

BAL HARBOUR VILLAGE
LOCAL PLANNING AGENCY MEETING MINUTES
OCTOBER 16, 2012

A Local Planning Agency Meeting was held on Thursday, September 13, 2012, at the Bal Harbour Village Hall Council Chambers (655 – 96th Street, Bal Harbour, Florida).

1. CALL TO ORDER/ROLL CALL: The meeting was called to order at 7:06 p.m. by Mayor Rosenfield. The following were present:

Mayor Jean Rosenfield
Assistant Mayor Joni D. Blachar
Councilwoman Patricia Cohen
Councilman Martin Packer
Councilman Jaime M. Sanz

Alfred J. Treppeda, Village Manager
Ellisa Horvath, MMC, Village Clerk
Andrea Greenblatt, Executive Assistant
Richard J. Weiss, Village Attorney
Tony Recio, Village Attorney
Johanna Lundgren, Village Attorney

As a quorum was determined to be present, the meeting commenced.

2. PLEDGE OF ALLEGIANCE: The Pledge was previously done at the General Employees Retirement Board Meeting.

3. PUBLIC HEARINGS:

Consideration of the Following Ordinance Creating Section 21-322 Providing for Site Plan Review for B Business Zoning: Mrs. Greenblatt read the following proposed Ordinance:

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING DIVISION 11, ARTICLE III, CHAPTER 21 OF THE VILLAGE CODE TO CREATE A NEW SECTION 21-322 "SITE PLAN REVIEW;" PROVIDING FOR SITE PLAN REVIEW, INCLUDING APPLICABILITY OF REQUIREMENT, APPLICATION AND REVIEW PROCEDURE, COST RECOVERY, AND DEVELOPMENT AGREEMENT; AMENDING SECTION 21-320 OF THE VILLAGE CODE TO CLARIFY THE APPLICABILITY OF COUNCIL REVIEW OF A TRAFFIC STUDY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Rosenfield discussed the two public workshop meetings that were held.

A motion was offered by Councilman Packer and seconded by Councilwoman Cohen to recommend approval.

Mayor Rosenfield opened the public hearing.

Dina Cellini, 211 Bal Cross Drive, requested that the record indicate that a Bal Harbour resident would qualify as someone who was substantially affected and could appeal. Mr. Recio confirmed that was true. Ms. Cellini requested that the Council keep in mind that the bank property was also zoned Business District and things could change on that site. She voiced concern that under the current version a business that qualified as a permitted use (beauty salon, bakery, etc.) on that (bank) property would not trigger a major site plan review and didn't think that the Village would necessarily want those types of businesses at the gateway to the community. She didn't think that the Ordinance protected the Village for that particular site and requested that the Council have extra input on that property. Mr. Recio clarified that if there was a physical change to the building or to traffic circulation then it would trigger a site plan review, as well as a change to a conditional use. He agreed that Ms. Cellini was right that any permitted use would not trigger a site plan review.

Guillermo Olmedillo, Olmedillo X5 - Village Consultant, confirmed that the bank property had the same rules as the Shops site did, since it was in the Business District. He thought that it would be very difficult to justify having different rules for something in the same district. He clarified that the Village could designate a different zoning category for the bank property and then provide for different restrictions. He added that the Council could rezone any property, as long as it was consistent with the master plan. Mr. Olmedillo noted that the Village Attorney would have to look at the rights of people and the rights of that property, before doing so.

Ms. Cellini suggested creating a distinction in the current zoning, with regard to freestanding properties in the Business District, which wouldn't impact the Shops and would only impact that particular property.

Mr. Weiss noted that issue could be addressed at second reading of the current Ordinance, or presented on first reading again at the next meeting, to rezone that property or deal with it differently. He clarified that whatever use was there would be grandfathered.

Councilman Packer suggested that the bank property be held aside and the Village Attorney provide language that would not affect the Shops, but would preserve that particular piece of property, by some sort of zoning amendment.

Mr. Weiss voiced concern about slowing the process down. He added that the scope of the Ordinance didn't put the bank property owner on notice of any substantial change or separate procedure. He suggested proceeding and addressing it at second reading of the Ordinance.

Councilwoman Cohen agreed and thanked Ms. Cellini for bringing up the issue.

Dan Holder, 24 Bal Bay Drive, discussed the impacts from the Shops on residents, including traffic, noise, etc. He added that zoning changes affected everyone who was near the property. He requested careful review of any zoning or road changes. He hoped that no road changes would be made and no Village property would be given away in any trade.

Mr. Weiss explained that nothing specifically related to the Shops was being done. Mr. Recio will speak to Mr. Holder, prior to second reading. He clarified that the Ordinance set up a procedure on how developments in the Business District would be reviewed by the Village, since nothing was currently in place.

Councilwoman Cohen suggested future discussion on how to raise awareness of the Council meetings. The Council discussed the numerous ways that the meetings were noticed.

Doug Rudolph, 212 Bal Bay Drive, reported that he receives a number of emails about the meetings and suggested that the Village focus on gathering more of the residents' emails. He discussed the asset of having a Code Red system, to notify residents.

There being no additional comments, Mayor Rosenfield closed the public hearing.

The motion carried (5-0), with the roll call vote as follows: Mayor Rosenfield yes; Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; and Councilman Sanz yes.

Consideration of the Following Ordinance Amending Village Code Section 21-316 to Amend the List of Uses for B Business Zoning: Mrs. Greenblatt read the following proposed Ordinance:

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING SECTION 21-316 OF THE VILLAGE CODE TO AMEND THE LIST OF USES AND SET FORTH PERMITTED AND CONDITIONAL USES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to recommend approval (for the first version, not the redlined alternative one).

Mayor Rosenfield opened the public hearing.

Dina Cellini, 211 Bal Cross Drive, spoke in favor of a separate category that would mandate that certain uses that were controversial by nature (banquet facility, movie theater, private club, etc.) be subject to a major site plan review. She pointed out that those uses were currently considered conditional uses.

Mayor Rosenfield noted that was discussed at the second workshop meeting, but nobody wanted to change that.

Mr. Recio explained that specific conditional uses would normally require a site plan review, but not necessarily a major site plan review. He clarified that the Building Official and Village Manager had the discretion to determine whether or not there were impacts to adjacent properties, which would require a major site plan review. He clarified that the applicant would have to demonstrate that there weren't any impacts to any other parcels or infrastructure. Mr. Recio advised that if the applicant was able to demonstrate that, then the Building Official and Village Manager could then approve it without Council review; however, that determination would be subject to appeal, by any substantially affected party

and would then come to the Council.

Mr. Weiss clarified that the burden was on the person making the application to the Village that it didn't have an impact on the items listed. He added that if the Building Official and the Village Manager determined that the applicant hadn't met that burden, then it would go to the major site plan review. He further clarified that if it was determined that there was no impact, it could be approved, but then any affected party could appeal the decision to the Council and the Council could put it through the full review process.

Mr. Recio read the burden procedure.

Ms. Cellini suggested that the word "may" be changed to "shall", so that the Building Official and Village Manager could not disregard those impacts (page three of the first Ordinance).

Ms. Cellini voiced concern that the \$500 fee that a resident would have to pay for the appeal, in addition to costs if the appeal was lost, would discourage them to start that process.

Councilman Packer questioned the process if a Councilmember wanted to appeal. Mr. Recio explained that there was no exception to the fee, but the Council could refund the appeal fee.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to change the word "may" to "shall" (page 3) under Site Plan Review and Applicability.

Mr. Weiss clarified that changing "may" to "shall" was in the first Ordinance that was passed on first reading, so the change in that language would be provided at the second reading. **No vote was taken on the motion, since that Ordinance was already passed.**

Amy Huber – Shubin & Bass, Attorney for the Bal Harbour Shops, suggested a combination of the proposed and alternative Ordinances. She requested that the appliance/electronic stores be allowed up to 2,000 square feet, with one larger store (10,000 square feet) allowed through the permitted use process, and anything additional to that would go through the conditional use process, which would require a major site plan review. She clarified that the Shops currently had an electronic store under 2,000 square feet and there was consideration for a larger computer store and they didn't want to have to remove an existing tenant, to provide for the larger store. Ms. Huber clarified that she was referring to an example of changing out five stores for a larger electronic store.

Assistant Mayor Blachar requested that franchise fast food restaurants not be allowed. Mr. Recio noted that the Code didn't define that, so he will look at excluding it as a permitted use, for second reading.

Ms. Huber requested clarification that the exclusion wouldn't include any upscale restaurants with takeout sandwiches, etc. Assistant Mayor Blachar agreed that those types of upscale restaurants would be okay. The Council will review the language, after it is provided by the Village Attorney.

There being no additional comments, Mayor Rosenfield closed the public hearing.

The motion carried (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; and Mayor Rosenfield yes.

Consideration of the Following Ordinance Amending Village Code Section 21-1, 21-281, and 21-299 to Amend the Permitted Uses within the Ocean Front and Planned Development Districts: Mrs. Greenblatt read the following proposed Ordinance:

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 21 "ZONING," AMENDING ARTICLE I "IN GENERAL" SECTION 21-1 "DEFINITIONS" REGARDING DEFINITIONS OF PERMITTED USES LISTED IN THE ZONING DISTRICT REGULATIONS; AMENDING ARTICLE III "DISTRICT REGULATIONS" DIVISION 10 "OF OCEAN FRONT DISTRICT," SECTION 21-281 "PERMITTED USES" AND SECTION 21-299 "PD PLANNED DEVELOPMENT DISTRICT" OF THE CODE OF ORDINANCES IN ORDER TO AMEND THE PERMITTED USES WITHIN THESE DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to recommend approval.

Mr. Weiss noted that per direction of the Council, the convenience uses in the Ocean Front District were eliminated or scaled back.

Johanna Lundgren, Village Attorney, explained that the Ordinance amended the current allowable uses within the Ocean Front District, to limit commercial uses in multi-family buildings.

Mr. Weiss clarified that everything would be excluded, except for restaurants, spas, and health clubs, serving only the residents and their guests. Councilman Packer agreed, but clarified that would be for condominiums and apartments, but not include the hotels.

Assistant Mayor Blachar requested that tattoo parlors not be allowed. Councilman Packer agreed. Ms. Lundgren will clarify that they are not allowed. Councilman Sanz questioned if a tattoo would include cosmetic for the lips, eyes, etc. Councilwoman Cohen agreed that the exclusion should only be for a stand-alone tattoo place, but not the process of tattooing such as what is done at a spa. Ms. Lundgren noted that permanent makeup could be considered cosmetic. Assistant Mayor Blachar spoke against allowing it. Councilman Packer spoke against allowing beauty procedures at a spa (in a condominium) that required a needle. Ms. Lundgren will further clarify that in the Ordinance, to prohibit that type of service.

Ms. Lundgren reviewed the allowed uses in the Planned Development District, which were not changed. Mr. Weiss clarified that the Planned Development District was more liberal and the Ocean Front District was stricter.

Councilman Packer objected to allowing items in the Planned Development District, as
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listed on page 12 of the Ordinance, in a condominium building. Mr. Weiss clarified that the Planned Development District was not changed, per direction of the Council. Councilman Packer suggested that some of the allowed uses in the Planned Development District be excluded.

Mayor Rosenfield opened the public hearing.

Doug Rudolph, 212 Bal Bay Drive, pointed out that the Planned Development would come before the Council, as a negotiated arrangement. He clarified that the intent was not to exclude anything and then for the Council to have the flexibility to decide what it wanted to allow. Councilman Packer wanted the new project (Consultatio – 10201 Collins Avenue) to be put on notice of what the Council didn't want in a condominium. Mr. Rudolph didn't want the Council to prevent itself from being able to negotiate items for the Planned Development.

Mr. Treppeda clarified that the Planned Development project would not need approval for items that were listed as allowed.

Councilman Packer requested that cleaners, travel agencies, and florists, be excluded from the Planned Development District. Councilwoman Cohen agreed and suggested that spas and beauty salons be allowed. Councilman Packer agreed. Councilman Sanz spoke in favor of all of the condominiums having the same allowed uses, in both the Ocean Front and Planned Development Districts.

Mr. Weiss clarified that the request was to limit the Planned Development multi-family buildings to the same three items as the Ocean Front multi-family buildings.

A motion was offered by Councilman Packer and seconded by Councilman Sanz to amend the Ordinance to only allow the same uses in the multi-family buildings in the Planned Development District as in the Ocean Front District. The motion to approve the amendment carried (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; and Mayor Rosenfield yes.

Dan Holder, 24 Bal Bay Drive, questioned if beach concessions were allowed. Mr. Weiss advised that was not in the proposed Ordinance and was a separate topic.

Dina Cellini, 211 Bal Cross Drive, thought that there was a separate Ordinance that dealt with beach concessions. She clarified that the Council approved a more liberal approach for the uses allowed in the hotels. She questioned how the Sea View Hotel would be handled, since it was a hotel, but was in the Ocean Front District. She spoke in favor of the Sea View being allowed the same sort of amenities, as a hotel in the Planned Development District.

Ms. Lundgren clarified that the restrictions did not apply to the hotels.

There being no additional comments, Mayor Rosenfield closed the public hearing.

The motion to recommend approval of the Ordinance, as amended, carried (5-0), with the roll call vote as follows: Assistant Mayor Blachar yes; Councilwoman Cohen yes; Councilman Packer yes; Councilman Sanz yes; and Mayor Rosenfield yes.

4. ADJOURN: There being no further business to come before the Local Planning Agency, a motion was offered by Assistant Mayor Blachar and seconded by Councilman Sanz to adjourn. The motion carried (5-0) and the meeting was adjourned at 8:18 p.m.

Attest:



Ellisa Horvath, MMC, Village Clerk



Mayor Jean Rosenfield