns of the past history of this building and I have spoken to a police officer, Mr. Durante about the history. Officer Durante did say that prior to the current tenant there was a horrible situation with drugs, and all kind of things going on. He did say since there are new owners of the motel, there have been no instances and said that the 6ft. fence was a big help. All the new refurbished rooms will not have stoves, washer and dryers and the building will have a 'Key West' look.

Public Comments, Staff Rebuttal and Cross Examination

Mark McDonnell – Planning and Zoning

Mr. McDonnell said that Mr. Brewer spoke to a police officer regarding the number of calls out at the site and I have to go by the CPTED Review that we received from the police department. On the report it says how the natural surveillance has improved but it has been negatively impacted by the fence. The residences around the motel would like it removed.

Peter Humanik – Resident from the motel area

Mr. Humanik is here to speak in general and not specifically on the project. He feels that we do not need anymore ‘Motel’ type units here in Delray Beach. Is this what we are looking for in our city? He had no negative comments specifically, because he is sure that these people will do a fine job, but is this really where we want to go?

George Brewer – Architect for the Motel (rebuttal)

On item #7, we are asked to use LED lights because of the glare. We are asking that this be removed from the report due to expense.

Mr. McDonnell said that the primary concern is the glare, but that he was only going by the CPTED Review. Metal haloid lamps are preferred as it portrays a more accurate imagine you are trying to see. We are trying to look for the quality of the light. This light has been recommended by the police department.

BOARD DISCUSSION

Dr. Spodak – We have received an email that was admitted into the record with references to numerous code violations, outstanding code violations that the applicant has against him. We want to know if this is true.

Mr. McDonnell acknowledged that Planning did receive the email and that we conducted research. What we found was that at this time, there is no less than a \$4500 lien on the property which was recorded in Palm Beach County tax records; there was a hearing on February 8, 2012 and a follow up on May 10, 2012 with daily fines of accruing at \$50.00 a day. A Code violation was posted, a certified letter was sent and all with no response. No one representing the property was present at the hearings.

Mr. Lynch asked, with question, is this fine accruing since February 8<sup>th</sup>?

Mr. McDonnell said he is not sure of the date this started, but it is about the fence.

Dr. Spodak said that the reason he was asking this question was that Mr. McDonnell said numerous times, quote “If it becomes something other than a motel”, meaning that if it goes to something else this would be a problem.

Mr. McDonnell explained that they have to renew their business tax receipt every year; the receipt is not good indefinitely.

Dr. Spodak said when they renew the business tax; they would be able to see the occupancy record?

Mr. McDonnell said he is not sure if they request that from the hotel.

Janice Rustin (Attorney) said that they could get a code enforcer out to the motel and check on that type of activity.

Mr. Franciosa asked if he could get the definition of a 'motel' compared to 'guest cottage'.

Mr. McDonnell commented that he had no information regarding that at this time.

Mr. Franciosa wanted to know how long could I stay?

Dr. Spodak said that he thought there was a city regulation on how long you can stay.

Mr. Franciosa said that he thought this was an important item to know. If I was to check in to this motel, could I stay for 2 years or what is the law.

Dr. Spodak commented that this would be something for code enforcement.

Mr. Dorling said that he is not sure there is a definition for the term 'short term'. What we have done is try to make it less attractive to stay long term. We have removed the stove and refrigerators to be less accommodating.

Mr. Lynch asked Mr. Dorling about the fines on the property? It is standard for a property to have liens and we can further approve other items?

Mr. Dorling is not aware of a policy that says you cannot seek approval for something else that is unrelated to the lien. I am not sure why these people have ignored the code enforcement actions, and it will get to a point where there will be some sort of a federal action.

Mr. Franciosa said that they are at a point where they should go back to code enforcement and settle the lien.

Ms. Shutt said that if there is potential sale on the property, you will probably have to settle the lien. Second thing is put a condition on taking out the 220kw so they cannot have the larger appliances. And third we should not approve expansion, and anything that is not correcting the code enforcement violation.

Janice Rustin (Attorney) said in regards to the lien, the new owners will be subject to the lien, so I don't see the lien barring the sale.

Dr. Spodak wanted to clarify that the applicant before us is the current owner and he is not doing what he should or shouldn't do. So I have a small concern why the applicant is not dealing with the code violations.

Louis Trematerra (Applicant and current owner) said he has no knowledge of this lien and when and if this request gets approved, this lien will disappear.

Dr. Spodak said that the owner is required to do this and he wants this project moving and he is not taking care of what the city is asking him to do.

Louis Trematerra again said that if this request gets approved it will go away.

Mr. Hansen concern is that when you have an individual that is not performing with what he is supposed to do in the first place, he has proven that he is not going along with what has been asked for him to do. So if there was an approval, what guarantee do we have that he will not do whatever he wants to do.

Janice Rustin (Attorney) clarified that the Board needs to be careful on what is imposed on the property and what conditions are put on the property for an economic benefit. We would look closely at the City Attorney's office on this.

Mr. Hansen asked why the south elevation was taken out.

Mr. Trematerra said that he asked the same thing.

Mr. McDonnell replied that the elevation was taken out because it did not reflect the current proposal.

Mr. Trematerra said that the overall design is similar to the back.

Mr. Hansen asked why the design has been changed.

Mr. McDonnell stated that the rendering that you saw was not updated to reflect the current design and I took it out.

Dr. Spodak said that when we saw the rendering back in June, we saw the stove tops in the drawings and since then things have not changed. At the time it was a different applicant but clearly since June nothing has changed and still in the drawings.

Mr. Trematerra said that they are definitely going out.

Ms. Shutt asked if there are any conditions that we can use to strengthen this use and not any other use. Maybe having annual reports or something so we are not going through this type of problem again. We want the next owner to go through a management company to be safe guarded.

Janice Rustin (Attorney) thanked Ms. Shutt for clarifying some of the questions about conditional use.

Mr. Lynch asked if Mr. Dorling would like to speak with regard to the comments.

Mr. Dorling said that clearly not having the 220 would keep the larger appliances out of the motel. We also emphasis that it should be short term, but we should put in something reasonable that the stay should be limited to no more than a specific period of time for any tenant. Maybe that could be in the range of a month or something like that showing that it only goes short term.

Mr. Lynch asked about the permits. Is there something that says how long the maximum should be?

Mr. Dorling said that there is a license that is through the state for hotel and motels. But the city has conditional use that we could put some specific restrictions on. I as not sure that annual reports are the way to go, but having spot checks might help to make sure they are following the rules.

Mr. Franciosa asks is it true that they have owned this property for 8 years?

Mr. Trematerra said no, it has been 4 years.

Mr. Franciosa said he is uncomfortable with their track record. They get cited for an illegal fence, code enforcement comes out and they have been fined.

Mr. Trematerra said AGAIN, that if approved, this will all go away.

Mr. Franciosa asked why should we believe you?

Mr. Trematerra said that the new buyer has no intentions of operating this, this way.

Mr. Franciosa asked where is the new buyer...is he here tonight?

Mr. Trematerra said first of all I did not know that there was a lien on this property. I took the property in foreclosure 4 years ago.

Mr. Franciosa asked if he knew there was a problem with the fence.

Mr. Trematerra said no, I was not aware there was a problem with the fence and the fence was put up for the survival of the property. Previously to putting up the fence, people were causing problems back behind the fence.

Mr. Lynch asked Mr. Trematerra if he was the current owner.

Mr. Trematerra said yes. He then said he was the current owner...no more. Thank you but no thank you.

Mr. Franciosa said that the architect was talking about a new owner?

Mr. Trematerra said that Mr. Brewer (architect) met with the new owner, explained the situation, they met with the City and he said no thank you and I pass. I am just trying to make some economic sense with this property.

Mr. Hansen is in favor in supporting to improve this property but we need to clear up this situation.

Ms. Shutt asked if we could condition the payment of all outstanding fees or something to pay the fees right away.

Mr. Lynch said that he agrees that we should not approve a property that is not in compliance with the city on a lien perspective. Is this possible? Can we make this a condition of the permit?

Janice Rustin (Attorney) said yes to adding conditions to the permit.

Dr. Spodak asked for clarification from the board. He asked is the concern about the money that is due or the behavior of the applicant?

Mr. Durden said that it's not the money, but he agrees it's the behavior. If this is the way the situation is approached now, how is it going to be any different?

Mrs. Pierre-Louis said that she agrees that this situation needs to be straightened out with the current owner.

Ms. Shutt said that this violation is with the fence.

Mr. Hansen said that the City is in the driver's seat in how they want to handle this. They certainly can collect the fee and enforce the violation. I am sure this will go before the code enforcement lawyers.

Mr. Humanik (Rebuttal) We are expanding, we have a lot problems which I was not aware of all of them. Code enforcement, do you really think that they have the capability to come out and check to see how many people stay per night. In regards to the \$400 night rooms in Delray on Federal, there are plenty of room that are less expensive that I see as I am driving. I certainly do see a lack of less expensive rooms.

Janice Rustin (Attorney) wanted clarification on the lien. Is it for just the fence or it is for another violation?

Mr. Lynch said it is for the fence. It is the fence in the back not the front.

Dr. Spodak said that he applaud Mr. Brewer for the work he is doing, not only financially but for what he wants to do but thank you for investing in the property. But for the new owner, if they could come in with a clean bill to the City if not, code enforcement will be involved.

Mr. Francisco stated his agreement with Dr. Spodak.

Mr. Hansen asked is the approval with conditions?

Mr. McDonnell stated that the owner has to go to City Commission, SPRAB, get site plan certified, and then pull permits.

Mr. Lynch stated that it seems that the board is pretty aware of where they stand, so if someone on the board would like to put a motion on the table with certain conditions.

Ms. Shutt said she is torn. She wants to give the applicant a chance, but I do not know enough about the history and why are these issues still on the table.

Janice Rustin (Attorney) We should look at the LDR and ask Mr. Dorling to elaborate.

Mr. Dorling said that they have extreme flexibility with the conditions, and from what I have heard from the board members the conditions are legitamate. For the boards' information this issue did come before the board in June and at that time it was tabled because it didn't meet LDR requirements.

Ms. Shutt asked if they have made any effort to address the code enforcement issue.

Mr. Dorling said that the lien did not come up in those discussions.

Motion/Approval

Ms. Shutt recommend **approval** of the request for a conditional use for the Beachway Motel, based upon positive findings with respect to Section 3.1.1 and Section 2.4.5(E)(5)(Compatibility) of the Land Development Regulations, and the policies of the Comprehensive Plan, subject to the conditions identified in the attached "Appendix A", 1-9 as is, with two additional conditions.

New Conditions

#10(new #11) Maximum stay for each motel/hotel guest shall be limited to 7 consecutive calendar days.

#11(new #12) Prior to the issues of the building permit of the motel/hotel expansion all code enforcement liens and fines shall be paid in full to the City of Delray Beach.

Mr. Lynch said there is a correction to the new conditions. There is an item 10 under the Police Department (CPTED). So the new conditions would be items 11 and 12.

Mrs. Shutt said that if the board wishes, we can add Item 13 as the use limitation. Limited to hotel or motel us that can further be defined. Also, if you want to add another item in regards to the 220 outlet.

Mr. Lynch updates the new conditions as follows with a vote.

Item 11 – Maximum stay for each motel/hotel guest shall be limited to 7 consecutive calendar days.

Item 12 – Prior to the issue of the building permit of the motel/hotel expansion all code enforcement liens and fines shall be paid in full to the City of Delray Beach.

Item 13 – Limited to motel/hotel use limitation.

Item 14 – Not having 220 outlets in the rooms.

Mr. Lynch said we have an amended motion with an amended 2<sup>nd</sup> by Mr. Hansen with discussion.

Mr. Franciosa questioned if the 7 consecutive calendar days is too restrictive.

Janice Rustin (Attorney) read the definition of a motel/hotel and length of stay. There really is no maximum stay.

Mr. Hansen commented that the owners have to have their license renewed each year, so at that time the length of stay would be addressed. They would have to meet the requirement of the City.

Mr. Franciosa said that if other hotels don't have a maximum stay why are we putting a restriction on this motel?

Ms. Shutt amended Item 11 to read: Maximum stay for each motel/hotel guest shall be 30 consecutive calendar days.

Mr. Hansen said that there might be a tax issue for 30 days.

Ms. Shutt said that if they are operating as a motel/hotel then they already are going to have a tax.

Mr. Durden said that the issue is that we are setting ourselves up. We need to be careful because we really are picking on a business and not another.

Motion by Ms. Shutt as follows and seconded by Mr. Hansen. Said motion denied 2-5 with conditions

Item 11 – Maximum stay for each motel/hotel guest shall be limited to 30 consecutive calendar days.

Item 12 – Prior to the issue of the building permit of the motel/hotel expansion all code enforcement liens and fines shall be paid in full to the City of Delray Beach.

Item 13 – Limited to motel/hotel use limitation.

Item 14 – Not having 220 outlets in the rooms.

B. Conditional Use Request to allow Tim Finnegan's Irish Pub and Restaurant to extend its operating hours from 12:00 a.m. to 2:00 a.m. seven days per week, the business occupies an existing tenant bay within the Dumar Plaza, located at 2885 South Federal Highway.

Quasi-judicial Hearing

Ex-Parte Communications – None

The record shows that Clifford Durden has left the meeting at 7:30p

McDonnell entered the project file No. 2013-067 into the record.

The conditional use request is in conjunction with the Tim Finnegan's Irish Pub and Restaurant, to allow the Irish Pub to operate past the hour of 12:00 a.m. and no later than 2:00 a.m. seven days per week. The property is located at 2885 South Federal Highway in the Dumar Shopping Plaza, across from Delray Toyota and Del-Raton RV Park.

*Pursuant to LDR Section 4.3.3(VV)(2), any 24-Hour or late night business located or proposed to be located within a three hundred foot (300') straight line route from any residentially-zoned property shall obtain a conditional use permit from the City for the operation of such use. The distance shall be measured from the nearest point of the property on which the 24-Hour or late night business is or will be located to the nearest point of a residentially-zoned property*

Installation of internal and external security measures which are described in the security plan submitted to the City's Police Department. In addition, LDR Section 4.3.3(VV)(2)(a), (Conditional Use) states that any 24-Hour or late night business located or proposed to be located within a three hundred foot (300') straight line route from any residentially-zoned property shall obtain a conditional use permit from the City for the operation of such use. The distance shall be measured from the nearest point of the property on which the 24-Hour or late night business is or will be located to the nearest point of a residentially-zoned property. It is noted that the Tim Finnegan's Irish Pub is part of a building structure located in the northwest side of the site adjacent to South Federal Highway.

The nearest residentially zoned properties are East View Village Square Condo, Tropic View Condos, and Tropic Isles Town Homes, all of them multiple family residential developments. The residential areas to the north of the site (Tropic Isles Town Homes)

and to the east (East View Village Square, and Tropic View Condos) are located 265' and 328' away from the Tim Finnegan's Irish Pub Building respectively.

The City's Police Department has undertaken a review of the proposed project and has found that from a CPTED perspective, changing operating hours for the restaurant until 2:00 a.m. seven days per week should not impact crime in any way. There is acceptable lighting and there have been no criminal issues in the area. Since this is a conditional use request and there are no modifications to the building or parking lot, no further CPTED study is necessary.

We have received a number of emails that the applicant has responded to. They are attached to this report.

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

Courtesy Notices:

- Neighborhood Advisory Council
- Delray Citizen's Coalition
- Tropic Isle Civic Association
- Tropic Harbor
- Tropic Bay
- Pelican Harbor

Staff recommends approval to the City Commission of the conditional use request to extend the time from 12:00mid night to 2:00am with the (9) conditions included.

Mr. Franciosa asked when these conditions will come into effect.

Mr. McDonnell said that will come into effect when they get their approval and start staying open till 2:00am.

APPLICANTS PRESENTATION

Debora Turner – Applicant  
Lisa Walsh – Owner

We are in agreement with the staff report, and met with the landscape people. In regards to where they have been located, we have not been in that location since 2009, we have been in the current location since October 2012. We are moving ahead with the landscaping changes. The board has received some emails in regards to the noise after 12:00 midnight. All bands will be stopping at midnight, and we want our lines of communication kept open.

### QUESTIONS TO THE APPLICANT

Mr. Hansen asks if all the conditions will be part of the license.  
Dr. Spodak asked what the current hours at the other facility are.

Ms. Turner (Applicant) replied with 12:00 midnight.

### BOARD DISCUSSION

Mr. Franciosa is concerned with the late hours. The facility is 235 ft. away from residential and you have music 7 days a week.

Ms. Turner responded that anything after 12:00 midnight will just be stopping by, not wanting band music.

Mr. Hansen asks if there was a noise ordinance in the City.

Mr. Dorling responded there is an ordinance under review and if excessive it will be looked into.

Janice Rustin (Attorney) stated that the ordinance is drafted with the noise decibels at 100 feet.

### Motion/Findings

Recommend approval to the City Commission of the conditional use request for a 24-hour or late night business in conjunction with the Tim Finnegan's Irish Pub and Restaurant, based upon positive findings with respect to Chapter 3 (Performance Standards), Section 2.4.5(E)(5) (Required Findings), and Section 4.3.3(VV)(2)(c) (24-Hour or Late Night Business Findings) of the Land Development Regulations, and consistency with Housing Element Policy A-11.3, subject to following conditions.

1. Conditions 1-9 with #4 being amended and should read "That no outdoor music or outdoor speakers will be allowed outside the building;
2. # 6 should read, "Shade trees that are minimum fourteen feet (14') in height with a six foot (6') spread shall be planted every thirty feet (30') on center.

Motion by Mr. Franciosa and seconded by Mr. Durden. Said motion approved 5-1.

C. Privately-initiated Amendment to the Land Development Regulations Section 4.3.4(J)(4), "Increases to Height Regulations", Subsection (b), "Allowances", to allow an increase in building height to be considered for the Delray Medical Center, located on the south side of Linton Boulevard, west of Military Trail.

This is a privately-initiated amendment to the Land Development Regulations (LDRs) that will add the Delray Medical Center campus to the list of areas eligible to request an increase in the maximum allowable height. The property is zoned CF-Community Facilities which has a maximum permitted height of 48 feet. The proposed amendment will allow a request to the City

Commission to increase the maximum allowable height to 60 feet through the conditional use process. add a 4-story, 129,188 sq. ft. bed tower and a 5-level, 343 space parking structure, and expansion of the energy plant. The bed tower addition will add 140 private patient rooms to transition from semi-private to private rooms. It should be noted that the expansion will not actually add beds; rather, it will result in the conversion of the existing 280 beds from semi-private to private rooms. The conversion is prompted by new industry code and guideline requirements related to an enhanced level of patient privacy for patient care.

First, they note that the property is landlocked with no opportunity to acquire adjacent land to allow expansion that would allow compliance with the LDRs. Secondly, they explain that due to building code. Ventilation and structural requirements, hospitals are built with a significantly greater floor-to-floor ratio.

It is noted that the CF-Community Facilities zoning district currently has a 48-foot maximum allowable height throughout the city. The CF zoning district requires a minimum 10-foot perimeter buffer, and when adjacent to a residential zoning district, the buffer increases to 15 feet. For Hospital uses, LDR Section 4.3.3(L)(3) requires a 50-foot setback for structures, and that no parking be located within 25 feet of a property line. An increase to the maximum allowable height to 60 feet may require adherence to an additional 2-foot setback for each foot above the standard 48-foot maximum (it is one of the two criteria required to be met among the three that are listed). In this case, buildings at 60 feet may be required to show an additional 24 foot setback for a total setback of 74 feet. The currently designed site plan would have no difficulty in satisfying these criteria.

Allowing additional height as a conditional use will require consideration of surrounding uses and mitigation measures to ensure compatibility. Additional setbacks, along with the design of open areas, such as courtyards, plazas, and landscaped setbacks, are required criteria for increased height consideration to add interest and provide relief from the building mass.

### **Courtesy Notices**

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

- Neighborhood Advisory Council
- Delray Citizen's Coalition

Staff recommends approval of this privately amendment with no conditions, but to meet the criteria that applies to any building.

### **Applicant Comments**

Colline Walter – Urban Design Kilday Studios – representing Delray Medical Center  
Michael Kronen – Dir of Plant Operations and Safety Officers of Delray Medical Center

Thank you for the presentation and we are here not to approve the 60ft. but here to make a recommendation to the City Commission to consider amending the code to allow Delray Medical Center to submit an application requesting approval for 60 feet. That would be in a form of a conditional use. The building is land lock and they have no other way to go but up.

BOARD DISCUSSION

Ms. Shutt would like to know how many other CF are in our area.

Mr. Kronen said that this amendment is specifically to this geographic location, not all CF properties, only this one.

Mr. Hansen asks about the setbacks of the hospital.  
Mrs. Walters said that this request is just for the hospital.

Motions/Findings

Dr. Spodak made a motion to recommend approval of the amendment to Land Development Regulations, **Section 4.3.4(J)(4) “Increases to Height Regulations”, Subsection (b), “Allowances”, to allow an increase in building height to be considered for Delray Medical Center**, 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).

Motion by Dr. Spodak and seconded by Mr. Franciosa. Said motion approved 6-0.

VI. Reports and Comments

A. Board Members

Parking Management Advisory Board (PMAB) – Raising the parking meters to 10pm and getting a lot of comments back about this.

Mr. Lynch wanted to thank the staff for getting the packages to us on Thursday. It is a big help to us all. Also, would like to get a copy of all the issues. And third, I appreciated all the work that staff is doing on the Staff Reports, but was wondering if the presentation could be shortened. Whereas we get the reports early now, we have plenty of time to look them over and be ready for the meeting.

B. Staff

Meeting Dates/Project Updates

Mr. Dorling said that at last meeting we had some discussion about the SAD and the process, and we did have a very detailed site plan that went along with the SAD zoning and that was a concern for members of the board that we didn't have the detail. We did have a detailed plan and we as staff said 'yes' that the plan did not work and we recommend that you deny the zoning and send a message to the applicant based on that detailed plan not be adequate. The board at that time chose to do something different and the detail was there that you needed. It is clear that it did not make it and it went forward to other boards that it was clear and now the applicant has gone back to the drawing board and is revising that plan.

Mr. Lynch said that it wasn't that the site plan was not detailed my understanding for this board was that we had the information on the plan but the details of that plan were to be given to another board and we were here just here to determine the use. The feedback that I received from many people was that this board should be reviewing the plan but in the end is that this board should have killed the plan.

Mr. Dorling said that we will make it clear going forward that if this situation comes about again we will suggest to kill the plan because the details were there and they were not acceptable. Mr. Lynch commented that it is our job, to do the job of all boards when we get SAD. It's unfortunate as each board has their specific people that do specific things and we do not have that on this board.

Ms. Shutt thought the board was going to look at a conditional over lays zone where we will have a site plan to do this as a re-zoning.

Mr. Dorling said that the board did have one and it was a very detailed one.

Ms. Shutt said that we couldn't do any conditions.

Mr. Dorling said that you could have given them direction. The SPRAB board asked what conditions we could apply.

Mr. Lynch asked is the City reconsidering that zone.

Mr. Dorling said that ultimately the City Commission Board would decide.

Mr. Lynch asked that this subject be taken further for discussion.

#### Next Meeting Agenda items

- Conditional Use for Delray Medical
- Rezoning for AC to PC for Delray Marketplace (former Ralph Buick Dealership)
- Conditional Use for a 2/story building for an expansion on the South Gate Motel
- Master plan for Bellantica Gardens
- Final plat for the Fairfield Inn
- Subdivision plat for Sofa Building 1 and 2

Also, in March the public arts person that has been employed by the city to interact with us wants to come before the board for a presentation. It was suggested not to do it at next meeting as it might be large.

ADJOURN

The meeting adjourned at 8:30pm

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 29, 2013 which were formally adopted and approved by the Board on February 25, 2013.

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Diane Miller, 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.