

Minutes
PLANNING & ZONING COMMITTEE
REGULAR MEETING
Wednesday, December 12, 2007 9:30 a.m. – City Hall Conference Room

1. Call to Order, Roll Call – Chair Bill Danaher called the meeting to order at 9:30 a.m. Present were: Bill Danaher, Bob Glassman, Kathryn McCullough Rea, Ron Anderson, Ron Foster and Marie Flood. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz, Police Chief Robert Petrick and City Clerk Vickie Bollinger. Public: 37
2. Approval of Minutes: Regular Meeting September 19, 2007
Approved as written.
3. Discussion
 - A. Continuation of Architectural Review – 121 10th Street, Orlando Fernandez, Owner
Owner applied for a building permit for a second story addition to his one-half of a duplex structure.

Building Official Borysiewicz stated Mr. Fernandez wants to add a second story to his half duplex at 121 10th Street. This addition will block three windows in the existing second story of the common wall half duplex. Building Official Borysiewicz stated that Mr. Fernandez considered tearing down his half duplex, but found that to rebuild to existing flood elevations, his half duplex would be higher than the other half duplex which would not be aesthetically pleasing. The proposed addition will align with the roof line of the existing second story half duplex, but will block the existing three windows. Building Official Borysiewicz read LDR 101-28 and asked the committee to make a recommendation to the city commission regarding issuing a building permit. At the last meeting, the Planning & Zoning Committee had asked Mr. Fernandez to provide additional drawings which he has done.

Attorney Thomas Wright stated the Building Official had called him early in the process about the proposed project and it appears to be in conformance with general standards of construction and city building codes. However, the issue of blocking the three windows of the common wall is unique and he recommended the matter be referred to the committee.

Chair Danaher read a letter from Timothy J. McGarry, owner of the other half of the duplex. He stated that the additional drawings did not meet the request for more details about the proposed addition, that there were not sufficient detail or information for the committee to proceed, and he recommended the committee deny the request or defer it until more detail was available.

Building Official and the committee discussed:

- Elevations were shown on the drawings from two directions, not all four
- Proposed addition would match elevations of existing structures
- The current roof would be removed and a second story added that would be the exact dimensions of the first floor—square footage and building footprint would be the same and it would be constructed of the same materials, masonry and stucco with a truss roof.
- One of the existing windows overlooks the applicant's roof and pool, one window is frosted, and the other window has some view of the canal.

Discussion - Continuation of Architectural Review - continued

Mary Schmidt, 9th Street, stated the proposed addition would block the canal view from the existing second story, the house has been for sale for two years and it would have less chance of selling if these windows were blocked.

Committee discussion continued:

- The McGarry's canal frontage was estimated to be about 20 feet.
- There is another window further down that allow the McGarry's a view of the canal.
- One window was in a bedroom that overlooked the roof and street, one window was stained or frosted and was a bathroom and only about one half of the third window would be blocked. A smaller window could replace the third window.
- If the windows were removed, there was still legal egress for rental possibilities.

Attorney Wright recommended the committee review LDR 101-167.

Chair Danaher read the general criteria, LDR 101-167(2)(i)1 and the committee discussed whether or not there was enough detail on the drawings to make a decision. In response to a question Building Official Borysiewicz and Attorney Wright stated that to their knowledge this was the first time this situation had happened in the city. There were other ground floor duplexes where one half had added a second story; and the layout of this duplex was also unique.

Brian Schmitt, real estate broker representing the McGarry's, stated that the proposed addition was a concern in the sale of the property and it was not a positive one. He reiterated the McGarry's concerns as stated in the letter about the effect of the proposed addition on the value of their property. He stated that having construction so close to the property would also be a deterrent to the sale.

Steve Smith, real estate agent with Key Colony Beach Realty, stated the existence of a common or party wall should not interfere with an owner who wants to improve his property.

Attorney Wright advised the committee that who pays to remove the windows and make required changes is not a topic for the committee.

Motion – Moved by Chair Danaher, seconded by Kathryn Rae, to recommend to the city commission to disapprove the proposed addition as LDR 101-167(2)(i)1.b. prohibits it due to a material depreciation in value to the other half of the duplex and causing it to be not salable. Roll Call Vote: Unanimous approval.

This matter will be heard by the city commission on December 27, 2007.

Attorney Wright stated he will review LDR 101-167(3) regarding the review procedures.

B. Proposed Changes to Land Development Regulations:

1. Section 101-42 Restaurants and bars, to allow serving of food and drink until 1:00 a.m. and amplified music until 10:00 p.m. in the RH district

Building Official stated that Ms. Tracy had requested two changes to the LDR 1) that drinking and dining be permitted until 1:00 a.m. and currently it is only allowed until 10:00 p.m. and 2) that amplified music be allowed until 10:00 p.m. and currently it is not allowed at all.

Attorney Wright stated that Ms. Tracy was not really an applicant in this matter. Ms. Tracy did request the changes but all parties have an equal standing in the discussion.

Attorney Jerry Coleman, representing Ms. Tracy, related the historical use of the property for dining and entertainment and the Tracy family's involvement with the property. He stated this property was in the RH district, the city was a high density

Discussion – Proposed Changes to LDR - continued

area, and told of the traditional uses of the property. He stated there had been some confusion about the requested changes and reiterated that Ms. Tracy was requesting dining and drinking be allowed until 1:00 a.m. instead of 10:00 p.m. and that live entertainment be allowed until 10:00 p.m. He talked about recent complaints from neighbors of the property relating to excessive noise and acknowledged that we all have different sensitivities to noise levels. He stated the RH district has historic buildings that have always been used for dining and entertainment for the enjoyment of residents and visitors to the city. He stated that a way of life and enjoyment was provided to residents and visitors by the Tracy family. He said it was important that there be a balance and the committee needs to consider the greater good and preserve the historic district and its use. He asked the committee not to allow complaints to close down the use and enjoyment of this business. He also asked to be allowed to respond to public comments.

April Tracy, Cabana Breezes, stated she was asked by commissioners to request these changes and the LDR was confusing. She stated that entertainment had been occurring at this property since 1955 and asked the committee to consider the history of the property. She acknowledged there was a noise issue and that she has been addressing that issue. She stated she has been working with a resident who owned a sound system company who was helping her to design a system to contain the noise, such as changing the speaker type and their direction, adding more speakers at reduced volumes, adding a movable barrier, and relocating the musician's stand closer to the building. She stated there would always be a certain amount of noise, but she was working to contain it.

In response to a question about the movable barrier, Building Official indicated there may be concerns as to whether a movable barrier would meet building codes. Ms. Tracy stated that the barrier needed to be movable so that it could be taken down and stored before any storms. Recent history had shown that the business was vulnerable since it was directly on the ocean. Ms. Tracy stated that different options were being considered and she was looking for any possible solutions.

Attorney Wright stated that unless the committee was considering changing the LDR to allow movable walls, this issue should not be part of the discussion.

The committee and Ms. Tracy discussed that some of these containment measures could be done this winter regardless of the status of the requested LDR changes. There was discussion about the property lines, setbacks and easements.

Chair Danaher read letters of objection from:

George and Lorraine Lees, Casa Clara Condominiums

Richard and Odette Belasco, Casa Clara Condominiums

Laurie Reeves, 280 5th Street

Building Official Borysiewicz stated that there were numerous noise complaints, but some of them were reported on Monday about events during the weekend. He stated the police have responded and asked Police Chief Robert Petrick to provide details.

Chief Petrick stated officers had responded five times to calls from the Sheriff Office dispatch between March 14 and May 11, 2007. In some cases by the time the officer arrived the noise level had been reduced. On three occasions, the officer found significant noise levels in the Casa Clara parking lot and one citation was issued on April 28, 2007 for having amplified music at 11:00 p.m. The other noise complaints were received between 7:45 p.m. and 12:40 a.m.

In response to a question, Building Official Borysiewicz stated that he had not formally addressed the question as to whether the tiki was indoor or outdoor dining, but his opinion was that it is outdoor dining.

Discussion – Proposed Changes to LDR - continued

Attorney Wright stated that the requested change was for amplified live entertainment until 10:00 p.m. and by omission this may mean that other forms of amplified music would be allowed anytime the business is open.

Public Comment:

- Peter Sehlinger received clarification that the requested changes included dining and drinking be allowed until 1:00 a.m. and that live entertainment be allowed until 10:00 p.m.
- George Lees, Casa Clara, whose letter of objection was previously read, added that he recently heard loud noise on November 23 at 12:30 a.m. and December 3 about 11:30 p.m. as fans watched Monday night football. The noise was loud at 400 feet from the property line. He stated after Hurricane Georges, the inside bar was removed and rental apartments made so that now there is only one bar. He asked if Guy Lombardo's music was inside or outside. Ms. Tracy responded that in 1979, music was outdoors.
- Mary Eige stated she and her husband have been here since the late 1950s and the music and bar were inside the building. At the time there were no condos and she asked why amplification was needed if the music could be heard at Casa Clara.
- Eugene Wambold, Sunset Beach Apartments, stated that if amplified music is allowed until 10:00 p.m. it would be a nightmare with lots of drinking and possible vandalism. He objected very strongly to the requested changes.
- Sue Demaras, owner of the property next door and former owner of the Cabana Breezes property, stated there was always outdoor music. She stated this was not a change in use, but was asking that the laws be changed to catch up with the actual use. This could be considered a grandfathered use. Visitors pay \$125 to \$235 per night to stay at her business and there have only been 1 or 2 complaints and when they occurred there was an immediate response.
- Jerry Ellis, 175 4th Street, stated he goes to the restaurant and enjoys it, but what happens if the LDR is changed and there is a new owner who is not as responsive or cooperative. He stated he was opposed to the change, he has never complained, but on many occasions has heard the noise at 10:00 p.m. He has learned to live with it, but it should not be allowed after 10:00 p.m.
- Charlene Grimes, 14 Causeway, asked that if this change be allowed, will that allow other activities until or after 10:00 p.m. She stated her family enjoys playing basketball or tennis, but are chased off after 7:00 p.m. because of noise. Chair Danaher stated this was a separate issue since it was not in the RH district and suggested she discuss her concerns with the Recreation Committee. Ms. Grimes stated her home is between, and is subject to noise from, the Cabana Breezes, Sparky's Landing and the Island Tiki.
- Norval Smith, Casa Clara, stated he has owned in Casa Clara for five years and been visiting this city for 30 years. He stated it does get noisy and that he is assisting Ms. Tracy to contain the noise. He suggested the city set standards using decibels at some specific distance to measure noise and issue violations. He stated his unit is probably closer to the Cabana Breezes than any and he is not happy about the noise after 10:00 p.m., but he is working to contain it.
- Mary Schmidt, 310 9th Street, stated she thought Mr. Smith had a good idea about using some decibel measure. She stated she did work for Ms. Tracy and that the Causeway used to be more commercial, but now has additional residential units. She added that the Cabana Breezes is the last ocean front restaurant in the Middle Keys.

Discussion – Proposed Changes to LDR - continued

- Jerry Ellis, 175 4th Street, stated that some of the homes were there before the restaurant, since Guy Lombardo lived in his house.
- Jason Kohler, resident of Marathon and business owner, stated his support of the requested changes and that if no change is made, in the summer food service will be shut down before it gets dark. He stated that the restaurant and surrounding area is always clean, the Cabana Breezes is a good neighbor for the community; and the next owner may not be.

A show of hands poll of the public in attendance was divided; about 60% opposed to the requested changes and 40% supporting the requested changes.

Attorney Coleman stated he didn't know about Guy Lombardo, but he did acknowledge the noise from the football game. He stated that things and cities change over time, but if the city keeps chipping away at the businesses, there won't be any buyers when the Tracy's want to sell. He stated there was no way to appease everyone, but the laws need to be updated to conform with reality and to preserve the businesses. He stressed that noise and noise levels are different for all people, that we all live in close quarters with higher densities and we need these amenities. He stated the changes were reasonable.

Attorney Wright reiterated the requested changes and read the procedures from the LDR. He stated this was not the advertising public hearing required by the LDR.

The committee, Building Official Borysiewicz and Attorney Wright discussed whether the word "live" should be removed; that there had been no code enforcement related to eating; that outdoor dining after 10:00 p.m. was a violation, but not enforced; and that the amplified music was more of an issue than outdoor dining.

The committee agreed to remove the word "live" from the requested changes. Ms. Tracy concurred with the committee's decision.

The committee set a public hearing on the matter for Wednesday, January 16, 2008, at 9:30 a.m.

Committee Member Ron Foster left the meeting for a previous commitment.

The committee took a 10 minute recess.

2. Section 101-186. Beautification committee, to change the membership to 5 members and 3 alternates

Committee Member Marie Flood stated she was also a member of the Beautification Committee. The Beautification Committee now consisted of 7 regular members and 2 alternates. She stated that in the summer it was difficult to get a quorum and the committee is asking that membership be changed to 5 regular members and 3 alternates. No one had any objections to the proposed changes.

It was determined that the public hearing for this change to the LDR could be combined with the hearing for the changes to LDR 101-42 previously discussed.

C. Proposed Ice House to be located at CITGO, 13155 Overseas Highway

Building Official Borysiewicz stated that Ross Coffman, representative for East Coast Ice is asking to install a vending machine for ice (ice house) at the Citgo gas station. The ice house measures 8 feet by 24 feet by 9 feet high. This meets all building codes and is being brought to the committee per LDR because it is an addition to an existing commercial structure.

Discussion – Proposed Ice House - continued

Chief Petrick stated he had one concern related to the placement of the ice house on the property. According to the drawing the ice house will be placed near the handicapped parking spaces which could create a nuisance since people may use the handicapped parking space or block that space when getting ice.

There was a discussion of other possible locations for the ice house. Mr. Coffman stated that he was willing to work with the Citgo owners regarding the placement, but there were advantages to where it was shown on the drawings: 1- it had good exposure on both streets and 2- it was visible from many angles which may reduce vandalism.

In response to a question, Building Official Borysiewicz stated that the ice house is considered a structure and would therefore have to meet all building codes.

This matter will be forwarded to the city commission for review and it was suggested that Mr. Coffman provide a written statement authorizing him to speak for the company.

Motion – Moved by Marie Flood, seconded by Bob Glassman, to approve the addition of the ice house at the Citgo gas station. Roll Call Vote: Unanimous approval.

Mr. Coffman requested that this matter be heard by the city commission in January.

4. Any Other Business - None

There being no further business, the meeting adjourned at 11:40 a.m.

Vickie L. Bollinger, City Clerk

Note: A mechanical recording has been made of the meeting of which these minutes are a part, and a copy is on file in the office of the City Clerk, as a public record.