

Mr. Vonder Meulen responded that they are all studios and 1-bedrooms and that they will be rentals.

MOTION was made by Joan Kovac and seconded by Richard Klosiewicz to approve Site Plan PZ #18-12000031 per the four conditions of staff. All voted in favor of the motion.

G. OTHER BUSINESS

4. ZONING IN PROGRESS

Staff is recommending a text amendment in order to add language to the Zoning Code outlining the rules and procedures for establishing “Zoning in Progress.” When a significant change in zoning district or an amendment to the zoning code is being considered by the City, staff is proposing that no development order, site plan approval, permit, or license of any kind shall be issued, and no change of occupancy shall occur if such development order, site plan approval, permit, license, or occupancy would result in the nonconforming or unlawful use of the subject property should the proposed change be adopted. The new code would only apply, when it is declared by the Planning & Zoning Board or City Commission.

Mr. Daniel Keester-O’Mills, Principal Planner, presented himself to the Board. He provided the Board a powerpoint overview of the proposed text amendment. He explained that “Zoning in Progress” has been used a number of times for ordinances before codification and stated that this process is now proposed to itself be added into the zoning code. He explained who this would apply to, when it would apply, and how long it would last. He explained that Zoning in Progress would prohibit development orders, zoning compliance, or use permits if their issuance would result in nonconforming or unlawful development. He stated that it would be enforced by staff and that individuals could apply for a “Vested Rights Claim”. Appeals may be made to the Zoning Board of Appeals. He stated that the City Attorney’s office has reviewed the proposal and while they have some minor changes in mind, they have found the substance legally enforceable.

Dr. Mills stated that he does not understand the reason for this text amendment.

Mr. Keester-O’Mills explained that this would allow for the enforcement of certain zoning amendments that the City may wish to begin immediately. He further explained that the idea is to allow for the Board to declare certain zoning amendments Zoning in Progress as opposed to automatically treating all zoning amendments as such. This text amendment would put this language into the zoning code itself.

Mr. Stacer commented that the Board, along with the City Commission, have more authority than staff does to declare if something should be treated as Zoning in Progress.

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Dr. Mills responded that since proposed amendments go to staff before the Board, this seems like a useless text amendment.

Mr. Hill asked if this would allow for the Board to, while making a recommendation to approve of a proposed zoning amendment, to also declare Zoning in Progress.

Mr. Keester-O'Mills confirmed that this would be the case, either in the same motion or a separate motion.

Mr. Hills asked what happens today regarding this process and if it is staff that makes the determination of Zoning in Progress.

Mr. Keester-O'Mills confirmed that staff has made this determination on a number of occasions. He explained that this text amendment would codify what the process means and how it may happen.

Mr. Hill commented that he thinks the proposed appeal process isn't ideal, but that he does not have any better suggestion.

Mr. Klosiewicz asked if an application that was submitted before a proposed zoning amendment was brought to the Board could be approved.

Mr. Keester-O'Mills responded that a building permit could not be issued if it was to be in conflict with any newly adopted code. In a scenario like this, an applicant could file a Vested Rights Claim that would be reviewed by the Development Services Director.

Mr. Saunders commented that the Zoning in Progress and the Vested Rights Claim process are related by separate matters.

Ms. Eaton asked what Zoning in Progress would apply to.

Mr. Keester-O'Mills responded that it would apply to zoning code amendments and rezoning applications, but not land use applications.

Ms. Eaton asked how this is compliant with the Bert J. Harris Jr. Act. She asked how proactive the City will be in notifying the public of its intentions.

Mr. Saunders responded that he has not had the opportunity to review this proposal in light of the Bert Harris Act, so he would have to reserve judgement.

Mr. Klosiewicz asked what the legal process will be for the Vested Rights Claim.

Mr. Keester-O'Mills responded that the applicant would submit documentation showing how they have a vested right in whatever was previously allowed.

Mr. Klosiewicz asked what the application fee would cost.

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Mr. Keester-O'Mills responded that it would be \$600.

Mr. Klosiewicz commented that applicants would likely need to expend additional resources on legal counsel. He stated that he thinks the only fair way to deny an application would be only after a matter was decided by the City Commission.

Mr. Stacer commented that he thinks it would be best to have any cut-off as early as possible so as to provide as much notice as possible.

Mr. Klosiewicz expressed that he was troubled by the prospect of an application being denied even before an ordinance had been passed. He asked what the criteria would be for a successful vested rights claim.

Mr. Saunders read into the record the criteria as listed in the staff report.

Mr. Klosiewicz asked if the filing an application would not be enough.

Mr. Keester-O'Mills responded that it would not.

Mr. Stacer reiterated that he thinks the City would minimize its risk of lawsuits by giving as much notice as possible.

Dr. Mills stated again that he does not like the last sentence as listed on the meeting agenda.

Mr. Saunders responded that the Board should focus on the text amendment language itself, and not the specific language in the staff report or meeting agenda.

Ms. Kovac commented that she thinks what staff is proposing is to the advantage of applicants.

Mr. Hill agreed that he thinks this is a good idea in that individuals who may be preparing a development project would have ample notice that their use may become non-conforming. He stated again, however, that he is concerned by appeals going to the Zoning Board of Appeals since approval requires a supermajority and is very difficult to obtain. He suggested that a simple majority would be better. He also commented that property owners who may be uniquely impacted by proposed zoning changes should be noticed in advance.

Mr. Stacer asked when a rezoning would be noticed.

Mr. Keester-O'Mills responded that they would notice all property owners within a 500' radius as well as posting an ad in the newspaper. Text amendments do not get mailed notice since it is not location specific - City Commission notices these requests in the newspaper. He stated that staff can provide information to individuals in advance of any proposed changes.

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Mr. Saunders asked if the public hearing described in the staff report is noticed.

Mr. Keester-O'Mills responded that they are noticed in the first floor of City Hall as well as online.

Mr. Saunders asked if notification is different at the City Commission level.

Mr. Keester-O'Mills responded that they publish the actual ordinance title in the newspaper.

Mr. Saunders stated that the notice of the actual declaration of zoning in process that might come from the Board is very important.

Mr. Stacer stated that the Board wants to make sure that any impacted individuals are properly noticed, and not just in a way that merely satisfies legal requirements.

Ms. Eaton asked what things Zoning in Progress could impact.

Mr. Keester-O'Mills responded that it would be broad, because it could be anything within the zoning code.

Ms. Eaton emphasized that notice would need to be very robust.

Mr. Stacer stated that the Board could instruct staff as to how notice should occur.

Mr. Keester-O'Mills noted that in the example of a zoning code change to B-3, not every B-3 property is required to receive mailed notice. Rather, notice is published twice in the newspaper. He pointed out the difference between a rezoning and a zoning text amendment and the different notice requirements.

Mr. Stacer asked if the Board can direct staff to do some heightened notice.

Mr. Saunders responded that since the Board is advisory, they could direct staff to do some kind of notice that is similar to what the City Commission does. He added that his office is suggesting minor changes to the criteria for a Vested Rights claim.

Mr. David Recor, Director of Development Services, presented himself to the Board. He stated that the mere filing of an application would not be sufficient for a vested rights claim, but things like money invested or the issuance of a state permit would be factors to be considered. He stated that this is just a tool and that staff does not intend to use it for routine matters, but rather for issues where staff would expect a flurry of applications. He pointed to the example of medical marijuana dispensaries as one that might have been fitting for the Board to declare Zoning in Progress.

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Ms. Eaton pointed out the example of a sexually oriented business on Atlantic Boulevard that got an application in during a gap in regulations. She asked if there will be a definition for “Zoning in Progress”.

Mr. Recor responded that he thinks that this is a legal term for the proclamation. He also noted that regarding notice, he urged the Board to stick to the statutory requirements.

MOTION was made by Joan Kovac and seconded by Rhonda Eaton to recommend approval of the proposed Zoning in Progress text amendments, as amended by the City Attorney’s office. All those voted in favor, with the exception of Jerry Mills; therefore, the motion passed.

5. 2019 BOARD MEETING CALENDAR UPDATE

Ms. Martha Lawson stated that the November meeting has been moved to the 3rd Monday, November 18, 2019 and the December meeting also to 3rd Monday, December 16, 2019.

Mr. Stacer pointed out that the deadline dates have not been moved to correspond to the earlier meeting dates and asked if staff would be able to handle this reduction in time.

Mr. Keester-O’Mills responded that staff could move the deadline dates to correspond to the adjusted meeting dates.

MOTION was made by Richard Klosiewicz and seconded by Jerry Mills to approve the 2019 meeting schedule as proposed. All voted in favor of the motion.

The Board discussed moving the scheduled December 26, 2018 meeting to December 19, 2018.

MOTION was made by Jerry Mills and seconded by Richard Klosiewicz to move the December 26, 2018 Board meeting to December 19, 2018. All voted in favor of the motion.

H. AUDIENCE TO BE HEARD

I. BOARD MEMBERS DISCUSSION

Dr. Mills asked for the Staff Reports to be the first item listed in the backup. He noted that he will not be at the November meeting.

Ms. Kovac urged people to vote in the upcoming election.

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