

DRAFT
PLANNING AND ZONING BOARD
CITY OF FORT LAUDERDALE
CITY HALL COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA
WEDNESDAY, OCTOBER 17, 2012 – 6:30 P.M.

Cumulative

Board Members	Attendance	June 2012-May 2013	
		Present	Absent
Patrick McTigue, Chair	P	4	1
Leo Hansen, Vice Chair	P	4	1
Brad Cohen	P	2	0
Stephanie Desir-Jean	P	4	1
Michael Ferber	A	4	1
James McCulla	P	4	1
Michelle Tuggle	P	5	0
Tom Welch	P	4	1
Peter Witschen	P	4	1

It was noted that a quorum was present at the meeting.

Staff

Ella Parker, Acting Urban Design and Planning Manager
D'Wayne Spence, Assistant City Attorney
Anthony Fajardo, Urban Design and Development
Tom Lodge, Urban Design and Development
Yvonne Redding, Urban Design and Development
Mohammed Malik, Chief Zoning Examiner
Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

Communications to City Commission

Motion made by Mr. Witschen, seconded by Ms. Desir-Jean, to request that Staff develop a process that would not require Items such as 17R12A and 18R12A, both of which relate to sign approval, to come before the Planning and Zoning Board (and also streamline the review process for residential uses in the residential office districts, which currently require the Board's review). Staff has prepared revised code language that will streamline the review process for signage in the Regional Activity Centers and anticipates making additional code improvements in the near future to address the communication in full.

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Case Number **Applicant**

1. 17R12A** 1 E Broward Boulevard
2. 18R12A** 200 E Broward Boulevard
3. 41R11** Las Olas Property Management, LLC
4. 50R12** Certain Properties, LLC
5. 12Z12** * Key Village Charter School
6. 1P12** St. Jerome Catholic Church and School
7. 10P12** Ninth Street Property, LLC / French Village
8. 11P12** Ninth Street Property, LLC / French Village
9. 4T12* Neighborhood Compatibility
10. 5T12* Adult Gaming Centers
11. 11T12* Photovoltaic Solar Systems
12. Communication to the City Commission
13. For the Good of the City

Special Notes:

Local Planning Agency (LPA) items (*) – In these cases, the Planning and Zoning Board will act as the Local Planning Agency (LPA). Recommendation of approval will include a finding of consistency with the City's Comprehensive Plan and the criteria for rezoning (in the case of rezoning requests).

Quasi-Judicial items ()** – Board members disclose any communication or site visit they have had pursuant to Section 47-1.13 of the ULDR. All persons speaking on quasi-judicial matters will be sworn in and will be subject to cross-examination.

Chair McTigue called the meeting to order at 6:32 p.m. and all stood for the Pledge of Allegiance. The Chair introduced the Board members, and Acting Urban Design and Planning Manager Ella Parker introduced the Staff members present. Attorney Spence explained the quasi-judicial process used by the Board.

It was noted that Items 1 and 2 were inadvertently mislabeled, and were not quasi-judicial Items.

Motion made by Mr. Welch, seconded by Ms. Tuggle, to approve the minutes of the September 19, 2012 meeting. In a voice vote, the **motion** passed unanimously.

Attorney Spence noted a correction to the July 18, 2012 minutes: p.3, Item 2 should state "Ms. Parker clarified that the 40 ft. easement noted by Mr. Lochrie would actually be a 27 ft. easement." He requested that the Board move to approve this correction to the previously adopted minutes.

Motion made by Vice Chair Hansen, seconded by Mr. McCulla, to approve. In a voice vote, the **motion** passed unanimously.

5.	<u>Key Village Charter School</u>	Yvonne Redding	12Z12
	Request: ** *	Rezone from Mobile Home Park (MHP) to Community Facility – School (CF-S), pursuant to ULDR Sec. 47-24.4	
	Legal Description:	WESTWOOD HEIGHTS 6-34 B, lot 6 thru 19, 20 less east 14 & less there from ext area of - 25 rad arc lying in se corner, block 38	
	Address:	2740 SW 4 th Court	
	District:	3	

Disclosures were made, and any members of the public wishing to speak on this Item were sworn in.

Attorney Spence clarified that emails must be disclosed for quasi-judicial items, as they are considered *ex parte* communication and may be intended to provide information that could influence a member's decision. Board members are asked to ensure that Staff receives a copy of any such emails as part of the record.

Gus Carbonell, representing the Applicant, stated that the request would rezone a 2 acre property, which is presently zoned as a mobile home park. The surrounding location is zoned B-2 and includes warehouses, restaurants, schools, repair shops, and other businesses. A charter school, which will have a maximum of 600 students, is proposed for this location.

Mr. Carbonell noted that this Item was presented three times to the Melrose Manors Homeowners' Association, and was presented once to the nearby Riverland community as well. The land use is allowed, as schools are intended to be near residential neighborhoods. The school will be open, by law, to any student residing in Broward County. A traffic study was conducted for the site by both the Applicant's and the City's traffic engineers. A stacking area is designated for parents dropping off and picking up their children, and a separate bus area and bicycle parking are designated as well.

The proposed school would be a single-storey building with 29 classrooms. The closest neighbors to the site are a two-storey apartment building and a church. Mr. Carbonell showed a landscape plan, noting that over 30% of the site would be landscaped. All buffer yard requirements will be met, and drainage has been addressed to contain water on the site. He concluded that most of the vehicular traffic will enter from and exit to 27th Avenue.

Ms. Tuggle commented that she is a resident of the surrounding area, and there are two K-8 schools within walking distance of the neighborhood. She asked if the proposed school will be a Florida public charter school. Mr. Carbonell confirmed this, stating that the school will be regulated by the Broward County School Board. He characterized charter schools as offering different programs for

students and being run in a manner similar to a business, with the principal having authority to hire teachers.

He advised that there are presently three parties interested in operating the school, and asserted that the facility is not intended to be an alternative school for troubled students.

Ms. Tuggle asked how the school could expect to attract students, as the schools in the area are very close to one another. Mr. Carbonell stated that the school is intended to provide choice in education, as parents would have the option of sending their children to a public, charter, or private school within the same neighborhood.

Hernan Leonoff, also representing the Applicant, clarified that he would not be the operator of the school. The operator would be selected during a later phase of the project after site plan approval.

Ms. Tuggle asked why the Applicant would want to develop a school at this location. Mr. Leonoff stated that charter schools are "schools of choice," and only receive funds from the school board "if the kids show up." It is intended to offer an alternative to parents who find the charter school's curriculum more attractive than other schools.

Ms. Tuggle explained that she would like to know how the Applicant determined that this particular neighborhood could support another school. Mr. Leonoff said demographics are studied to help identify the right operator for each charter school, and added that all 15 charter schools developed by the Applicant are successful.

Ms. Tuggle observed that several charter schools have recently closed due to lack of attendance and/or funds. Mr. Leonoff said charter schools are presented to the school board, which grants a charter; the proposed school must then find a location. He agreed that not all operators are running their programs efficiently, which can result in schools shutting down. He asserted, however, that the Applicant deals with reputable operators who have not experienced this problem.

Ms. Tuggle asked if the proposed school presently has a charter at the location, or if the Applicant would have to apply for a charter. Mr. Leonoff replied that the Applicant's role is to find a location that will support a charter school and then engage in a lease contract with an operator. The Applicant provides the facility, but does not operate the school or determine its curriculum.

Ms. Desir-Jean requested clarification that the Applicant is simply the developer who constructs the building. Mr. Leonoff confirmed this. Ms. Desir-Jean asked how it was determined that this particular area needed a charter school. Mr.

Leonoff said the area's demographics have been reviewed to determine the number of children from the ages of five to nine. The Applicant then studies the existing facilities to decide if they are up to the standards that could be offered by a competitive facility.

Ms. Desir-Jean asked if the Applicant had become involved with the surrounding community to hear residents' input. Mr. Carbonell said he had attended three meetings of the local civic association, and kept residents informed that the Applicant was working with the City on a traffic study to ensure that all necessary criteria are met. He noted that while some residents had expressed a desire to see single-family homes constructed in the area, the location was zoned B-2 and adjacent to a single-family neighborhood.

Ms. Desir-Jean asked if there is support from the neighborhood associations. Mr. Carbonell said he had presented the proposal to roughly 15 people each time he attended a community association meeting, although he had not requested a vote. He added that he felt there may have been some misinformation about the proposal, which could have resulted in opposition to the plans.

Mr. Cohen asked if the building would remain on the site if the proposed school went out of business. Mr. Leonoff said the Applicant would try to find an alternative use for the building. He asserted that the Applicant was open to placing limitations on the site so an alternative school could not be placed at this location.

Vice Chair Hansen asked if the school would serve meals on-site in a cafeteria. Mr. Carbonell said most schools have a meal program through which meals are delivered to the site and warmed before they are served. He noted that Code does not require a loading zone for the proposed facility; however, the circular driveway that accommodates buses could also accommodate deliveries later in the day. He showed the location of this entrance and exit on the site plan. Both bus drop-offs and deliveries would take place across the street from neighborhood residences.

Vice Chair Hansen requested more information on the number of classrooms. Mr. Carbonell said of the 29 proposed classrooms, there would be four specialty classrooms for art, music, science, and other uses. He showed the location of an outdoor recreational area on the site plan, noting that this includes a half basketball court and a green area. The loop area surrounded by the circular driveway could also be chained or cordoned off later in the day for additional recreational use.

Ms. Tuggle asked if buses would enter the facility through 4th Place. Mr. Carbonell explained that buses would drop off students at a doorway on the side

of the school. He referred again to the site plan, showing the dedicated driveway for the drop-off area and the entrance area for buses.

Mr. Carbonell advised that there would be 33 parking spaces on the site, which would be five more spaces than Code requires. He added that there is a 20 ft. setback from the property line to the nearby apartment building, which may not be used for any purpose other than landscaping. There will also be a 5 ft. concrete wall separating the facility from any adjacent property.

Mr. McCulla advised that the Board members had received copies of a transmittal including 111 signatures from the neighborhood in opposition to the project. He asked that Mr. Carbonell address the specific issues to which the neighborhood residents were opposed, stating that the first issue was the possibility that the school could devalue the residents' properties. Mr. Carbonell replied that good schools typically raise property values. He stated that he did not know the grades given to the public schools in the area.

Mr. McCulla moved on to the concern regarding traffic flow in and around the neighborhood, requesting clarification that buses and/or trucks would be directed past neighborhood houses. Mr. Carbonell confirmed this, although he noted that trucks were unlikely to visit the facility on a daily basis, and buses would drop off students and then leave the site. He added that there were not likely to be more than two buses coming to the site due to the estimated size of the facility; many of the 600 students are expected to walk or bike to school from the neighborhood.

Mr. McCulla asked if Mr. Carbonell had met with the Melrose Manors Homeowners' Association. Mr. Carbonell reiterated that he had met with this group three times, recalling that there was "hardly any reaction" to the proposed school. He said he was very surprised to learn of the document and signatures in opposition to the project, and felt it was the result of a miscommunication.

Ms. Redding stated that the request is for rezoning from the current Mobile Home Park designation to Community Facility – School, which is allowed by the medium/high residential land use. The site plan is expected to come before the Board later in the year.

Ms. Desir-Jean asked if a mobile home park had been located on the site. Ms. Redding said it had, although the parcel had been vacant for many years.

There being no further questions from the Board at this time, Chair McTigue opened the public hearing.

Jerry Covington, President of the Melrose Manors Homeowners' Association, stated he was speaking against the proposed rezoning on behalf of this

organization. He pointed out that there are three elementary schools within one-half mile of the proposed charter school. The Association felt that should the property be redeveloped, it would further erode the property values within the neighborhood. Mr. Covington also expressed concern about flooding in the neighborhood, as residents are concerned that the addition of a new concrete structure would exacerbate this tendency.

He continued that the Association is also concerned for the property rights of the homeowners adjacent to the proposed school, as it did not seem that 600 students could be brought to the area while still allowing these residents convenient access to their homes. Mr. Covington concluded that most of the residents opposing the school live near the proposed school.

While Mr. Carbonell had attended meetings of the Homeowners' Association and discussed these concerns, Mr. Covington stated that they were not addressed to the members' satisfaction. They did not vote in favor of or in opposition to the school at any time. He noted that the Association serves a large community, and the vote in opposition to the rezoning was unanimous.

Mr. McCulla asked why the Association felt the school would devalue nearby homes. Mr. Covington replied that the members had asked questions regarding an alternative school, as they were aware of recent problems facing some charter schools in Broward County. Should the proposed school fail, the Applicant would have the option of renting out the property as a school which "receives students that have issues and problems." This concern had been expressed to Mr. Carbonell. Mr. Covington noted that no offer to restrict the property's use had been made at that time. Mr. McCulla observed that the Applicant had stated earlier they were willing to accept a restriction that would prohibit an alternative school.

With regard to flooding, Mr. McCulla explained that any water falling onto the property must be retained on-site according to Broward County regulations, which meant the property could not contribute to flooding within the neighborhood. He asked if addressing these issues would alleviate the Association's concerns, or if they remained opposed to the project. Mr. Covington stated that at present, the Association was still opposed.

Mr. McCulla asked if the Association might feel differently if a traffic study showed the impact of the project would be minimal. Mr. Covington pointed out that "minimal" was not defined, and pointed out that many children from outside the neighborhood might attend the school, which would have a tremendous impact on the amount of traffic coming through the neighborhood.

Mr. McCulla asked if postponing the Item in order to give the Applicant time to present the traffic study to the residents might be useful. Mr. Covington asserted

that there are real estate professionals and attorneys in the Homeowners' Association who have expressed these concerns, particularly regarding property values.

Mr. Cohen asked if the current use of Mobile Home Park would add to property values within the neighborhood. Mr. Covington advised that in recent years, a presentation was made to the Association regarding the construction of townhouses on the property. This proposal was more readily accepted than the proposed school; however, he agreed that the Association would not be in favor of continued use of the site as a mobile home park.

Mr. Cohen asked how many members of the Association had voted unanimously against the project. Mr. Covington said there were 27 members present.

Willie Dudley, longtime resident of 4th Court, stated that he is a former educator and school principal, as well as an area director supervising charter schools. He observed that the property in question is a small parcel, and stated that it would not be possible to have two buses and 600 students on the property. He added that he was concerned about the impact the proposed school would have on other nearby schools, as well as the traffic it would bring into the surrounding community, and stated that the community would prefer townhouses or single-family homes, as there was no need for another school in the area.

Mr. Cohen asked if there was anything the Applicant could do to address Mr. Dudley's concerns. Mr. Dudley stated he was staunchly against the proposed school.

Charles King, private citizen, stated that he was very much in favor of rezoning the site in order to remove the possibility of a trailer park, and pointed out that many cities no longer zone areas for trailer parks. He also felt the nearby schools would not be affected by the addition of another facility unless they were unsuccessful schools.

Ms. Tuggle commented that the schools in the surrounding area are all performing schools, some of which have national reputations. She added that she was concerned about bringing 600 students onto the small parcel, and noted that schools in Broward County are closing due to lack of attendance. Mr. King said this was because charter schools are growing and traditional schools are shrinking.

Ms. Desir-Jean asked if Mr. King was a resident of the neighborhood. Mr. King replied that he was not. Ms. Desir-Jean asked if he would send his children to the proposed charter school. Mr. King said he did not believe he would, although he would be in favor of a charter school in his own neighborhood.

Gwendolyn Dudley, private citizen, asserted that the schools in the Melrose Manors community were not failing schools, and included public, magnet, and private schools. She noted that magnet schools may also attract students from anywhere in the district, and pointed out that it is already difficult to access or exit the neighborhood due to school traffic.

Ms. Dudley stated that she did not feel the community was in need of another school. She added that the streets in the surrounding community, including 27th Avenue, would have difficulty accommodating more school traffic. She concluded that if a charter school fails, the remaining facility is often rented for office or storage space, which would not be appropriate for a residential neighborhood.

David Ayala, longtime resident of the neighborhood, stated that he works for the Broward Sheriff's Office, although he was speaking as a private citizen. He observed that the existing crime rate in the neighborhood is "not fantastic," and the addition of more people coming into the area may increase the occurrence of crime. There is also an existing speeding issue with traffic in the neighborhood. He concluded that he would not consider sending his own child to the proposed school.

As there were no other members of the public wishing to speak on this Item, Chair McTigue closed the public hearing and brought the discussion back to the Board.

Attorney Spence advised that the Board is required to determine whether or not the public testimony they have heard proves the Application meets or does not meet the criteria found in the Code. In addition to adequacy and neighborhood compatibility requirements, Section 47-24-4-B sets forth three additional requirements:

- The proposed zoning district must be consistent with the City's Comprehensive Plan;
- Substantial changes in the character of the development in or near the area under consideration must support the proposed rezoning; and
- The character of the area proposed must be suitable for the uses permitted in the proposed zoning district, and is compatible with the surrounding districts or uses.

Attorney Spence continued that if the testimony heard by the Board does not support any of these criteria, denial of the Application is required. He added that conditions or restrictions may not be placed on the use of the property during a rezoning, as this would be equivalent to amending the ULDR.

He concluded that the Board is asked to consider the impact of the proposed zoning district when these criteria are evaluated, rather than the impact of a specific project.

Ms. Desir-Jean requested clarification of whether Community Facility zoning was specific to a school. Ms. Parker explained that this category includes “school-type uses,” and advised that Staff found the Application is consistent in terms of the land use and the surrounding uses, which include B-2 and RMM-25.

Ms. Tuggle asked if the Application fell within the scope of the City’s Comprehensive Plan. Ms. Parker replied that the comprehensive plan allows medium/high residential land use, which permits community facilities.

Mr. Witschen stated that he did not agree with Staff with respect to compatibility, as most of the property abuts single-family homes. He felt the issue was also one of adding a relatively intense use onto a small parcel, and concluded that the traffic generation was also likely to create an issue.

Vice Chair Hansen observed that while the site plan appeared to be a good attempt to show how the proposed facility would work, he felt it attempted to fit too much into a small site. He concluded that the surrounding residential neighborhood is not at all supportive of the project.

Mr. McCulla remarked that he did not feel it was appropriate to base a decision on a preliminary site plan, which is not required for rezoning. While he advised that he respected the neighborhood’s opinion, he also did not believe the project could be found incompatible in a neighborhood where several schools were already located. He concluded that the other issues raised by the neighborhood were “debatable, a matter of opinion, or refutable.”

Mr. Cohen stated his primary concern regarding compatibility was related to the increase in traffic. While he believed a school would be a good use for the property, he did not feel two buses would be realistic to bring a portion of 600 students to the facility.

Motion made by Mr. Witschen, seconded by Ms. Tuggle, to deny, based on compatibility standards and tests that [Attorney Spence] set [forth]. In a roll call vote, the **motion** passed 6-2 (Mr. Cohen and Mr. McCulla dissenting).

Attorney Spence clarified that the **motion** would be understood as a recommendation that the City Commission deny the Application.