

**MINUTES
PLANNING AND ZONING BOARD
CITY OF DELRAY BEACH**

MEETING DATE: December 13, 2021

MEETING PLACE: Commission Chambers

1. CALL TO ORDER

The Planning and Zoning Board meeting was called to order by Chris Davey, Chairman at 5:05 P.M.

2. ROLL CALL

A quorum was present at call to order.

Members Present: Chris Davey (Chairman); Julen Blankenship (Vice Chairman); Joy Howell (2nd Vice Chairman) arrived 5:09 P.M.; Allen Zeller; Rob Long; Max Weinberg and Christina Morrison.

Members Absent: None

Staff Present: Lawonda Warren, Assistant City Attorney; Amy Alvarez, Principal Planner; Rebekah Dasari, Senior Planner; Elizabeth Eassa, Senior Planner; and Diane Miller, Board Secretary.

3. APPROVAL OF AGENDA

Motion to approve the December 13, 2021, agenda made by Christina Morrison and seconded by Julen Blankenship.

MOTION CARRIED 6-0, Joy Howell was not present for the vote.

4. MINUTES

None

5. SWEARING IN OF THE PUBLIC

Chris Davey read the Quasi-Judicial Rules for the City of Delray Beach and Ms. Miller swore in all who wished to give testimony.

6. COMMENTS FROM THE PUBLIC (Limited to 3 Minutes)

None

7. PRESENTATIONS

None

Joy Howell arrived at 5:09P.M.

8. QUASI-JUDICIAL HEARING ITEMS

A. Bounce Sporting Club (2021-243-USE): Provide a recommendation to the City Commission regarding a Conditional Use request to establish a Late-Night Business until 2:00A.M. for Bounce Sporting Club, located at 625 East Atlantic Avenue, Building I, Suite No. 115 at the southwest corner of East Atlantic Avenue and NE 7th Avenue within Atlantic Crossing. (PUBLIC HEARING)

Agent: Neil Schiller, Esq., Government Law Group; nschiller@govlawgroup.com

Planner: Rebekah Dasari, Senior Planner; dasarir@mydelraybeach.com

CONTINUED TO DECEMBER 13, 2021, FROM THE MEETING OF OCTOBER 18, 2021.

Rebekah Dasari, Senior Planner, entered the File No. 2021-243 into the record.

Exparte Communication

Chris Davey- Received phone call from Mr. Schiller, received email and spoke with City staff

Julen Blankenship- Received phone call from Mr. Schiller

Joy Howell- Spoke with City staff and residents of the Palm Trail community, drove by the site

Allen Zeller- Visited site and received email

Rob Long- Received phone call from Mr. Schiller

Max Weinberg- Received phone call from Mr. Schiller

Christina Morrison- Visited the site

Applicant Presentation

Neil Schiller, Esq. - Government Law Group

Staff Presentation

Rebekah Dasari, Senior Planner, presented the project through a PowerPoint presentation.

Public Comments

Jack Endique- 419 NE 8th Avenue- Representing the Palm Trail Homeowners Association, opposes the granting of the conditional use as granting the conditional use will create a precedent for future development projects.

Rebuttal/Cross

Neil Schiller- the applicant is following the rules in requesting the conditional approval, the applicant is willing to place conditions on the conditional approval to ensure that neighboring residential properties are not negatively impacted.

Board Comments

Rob Long requested clarification from City staff regarding the Code Enforcement remedies available to ensure that the applicant follows the terms of a conditional use. Mr. Long stated that the Code Enforcement's function is to ensure compliance with the

City's code, to include any possible conditions placed by the Board in regard to this application. Mr. Long stated that the City Commission should have the ability to hear this request and make a final determination if a conditional approval is appropriate.

Max Weinberg asked Lawonda Warren what available code enforcement remedies exist if the operations are not consistent with the terms of the conditional use approval. Max Weinberg noted there are several establishments in close proximity to the Bounce that operate after midnight. These businesses are located within the entertainment district, and it appears that there is no history of noise complaints from those establishments. Mr. Weinberg requested clarification from the applicant regarding the type of live performances that will be conducted.

Chris Davey stated that the Planning and Zoning Board or City Commission is unable to revoke a conditional approval and that he was not aware of any instance where Code Enforcement revoked a Business Tax Receipt. Mr. Davey stated that granting the conditional approval to this establishment outside the entertainment district will have a detrimental effect on 3 residential districts surrounding the proposed establishment. If the applicant is in violation of the conditions of the conditional use, the enforcement process may be prohibitively lengthy.

Joy Howell stated that enforcing the noise ordinance is difficult due to the nature of the violation and can unnecessarily be taxing on City staff. There must be a balance between mixed-use development and ensuring that neighboring properties are not negatively affected by the proposed use.

Julen Blankenship was supportive of approving the conditional use so that the City Commission is able to hear the request and provide guidance in relation to the enforcement of noise violations. Ms. Blankenship requested clarification from the applicant as to what measures would be taken to prevent queuing of patrons on Atlantic Avenue.

Christina Morrison stated that remedies exist for noise ordinance violations and the use of off duty Delray Beach Police Officers is beneficial in ensuring that the proposed conditions are enforced.

Allen Zeller stated that the residents of the Marina Historic District are concerned regarding the noise negatively impacting the area. Mr. Zeller was concerned of the limited code enforcement remedies available to address noncompliance with any conditions enacted by the Board.

MOTION to deny Resolution No. 160-21, a Conditional Use request by Bounce Sporting Club LLC to establish a Late-Night Business to be open until 2:00 A.M. at 625 East Atlantic Avenue, Building I, Suite No. 115 within the Atlantic Crossing development, finding that the request is inconsistent with the Land Development Regulations and the policies of the Comprehensive Plan was made by Joy Howell and seconded by Allen Zeller.

Motion Failed 3-4 Dissenting Julen Blankenship, Rob Long, Max Weinberg and Christina Morrison

MOTION Move to recommend approval to the City Commission of Resolution No. 160-21, a Conditional Use request by Bounce Sporting Club LLC to establish a Late-Night

Business to be open until 2:00 A.M. at 625 East Atlantic Avenue, Building I, Suite No. 115 within the Atlantic Crossing development, finding that the request is consistent with the Land Development Regulations and the policies of the Comprehensive Plan was made by Julen Blankenship and seconded by Rob Long, subject to the following conditions:

1. The patio on the northeast corner of Suite 115 will close at 12:00 a.m. on all days.
2. All doors and windows will close at 12:00 a.m. on all days.
3. The foyer along East Atlantic Avenue will be the sole ingress and egress point after 12:00 a.m. on all days.
4. Live music will be prohibited after 12:00 a.m. on all days.
5. Full course meals be served till 2 a.m.
6. A minimum of 6 Delray Police Department off duty police officers be present between 11:00 p.m. to 2:00 a.m. on Fridays and Saturdays.

MOTION CARRIED 4-3 Dissenting Joy Howell, Allen Zeller, and Chris Davey

B. 5200 West Atlantic Avenue (2021-245): Provide a recommendation to the City Commission for Ordinance No. 01-21, a privately initiated request to rezone the property located at 5200 West Atlantic Avenue from Planned Office Center (POC) to General Commercial (GC). (PUBLIC HEARING)

Authorized Agent: Christina Bilenki, Esq. / Nicole Jaeger, Esq., Dunay, Miskel & Backman, LLP; cbilenki@dmbblaw.com and njaeger@dmbblaw.com

Planner: Elizabeth Eassa, AICP, Senior Planner; eassae@mydelraybeach.com

Elizabeth Eassa, Senior Planner, entered the File No. 2021-245 into the record.

Exparte Communication

Chris Davey- None

Julen Blankenship- None

Joy Howell- None

Allen Zeller- Visited the site

Rob Long- Spoke with City staff

Max Weinberg- None

Christina Morrison- Knows the property well.

Applicant Presentation

Christina Bilenki-Dunay, Miskel & Backman, LLP

Staff Presentation

Elizabeth Eassa, Senior Planner, presented the project through a PowerPoint presentation.

Public Comments

Daniel Scapusio 103 Coconut Key Lane- Applicant should consider the color and nature of the business and it may affect the quality of life of neighboring residents.

Susan Burnesa 105 Coconut Key Lane- concerned about a gas station being developed in this location, concerned about noise from the proposed business.

Michael Longueil 152 Coconut Key Lane- not opposed to zoning change, concerned that new business may be detrimental to the Coconut Key community.

Rebuttal/Cross

Christina Bilenki- Applicant looks forward to working with property owners of the Coconut Key Community regarding any proposed future development.

Board Comments

Max Weinberg inquired if there was a change in circumstances to make the current zoning inappropriate. The applicant indicated that the current zoning is not in line with current development standards. Mr. Weinberg questioned whether rezoning this parcel would be considered spot zoning.

MOTION to recommendation approval of Ordinance No. 01-22, a privately-initiated request to rezone the property located at 5200 West Atlantic Avenue from Planned Office Center (POC) to General Commercial (GC), finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the applicable criteria set forth in the Land Development Regulations made by Christina Morrison and seconded by Joy Howell.

MOTION CARRIED 7-0

C. Delray Ridge Plat (2020-237): Consideration of the Preliminary Plat and recommendation to the City Commission for the certification of the Final Plat, "Delray Ridge" with three waivers from Section 4.3.4(K) of the Land Development Regulations (LDR), associated with the creation of 14 fee-simple lots, for the properties currently addressed as 2201, 2275, and 2315 North Swinton Avenue and an unaddressed vacant parcel, located at the northeast corner of North Swinton Avenue and NE 22nd Street.

Property Owner & Applicant: Delray Ridge, LLC / Ron Elish Authorized

Agent: Allan Hendricks, RLA; allan@cwiasoc.com

Planner: Amy Alvarez, Principal Planner; alvarez@mydelraybeach.com

Amy Alvarez, Principal Planner, entered the File No. 2020-237 into the record.

Exparte Communication

Chris Davey-Received email, spoke with City Attorney

Julen Blankenship- Received email

Joy Howell- Spoke with City staff and neighboring residents

Allen Zeller- Visited site, received email

Rob Long- Received email

Max Weinberg- Familiar with the proposed development

Christina Morrison- Site Visit and spoke with City staff

Applicant Presentation

Bonnie Miskel- Dunay, Miskel & Backman, LLP

Staff Presentation

Amy Alvarez, Principal Planner, presented the project through a PowerPoint presentation.

Public Comments

None

Rebuttal/Cross

Bonnie Miskel-The land use allows for 25 units; the applicant is requesting development of 14 single family homes, allowing for additional green space. The applicant has proposed a significant increase in the diameter at breast height of the replacement trees. Amount of caliper inches has been doubled since the October Planning and Zoning Board meeting.

Board Comments

Christina Morrison asked the applicant regarding the establishment of a Homeowners association and whether perimeter a wall will be constructed along North Swinton Avenue.

Max Weinberg ask the applicant's landscape architect what is considered to be a viable tree, in relation to the existing banyan tree located in the center of the property.

Allen Zeller requested clarification from the applicant regarding the arborist report, as to the number and type of existing trees to be removed. The applicant's arborist report indicated that six existing trees are being are being preserved in place. The applicant contributed to the City's tree trust fund to mitigate for trees that were not being replaced. Trees were removed from the property prior to obtaining the required approvals; Code Enforcement may take enforcement action in the future.

Joy Howell requested clarification regarding the demolition of existing structures prior to the final plat approval from the Board. City staff noted that landscaping cannot be removed until a tree removal approvals and corresponding permits are obtained. Ms. Howell inquired regarding preservation of the existing large banyan tree in the center of the project and the possibility of incorporating the tree into the existing development plan.

Julen Blankenship appreciated the effort to increase the green space and the curb appeal and is in favor of approving the amended plat.

Rob Long stated that the applicant presented a better project than what was presented at the October hearing and noted that the proposed project is for less density than the allowable maximum density.

Chris Davey was supportive of approving the plat as the applicant has met the requirements of the landscape code and the proposed landscape plan will provide adequate green space.

MOTION for approval of the preliminary plat and recommendation of approval to the City Commission for the certification of the Final Plat, "Delray Ridge", associated with the creation of 14 fee-simple lots, for the properties currently addressed as 2201, 2275, and 2315 North Swinton Avenue and an unaddressed vacant parcel, finding that the request is consistent with the Comprehensive Plan and meets criteria set forth in the Land Development Regulations was made by Christina Morrison and seconded by Rob Long.

MOTION CARRIED 6-1, Joy Howell Dissenting

10. REPORTS AND COMMENTS

A. Staff (Amy Alvarez)

- a. Seawalls meeting will be held on December 16, 2021, second reading will be held on January 11, 2022.
- b. CDB Expansion was adopted December 7, 2021.
- c. Green Building Ordinance will be held on December 14, 2021, this will be the first reading of the proposed ordinance.
- d. January and February 2022 meeting will be held on the 4th Monday.

B. Attorney-No comments

C. Board Members-No comments

10. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 9:00pm.

The undersigned is the Secretary of the Planning & Zoning Board and the information provided herein is the Minutes of the meeting of said body for **December 13, 2021**, which were formally adopted and **APPROVED** by the Board on **July 18, 2022**

ATTEST:



CHAIR



BOARD SECRETARY

NOTE TO READER: If the minutes you have received are not completed as indicated above, this means they are not the official minutes of the Planning and Zoning Board. They will become official minutes only after review and approval, which may involve some amendments, additions, or deletions.