



CITY OF FORT LAUDERDALE

DRAFT
PLANNING AND ZONING BOARD
CITY OF FORT LAUDERDALE
CITY HALL – CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA
MONDAY, SEPTEMBER 17, 2018 – 6:30 P.M.

Cumulative

Board Members	Attendance	June 2018-May 2019	
		Present	Absent
Catherine Maus, Chair	P	3	1
Howard Elfman, Vice Chair	P	4	0
John Barranco	P	3	1
Brad Cohen (arr. 6:44)	P	3	1
Mary Fertig	P	3	1
Jacquelyn Scott	P	4	0
Jay Shechtman	P	4	0
Alan Tinter	A	3	1
Michael Weymouth	P	4	0

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

Staff

Ella Parker, Urban Design and Planning Manager
Shari Wallen, Assistant City Attorney
Chris Cooper, Deputy Director, Department of Sustainable Development
Jim Hetzel, Urban Design and Planning
Florentina Hutt, Urban Design and Planning
Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

I. CALL TO ORDER / PLEDGE OF ALLEGIANCE

Chair Maus called the meeting to order at 6:30 p.m. and all recited the Pledge of Allegiance. The Chair introduced the Board members present, and Urban Design and Planning Manager Ella Parker introduced the Staff members.

II. APPROVAL OF MINUTES / DETERMINATION OF QUORUM

Motion made by Ms. Scott, seconded by Vice Chair Elfman, to approve. In a voice vote, the **motion** passed unanimously.

~~Ms. Fertig pointed out that while an applicant is required to meet with nearby neighborhood associations, there is no requirement that an applicant meet directly with tenants who will be affected. She felt this meeting could alleviate many of the tenants' concerns.~~

~~Mr. Shechtman asked if it may be premature to meet with residents of the park before all necessary approvals have been granted to allow the project to advance. Assistant City Attorney Shari Wallen advised that case law states it is not necessary to wait for the results of a rezoning application in order to evict tenants.~~

~~Mr. Cohen asked if the tenants rent their units on a monthly or annual basis. Mr. Lochrie confirmed that the units are rented month-to-month. He added that the property owner does not want tenants to be frightened into relocating before it is necessary. Mr. Cohen explained that his concern was that a 30-day deferral might accomplish little.~~

~~Mr. Barranco asked if, should the **motion** currently on the table fail, the Board might make a motion to approve the rezoning, with the condition that further study and/or outreach is necessary before the Application goes before the City Commission. Attorney Wallen advised that it would be better to defer the Item pending further outreach.~~

~~Mr. Weymouth asked if it would be helpful to provide residents of the mobile home park with assurance that they would not be evicted on short notice. Attorney Wallen explained that eviction is addressed under a separate Statute. The Statute governing the current Application requires a finding of adequate housing to which tenants could relocate.~~

~~In a roll call vote, the **motion** failed 3-5 (Vice Chair Elfman, Mr. Barranco, Mr. Cohen, Mr. Shechtman, and Mr. Weymouth dissenting).~~

~~**Motion** made by Mr. Weymouth, seconded by Vice Chair Elfman, to approve [Item 3]. In a roll call vote, the **motion** passed 7-1 (Ms. Fertig dissenting).~~

~~Mr. Lochrie stated that the Applicant would reach out to the residents of the park.~~

4. CASE:

ZR17007

REQUEST: * **

Site Plan Level IV Review: Rezoning from Residential Single Family/Low Medium Density (RS-8) to Community Business (CB) with 0.25 acre of Commercial Flex Allocation / Waterway Use /Conditional Use for 34-slip Marina with 2,400 Square-Foot Storage Building and 1,553 Square-Foot Crew Club Building

APPLICANT:

Pier 17 Investments 2014, LLC

PROJECT NAME:

South Fork Marina

GENERAL LOCATION:

1500 SW 17th Street

ABBREVIATED LEGAL DESCRIPTION:	A Portion of Block "A", "Yellowstone Park Amended" According to the Plat thereof as Recorded in Plat Book 15, Page 3, of the Public Records of Broward County, Florida
ZONING DISTRICT:	Industrial (I) and Residential Single Family/LowMedium Density (RS-8)
LAND USE:	Industrial and Low-Medium Residential Density
COMMISSION DISTRICT:	4 – Ben Sorensen
CASE PLANNER:	Florentina Hutt

Disclosures were made at this time.

Stephanie Toothaker, representing the Applicant, showed multiple views of the subject property, which was previously an active marina where repairs were made. While most of the site is zoned Industrial, the request before the Board would rezone a small residential parcel to Community Business (CB).

The proposed project, previously called Pier 17, had received previous Site Plan approval. It included 22 slips, each of which was covered by a shed 65 ft. in height. The new proposal includes 34 slips with no sheds as an open mega-yacht marina. It includes 140 linear ft. of rentable floating dock space. The Applicant has assured the property's neighbors that no more than 55 boats, including tenders, will be kept on the property.

The proposed clubhouse for the project has been reduced to a single story and will be roughly 1500 sq. ft. in size. There will also be a storage building for the owners of boats. The Site Plan shows a docking schematic for the 55 boats on the property. Ingress/egress, a loading area, and a parking area were also shown on the Site Plan. The total parking provided is 47 spaces against a requirement of 33 spaces.

The marina will operate between the hours of 8 a.m. and 5 p.m. and will implement perimeter fencing, as well as lighting that is appropriate for the neighborhood. Secure dock access, security personnel, and a camera system will be included in the marina's operational plan.

Ms. Toothaker addressed community outreach for the project, stating that the Applicant has met with the appropriate neighborhood associations and invited all property owners residing along 17th Street to join these meetings. She characterized the project as a passive marina, with no heavy work performed on the boats docked there. The Applicant plans to improve SW 17th Street by widening a private road from 16 ft. to 20 ft., constructing a cul-de-sac to improve access to the residential properties, and providing utility improvements along 17th Street.

The Applicant has agreed to voluntary conditions of approval at the neighborhood's request, and is asking that Site Plan approval include all of these conditions. The Shady

Banks neighborhood has offered a letter of support that is specifically related to these voluntary conditions. The Applicant has drafted a Declaration of Restrictive Covenants and Marine Development Agreement that incorporate these conditions and will be recorded against the property. The conditions include the following:

- Dockage for in-water vessels shall not exceed 55 total boats and 34 mega-yacht slips, with required parking to accommodate demand and prevent spillover
- All boats up to a maximum of 55 ft. must be within 34 slips, providing that no individual slips shall ever have more than three boats
- The term “boats” shall include but not be limited to boats, vessels, watercraft, tenders, sailboats, and yachts
- Applicant agrees to limit the number of boats in each slip to a minimum of two per slip; one exception to this condition will be permitted for a tender that is directly related to a boat in the slip, provided the slip never exceeds three vessels
- No boat may extend beyond the slip limits as delineated in the modified submerged land lease
- Prior to final DRC approval, Applicant agrees to obtain an authorization from Broward County Environmental Protection stating that any soil or groundwater contamination on the property has been mitigated prior to land excavation, or obtain Broward County approval of a soil management plan that addresses how contamination will be handled during construction activities
- A management contract shall be required prior to a Certificate of Occupancy (CO)
- The marina operation shall be equipped with oil spill containment and fire safety attenuation equipment as required by City Code
- No outside loudspeakers or amplification systems are permitted
- No work activities shall be permitted at the marina that would violate noise or other nuisance-related Ordinances
- No rafting of boats shall be permitted in a slip along any dock or along a seawall adjacent to the property, except in an emergency
- Substantial changes to the marina’s Site Plan requiring an amendment to be reviewed by the Planning and Zoning Board shall first be reviewed by the Marine Advisory Board
- Applicant shall comply with all permits required by governmental agencies with jurisdiction over the waterways, and with all Codes and regulations affecting operation of the marina, including ULDR adequacy requirements
- Applicant shall provide marine sanitation pump-out service accommodations at each of the 34 slips, and shall comply with established requirements imposed by the City and other environmental permitting agencies
- Applicant shall furnish the Supervisor of Marine Facilities with copies of the final plans required
- The following work is prohibited at the South Fork Marina: heavy grinding, heavy sanding, extensive exterior painting, haul-out, dry dock storage, or any service or work on the upland; minor and water repairs are permitted

- Storage or disposal of any form of petroleum-based fuel is not allowed on the property unless permitted by the appropriate environmental agencies; disposal of any form of petroleum-based fuel will be handled in accordance with Code
- Signs are not permitted on dock structures or property for the purpose of selling vessels, boats, or other marine-related amenities unless approved in accordance with the City's Code of Ordinances and the ULDR in conjunction with DRC Site Plan approval
- Vessels moored on the New River adjacent to the South Fork Marina or in any slip may not extend beyond the submerged land lease
- Applicant shall take all steps necessary to modify the existing 2017 submerged land lease so it accurately reflects the construction of proposed structures in accordance with the current Site Plan
- Applicant agrees that in any subsequent extended or modified submerged land lease to the benefit of the marina, the number of slips will not change
- Special condition to establish a self-imposed restriction by the Applicant will prohibit permanent live-aboard vessels on site; necessary overnight use by owners is permitted
- Fixed fueling facilities are not permitted; fueling service provided by third-party vendors are limited to using mid-sized fuel tanker trucks or delivery via water; should more restrictive standards be imposed by County, state, or federal permitting agencies, the Applicant will abide by those standards
- Applicant has removed two residential lots from the Site Plan; however, the seawall required on those lots will be provided by the Applicant
- The Applicant has committed to addressing increased parking and traffic concerns for the neighborhood by making a financial commitment of \$50,000 to be used toward neighborhood improvements
- 18-wheel vehicles shall not be permitted to access the site once a CO is issued
- Applicant agrees to remedy any shoreline erosion to Bill Keith Preserve
- Applicant shall enter into an appropriate maintenance agreement with 17th Street property owners for its share of the upkeep of SW 17th Street
- Applicant will work with the SW 17th Street property owners to address the necessary easement and lateral design requirements for the installation of a sewer main on SW 17th Street

Ms. Toothaker reiterated that these conditions are requested as part of Site Plan approval.

Vice Chair Elfman requested additional information regarding the lighting plan for the street. Ms. Toothaker replied that the Applicant submitted a photometric plan showing there is no spillover to residential lots. Lighting is directed toward the marina and away from nearby residential lots.

Ms. Hutt of Urban Design and Planning stated that the request is for Site Plan Level IV review and rezoning from RS-8 to CB, with 0.25 acre of commercial flex allocation,

waterway use, and conditional use for a 34-slip marina. The marina will include a 2400 sq. ft. storage building and 1553 sq. ft. crew club building. The club building is an accessory use intended to be used by marina tenants.

The residential portion of the property has an underlying land use of low/medium residential density. Commercial use is permitted if the allocation of commercial flex does not exceed 5% of the total land use area within the flex zone designated for residential use. There are currently 519.6 acres available for commercial flex. If approved, 519.3 acres of commercial flex will remain available. The proposal was reviewed by the DRC and all comments were addressed.

The project is compliant with rezoning criteria, and the proposed rezoning will allow the entire site to be used as a marina. The proposed development is in character with neighboring properties to the south, which also incorporates marina and boat-related uses along the waterway.

Staff has reviewed the project for compliance with conditional use criteria, adequacy, and neighborhood compatibility. The project is found to be compliant with all these sections of Code. The project is consistent with the surrounding character of the neighborhood, and the proposed design of the marina is compatible with the residential neighborhood to the north. The development will improve a private road southwest of 17th Street, and the Applicant will construct a cul-de-sac to improve access to the residential properties to the north.

Vehicular ingress/egress is provided from SW 18th Avenue to SW 17th Street. A traffic impact statement from April 2018 was prepared by the Applicant's consultant and reviewed and approved by Staff. The Applicant held numerous meetings with the Shady Banks Neighborhood Association and River Oaks Civic Association.

Staff recommends that the Board approve the request with the following conditions:

- Prior to issuance of a final CO, the Applicant shall record an ingress/egress easement along the south side of SW 17th Street private road, varying from 8 ft. to 11 ft., and complete a 20 ft. roadway section that expands to include a proposed cul-de-sac 70 ft. in diameter, located at the east end of the private road, as approved by the City Engineer
- Prior to issuance of a final CO, the Applicant shall record a utility easement as appropriate along SW 17th Street private road for placement of proposed sewer infrastructure outside the existing right-of-way, to facilitate City maintenance and access as approved by the City Engineer

Four additional conditions resulted from meetings between the Applicant and the neighborhood association(s):

- Prior to final DRC approval, the Applicant agrees to obtain authorization from Broward County Environmental Protection which states that any soil or

groundwater contamination on the property has been mitigated before land excavation

- The marina manager shall not permit rafting of boats
- The two northeast residential parcels previously included in the DRC application have been removed from the Site Plan and will not be incorporated into the South Fork Marina project
- The Applicant shall repair the seawall around these parcels and align it with the property line no later than the completion date of the South Fork Marina
- The owner of the marina shall ensure that 18-wheel vehicles will not be permitted to access or service the South Fork Marina site once marina operations commence; during construction or any permitted site work, 18-wheel vehicles will be limited and only used to transport construction equipment or materials; no 18-wheel dump trucks will be permitted at any time

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

Barbara Haggerty, representing the Marine Advisory Committee of the Shady Banks Civic Association, addressed three areas of concern regarding the Application. In May 2018, the Association voted to support the project with the inclusion of 25 voluntary conditions; however, City Staff suggested that language requiring the City to enforce these conditions was not acceptable. There were also duplicate conditions in existing Code.

The voluntary conditions document a collaborative effort reflecting the concerns of many residents. While City Staff has suggested rewording the document, the revised conditions have not yet been signed by the developer. There is also an issue related to the absence of an easement agreement requested by 17th Street property owners in light of traffic safety concerns during and after construction. Ms. Haggerty concluded that the \$50,000 commitment states that upon receiving cost estimates from the City, the Applicant will commit to a reasonable and fair financial contribution to the City for the construction of two “three-legged” intersections.

Ms. Haggerty characterized the neighborhood as in favor of the project with exceptions. She requested that the Board either table the issue and allow additional time for execution of conditions, or allow the rewritten 25 conditions read by the Applicant’s representative to be part of the Site Plan approval.

Clayton Ratliff, private citizen, advised that he supports the development of the marina, subject to the voluntary conditions agreed upon by the Applicant and residents. He pointed out that only four of these conditions are recommended for the Board’s approval by Staff, and asked that the development be approved with all 25 conditions. The neighborhood has begun working on private restrictive covenants that would incorporate all 25 voluntary conditions. If the Board is not willing to approve these conditions, Mr. Ratliff asked that the Application be tabled at this time.

Chair Maus asked if there are any restrictions that preclude the Board from including the 25 conditions in their approval of the Application. Ms. Parker explained that some conditions are voluntary rather than Code requirements. The City does not want the obligation of enforcing voluntary conditions between private parties. The four conditions included in the Staff report are subject to Code Enforcement; for the remaining conditions, Staff recommends a private restrictive covenant coordinated through the Applicant's attorney.

Mr. Shechtman noted that the 25 conditions have been agreed upon separately from the Site Plan between the community and the developer. Mr. Ratliff stated that these conditions should be recorded as a restrictive covenant on the property in order to allow for their enforcement. Current language makes these conditions enforceable only by the Shady Banks Civic Association; however, the Association has no management aspect that could oversee enforcement.

Attorney Wallen explained that the City informed the Applicant's attorney as early as June 2018 that a restrictive covenant was recommended. She reiterated that the City is not comfortable enforcing conditions through City resources when most are not Code requirements. A restrictive covenant would allow for enforcement of the 25 conditions for the residents who have requested it. The City had been under the impression that this issue was resolved before tonight's meeting.

Mr. Shechtman asked if the Board may approve the Application with the condition that restrictive covenants be completed. Attorney Wallen recommended against this action, as Code states private covenants or deed restrictions for a subdivision that are not approved by the City do not fall within the jurisdiction of City enforcement. Because City resources are limited, they are not intended to be used to enforce private agreements.

Vice Chair Elfman requested clarification of what constitutes a private restrictive covenant. Attorney Wallen replied that this is an agreement with the requested regulations which are not Code requirements. The City does not wish to move outside the scope of governing City Code requirements.

Mr. Ratliff asserted that the Association is not happy with the revised covenants provided to them by the Applicant earlier in the day.

Mr. Shechtman asked for clarification of what has been executed thus far. Ms. Toothaker replied that the 25 conditions were drafted in a Declaration of Restrictive Covenants at Staff's suggestion. The Association returned a different draft that divided the document into two separate documents: one was the Declaration, while the other was a Marine Development Agreement. All conditions are included in the two signed documents.

Ms. Toothaker continued that the Applicant does not agree with the Association regarding what entity or persons have the right to enforce the documentation. The Applicant does not feel it is appropriate for individual homeowners throughout the neighborhood to have enforcement rights: they feel enforcement should be done either by the City, by the Association, or both. This is the only remaining issue of contention between the Applicant and the Association.

Ms. Toothaker asserted that the Applicant would still like to make the 25 voluntary restrictions as conditions of the Site Plan. Attorney Wallen advised that the conditions refer to private agreements, which the City cannot enforce.

Stephen Sperling, private citizen, stated that the voluntary conditions are intended to prevent any future owners of the marina property from taking action that would adversely affect the neighborhood. He characterized the Civic Association as a volunteer entity that cannot enforce any of the conditions. He could not support the Site Plan in the absence of the proposed conditions.

Heather Keith, private citizen, explained that she has been an advocate for the proposed project and lobbied for its approval by the Marine Advisory Board, subject to the 25 conditions. At that meeting, although Staff had recommended not including the conditions for the same reasons discussed tonight, the Marine Advisory Board recommended approval of the project including the conditions. She asked that the Planning and Zoning Board do the same. She felt further discussion of which conditions the City may enforce should be held before the City Commission.

Ms. Fertig asked if Ms. Keith wanted the project approved with the conditions. Ms. Keith confirmed this, adding that there are significant issues with the documentation provided to the neighborhood by the developer prior to today's meeting.

Barbara Schwebel, private citizen, stated that the magnitude of the project would affect the character of the neighborhood. She did not feel there is sufficient infrastructure to accommodate the project and its construction, including large trucks, increased traffic, and light and noise pollution. She concluded that she did not support the proposed rezoning.

Reiner Schwebel, private citizen, said he was not in favor of the project due to the traffic it would bring into the neighborhood, and expressed concern for property values. He submitted a letter from another resident of the neighborhood, Jeff Ore, who also disapproved of the project.

Thurman Mintz, private citizen, advised that he was supportive of the proposed project as long as the developer abides by the 25 conditions. He pointed out that work is already being performed on large boats docked at the marina.

Jennifer Jones, private citizen, expressed concern with the increased traffic the project would bring, as the neighborhood already experiences traffic issues due to speeding. She also noted that the marina's hours of operation would not apply to the captains and crew who may be staying overnight on vessels.

Colleen Colton, private citizen, noted that the condition requiring the marina to remedy shoreline erosion at the Bill Keith Preserve is not one of the four conditions recommended by Staff. She recommended that the Item be tabled for at least 30 days so further discussion could be held between residents and the Applicant.

Shelby Smith, private citizen, stated that when the property served as a working marina, it amounted to an industrial use. He suggested that the Board recommend approval of the Item with the requirement that the agreement between the Applicant and the Association be completed before final approval.

Lynn Phoenix Mark, private citizen, asked that the Board defer the Item if they could not approve the Application with the 25 conditions attached.

Peter Wan, private citizen, felt the proposed development would change the character of the Shady Banks neighborhood. He asked that the 25 conditions be included in approval of the project.

Chris Miller, private citizen, advised that he was only recently made aware of the proposed easement and maintenance agreement related to 17th Street, and would like more clarity on this issue before approval is granted.

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

Motion made by Ms. Fertig, seconded by Ms. Scott, to adopt the Site Plan with the 25 conditions and Staff conditions.

Vice Chair Elfman requested additional information on the easement. Colby Cooper, Chief Operating Officer of Hicks-Snedaker and developer of the project, explained that the easement agreement is between the City and the residents of SW 17th Street. Additional information is required before the developer may work with the City to ensure that the City may maintain the sewer once it has been installed.

Mr. Cooper continued that the only easement before the neighborhood affects residents of SW 17th Street and is between them and the City. Once the Applicant has City-approved language and forms, they will reach out to the SW 17th Street owners and address any further concerns.

Mr. Weymouth asked if the 25 conditions are intended to be enforceable by individual residents of the surrounding neighborhood. Ms. Toothaker reiterated that the Applicant

offered the 25 voluntary conditions with the intent that they would be conditions of Site Plan approval. In addition, the 25 conditions have been included in a Declaration of Restrictive Covenants or a marina developer's agreement. The only remaining issue is one of enforcement.

Ms. Toothaker continued that the 25 conditions are attached to the letter from the Shady Banks Civic Association, which specifically conditioned its members' approval upon inclusion of these conditions. Ms. Fertig **amended** her **motion** as follows: the 25 conditions as delineated in the letter from Shady Banks.

In a roll call vote, the **motion** passed 8-0.

~~V. COMMUNICATION TO THE CITY COMMISSION~~

~~None.~~

~~VI. FOR THE GOOD OF THE CITY OF FORT LAUDERDALE~~

~~Mr. Barranco observed that the discussion of Items 2 and 3 showed that the developer took all action required of them under Code; however, it did not appear that Code requirements were sufficient in this case. He felt if developers can be asked to meet with neighborhood associations, this courtesy could be extended to tenants as well, with housing options provided to these residents.~~

~~Ms. Fertig advised that Staff should look into the possibility of having an interpreter present in case one is needed in the future. She pointed out that other governmental entities make provisions for this need, and expressed concern that residents came forward with the intent of participating in the meeting but were not heard because professional interpretation was not available. Mr. Shechtman agreed, also asserting that this need should be accommodated.~~

~~Chair Maus advised that there are members of the public wishing to speak under For the Good of the City who may address projects that have previously come before the Board for approval. She pointed out that because not all parties associated with these projects are present at tonight's meeting, and Staff is not fully prepared for discussion of past cases, it may not be appropriate to discuss specific projects. She recommended that the discussion be limited to concepts rather than specifics.~~

~~Stan Eichelbaum, president of the Downtown Fort Lauderdale Civic Association, stated that the Board is not asked to make a formal recommendation at tonight's meeting. He noted that once a decision has been made, this is considered history and is subject to discussion.~~

~~Attorney Wallen explained that the issue is that there should not be re-litigation of cases that have already been decided. It is appropriate to discuss specific closed cases, but if~~