



PLANNING SERVICES

THE UPSIDE of FLORIDA

**MINUTES OF THE PLANNING BOARD**

April 10, 2018

**MEMBERS PRESENT:** Chairman Paul Ritz, Nathan Monk, Nina Campbell, Kurt Larson, Jared Moore

**MEMBERS ABSENT:** Danny Grundhoefer

**STAFF PRESENT:** Brandi Deese, Assistant Planning Services Administrator, Leslie Statler, Planner, Steve Richards, Code Enforcement Officer, Rusty Wells, Assistant City Attorney, Lysia Bowling, City Attorney

**OTHERS PRESENT:** Barbara Chapman, Laura T. Hall, Amber Hoverson, Lou Courtney, Steven Shelley, Damian Zimmerman, Bruce Partington, John Myslak, Betty Bowlin Hinote, Don Kraher, Council Executive,

**AGENDA:**

- Quorum/Call to Order
- Approval of Meeting Minutes from March 13, 2018
- New Business:
  1. Request for License to Use Right-of-Way – Intendencia Street - Southtowne
  2. Consider Amendment to LDC Section 12-2-10 Historic and Preservation Land Use District
- Open Forum
- Adjournment

**Call to Order / Quorum Present**

Chairman Ritz called the meeting to order at 2:00 pm with a quorum present.

**Approval of Meeting Minutes**

Mr. Larson made a motion to approve the March 13, 2018 minutes, seconded by Mr. Monk, and it carried unanimously.

**New Business**

**Request for License to Use Right-of-Way – Intendencia Street - Southtowne**

Daily Convo is requesting approval for a License to Use for improvements within the Intendencia Street right-of-way in connection with the Southtowne Development. This request is unique in that the project will provide a large amount of improvements within the right-of-way of Intendencia and the perimeter of the development, however, the property owner will assume maintenance for these improvements. This will be agreed upon in the form of a modified License to Use agreement between Daily Convo and the City. This request has been routed through the various City departments and utility providers with those comments provided.

Bruce Partington presented to the Board and stated the project presented today was the final piece of the development.

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He explained he had negotiated at length with the City Attorney for the License to Use (LTU) which will comply with all city requirements. Daily Convo would bear 100 percent of the construction and ongoing maintenance. He indicated the project would be aesthetically consistent with the existing structures.

Chairman Ritz appreciated the work placed into the overall project with the level of quality, concern for citizens, and addressing the environment. He also appreciated the use of the right-of-way for bettering the entire development and believed this would be a better treatment of the roadway than the city could execute without private dollars. The size of the development showed the level of commitment over the span of time. **Mr. Larson made a motion to approve, seconded by Ms. Campbell.** Mr. Larson pointed out he liked the public-private partnership and wanted to take the opportunity to try this LTU in a different manner. Ms. Campbell noted the utility comments, and Ms. Deese advised the project had oversight through the Engineering Department. Mr. Monk wanted to state a no conflict of interest since at the inception of Southtowne, he was an employee of Studer Properties, however, none of this discussion was going on at that time. Chairman Ritz advised since Mr. Monk was not in play for any financial gain, no conflict of interest would exist. **The motion then carried unanimously.**

#### **Consider Amendment to LDC Section 12-2-10 Historic and Preservation Land Use District**

The City has received a request from Dr. Laura Hall of East Hill Animal Hospital for an amendment to Land Development Code Section 12-2-10 Historic & Preservation Land Use District. More specifically, Dr. Hall is requesting that the use of animal hospitals, veterinary clinics and pet resorts (with fully enclosed kennels, with no outside runs, exercise areas are permitted) no longer require Conditional Use Permit approval and instead become a permitted use by right. Dr. Hall recently appeared before the Special Magistrate for a code violation of having exercise areas in the OEHC-1 zoning district. The Special Magistrate gave Dr. Hall one year to resolve the issue. Dr. Hall is requesting this amendment in order to bring her property into compliance.

In reviewing the Code Violation form, Chairman Ritz note the violation involved dogs running outside of the building which was not allowed. Ms. Deese advised a Conditional Use Permit would no longer be necessary, and it would become a permitted use by right. Chairman Ritz pointed out even though it was for one piece of property, if we keep changing the Code, the neighborhood could lose some of its character. One of the issues was encroachment and movement of commercial businesses within the residential neighborhood. But on the positive side, customers appreciated Dr. Hall's services and the convenience of having her clinic at this location. The change to the Code would become area-wide and not just for one property. Mr. Monk wanted to clarify that this change would allow for exterior exercise areas for pets in the clinic or the resort during business hours. Chairman Ritz advised there were no time limitations. Ms. Deese confirmed that since the ordinance does not define that, another use could come in by right without a Conditional Use Permit, and there would not be any ability to add those stipulations; they could operate at any hour, however, they would still operate under the noise ordinance.

Dr. Hall stated she had been in the OEHPD since 2007. She explained she put the outdoor exercise area provision in herself and had operated since 2007 with no formal complaints. Her pet resort was given the same rights as pet shops. She explained she attended the neighborhood association meeting and understood their concerns with businesses, future expansions, and parking. She explained all noise ordinances would still be intact, and this change in the Code would simply allow her to continue the business the City had allowed. She indicated the Magistrate from the Code Enforcement hearing advised her to change the Code so a violation would not happen again.

Ms. Campbell confirmed that the business had improved the neighborhood while maintaining the architectural integrity and spirit of that area. Chairman Ritz had not noticed a parking issue. In full disclosure, Ms. Campbell explained that Dr. Hall was her veterinarian, and her pets had stayed at the pet resort; she had not been overwhelmed with noise on the inside or outside. She stated when addressing these issues, certain areas of the community want to be self-sufficient as a sub community, and if that was the case, it might be appropriate for a pet resort to go in; Dr. Hall did bring a lot of business into the area.

Lou Courtney agreed Dr. Hall had a great reputation and was a great businesswoman. She explained a lot of the neighbors were opposed to the business when it was originally permitted because of the barking. Ms. Courtney lives one block away and observed the animals go outside five times a day, and the noise gets loud during the summer and during holidays. She indicated she worked from home in a studio and had followed the noise to observe 20 dogs within the exercise area with an attendant present. However, she was unable to address the attendant because of the noise. She applauded the doctor for the integrity of the architecture, but noise pollution was a serious issue. She also pointed out the doctor could sell the clinic, and the next owner might not be as conscientious. She also explained they do not like changes that hurt property values, aesthetic values, or quality of life. She explained there were no neighbors immediately adjacent to the doctor; one was being used for storage and the two behind were vacant. Joshua Gleaton appeared before the Board and stated he works from home does hear the dogs barking and it is a noticeable background noise. He did appreciate what the doctor's business had brought to the neighborhood but was concerned the Code change would allow for the continuation and the addition to what he sees as an existing problem. He felt changes to the Code should benefit the community and not just a few people. He stated Dr. Hall had indicated she was involved with the original language, and he was concerned with the result of changing the Code when someone is found in violation, and he did not see the benefit being for the neighborhood but for only one business.

Steven Shelley advised he had been an East Hill resident for 50 years, and even though the business was not in East Hill, he wanted to comment that when she was with Sacred Heart, she was well respected and loved. He was amazed in driving up to the facility how little noise was heard. He stated her business is exactly what the community was looking for.

Amber Hoverson, President of the OEHPA, was at the meeting and as a neighborhood, they were opposed to the Code change. She explained they were not opposed to change but were concerned with the noise and that some other business could come in and not be as mindful of the neighborhood. Also, as a homeowner of a contributing structure, she felt it was not fair when a homeowner in this district is required to go before the ARB and comply with their guidelines. However, this is a law that is being considered; she expressed you can avoid ugly but you cannot avoid noise, and many of the older homes are not insulated.

Betty Bowlin Hinote with Innerpeace Massage Therapies behind the McDonald's stated she had heard barking during therapy sessions, and they would lose business if the noise continued during treatments. She explained patients do sleep during therapy sessions, and the business maintains a quite atmosphere. She further stated the Code was set up to protect the interest of owners, their property values, and safety. She stated she had been at this location for 17 years and felt her property might lose value if the Code is changed. She had visited the pet resort on Hayne Street, and it was absolutely too loud, and if the Code is changed to include any hour, this noise would also be outside. One of her therapists left a note to her to make sure this does not happen since there will be barking dogs while the therapies are in session. Mr. Monk asked how long she had been in business, and she stated they had been operating there 17 years. She was not sure how much business she had already lost. With the Code change and having the dogs outside along with the possibility of a growing business, the problem might get worse. Mr. Monk asked if any customer left an appointment because of the barking dogs. Ms. Hinote explained they could not know if a person did not return because their session was disturbed. She further explained the Code protects against many issues, but she could not provide any solid facts supporting loss of income since this would be speculative. She did emphasize with a change in the Code, the situation would likely get worse.

Chairman Ritz stated as he reflected back from 2008, the noise issue was of concern. At that time, many Old East Hill residents were concerned with the noise; there were no outside exercise runs at that time. As of today, some of those members still do not embrace the idea of outdoor exercise runs, which have been consistent from then to now. He explained the idea of a Conditional Use allows for

checks and balances to occur should situations change. Changing the Code affects the entire area, and if another veterinarian should choose to come in, they could put in an outside run a block away. He advised one of the reasons for the Conditional Use being granted at that time was that a lack of outside runs would prevent a noise issue. He said he tended to think on the side of the neighborhood who opposed it in light of the way it came before the Board the first time. Mr. Monk emphasized the historic nature of East Hill and the Van Gogh Coffee Shop where the youth populated; the 309 house was a safe place for train hoppers and both were a part of the history of this community. It was constantly shut down because of noise complaints. His opinion was if you want quiet, don't live in the city which includes traffic, movement, and noise.

Ms. Campbell questioned how long this area had been business and residential, and Ms. Deese advised since its inception in the late 90s. Dr. Hall pointed out nothing would change since the dogs had already been entering an exercise yard. The exercise yard simply means they go out and exercise and come back in. Ms. Campbell indicated aside from the most recent complaint, the doctor had no other complaints and thought that was an interesting observation; it seemed the problem was not with the dog resort or the veterinarian but the noise level. She questioned if anyone had come up with a build-out for sounds. Dr. Hall stated she had investigated other resorts in the city which are all C-1, but they were not in a historic neighborhood, and when she went to change the Code in 2008, they placed the language in there. She advised at that time, parking was the main concern. She also explained as a property owner, she would be using outside cameras to protect her interests and confirm activity documenting the number of dogs.

Chairman Ritz clarified a Code violation was issued which stated "There are dogs running and exercising outside this facility which has a Conditional Use Permit which prohibits same and the condition constitutes an apparent violation of the Conditional Use Permit." Ms. Deese verified the Code violation was because there were dogs outside. She explained there was a video on the website showing how many times animals go outside into the exercise areas which was the specific Code violation. Dr. Hall explained exercise areas were where dogs were left unattended, which was not the case in her exercise areas. Mr. Moore asked if the change was approved, would it allow dogs to be left unattended. Ms. Deese referred to Dr. Hall's request for fully enclosed kennels with no outside runs and exercise areas are permitted. She explained there are scenarios where there are no outside runs, but the animals could go outside unsupervised, which was not Dr. Hall's intent. Mr. Monk asked if the Board had the authority to limit the number of animals allowed within a square footage. Ms. Deese advised the Board could include in the recommendation to City Council added conditions amending Dr. Hall's request. She clarified that the amendment takes it out of a Conditional Use Permit and makes it a standalone by right use. Chairman Ritz emphasized Conditional Use historically was used as a check and balance. Ms. Deese pointed out limiting the number of animals would be a challenge to enforce. Dr. Hall emphasized she wanted to operate her business as the City gave her permission to ten years ago.

Ms. Campbell asked if the amendment did not go forward and the doctor had one year to satisfy this issue, how would that impact her business. Dr. Hall advised she would not operate a boarding facility where the animals could not go outside. For clarification, Ms. Deese stated during the discussions with Code Enforcement, they felt it would be unreasonable to think that a medical facility for animals could not allow the dogs to go out and relieve themselves, but when the evidence was compiled along with the website video with the five times a day, it clearly was more than relieving themselves. Dr. Hall advised she wished she had clarified "no exercise yards where animals are left unattended" on her original plans. Ms. Campbell advised it would be a terrible loss for this portion of Pensacola to lose Dr. Hall, and asked could there be some sort of buildout for the exercise pad. Dr. Hall explained they incorporated vegetation and astro turf as well as 9' fencing.

Mr. Monk pointed out with the evolution of cities and small towns, we were going to see more small

businesses in isolated parts of the community so people do not have to drive great distances for these services. He personally did not want to live in a community where his children were playing the backyard and someone would call in a complaint on them or his dogs. More small business were going to creep into historic neighborhoods, and this natural evolution is where we're going as a community; There will be some discomfort, but that is the reality of living in a city.

Mr. Larson asked Dr. Hall if she was going to solve the problem before the Board involving multiple dogs, supervised or unsupervised, because he was not comfortable with just saying "exercise areas." Dr. Hall advised she liked the term "no exercise areas where dogs are left unattended." She explained they had play groups with 6 to 8 dogs maximum, and if they were loud, they returned to the inside. However, she was fine with whatever the Board approved. **Mr. Monk made a motion to support with an edit that it read "allows animal hospitals, veterinary clinics and pet resorts within the district by right with fully enclosed kennels, no unsupervised outside runs or exercise areas permitted with a limitation of 5 animals in the area." The motion was seconded by Mr. Larson.** For clarification, Mr. Larson stated with this change, a Conditional Use Permit would no longer be required in C-1. Ms. Deese explained this amendment was specifically for 12-2-10 Old East Hill Preservation District; C-1 still has the language which does not permit exercise areas, and you would be opening up to the entire city if you modified C-1. This is specific to Old East Hill, taking out the Conditional Use Permit requirement. **Ms. Deese clarified Dr. Hall's proposal stated "with no outside runs." Was the Board meaning "no unsupervised outside runs" and thus allow "outside runs" or add "unsupervised" to the exercise areas, and Mr. Monk verified adding "unsupervised" to the exercise areas only. The amendment was accepted by Mr. Larson.** For further clarification **Mr. Moore stated in OEHPD exercise areas would be allowed, but the language would state they would go out in groups of 5 or fewer supervised. There were no outside runs and the amendment was by right with no Conditional Use. The motion then carried 4 to 1 with Mr. Moore dissenting.** Ms. Deese reminded the audience that this amendment was a recommendation which would proceed to the City Council on May 10, 2018 at 5:30 pm.

**Open Forum** – None

**Adjournment** – With no further business, Chairman Ritz adjourned the meeting at 3:34 pm.

Respectfully Submitted,



Brandi C. Deese  
Secretary to the Board