CITY OF WINTER PARK
PLANNING AND ZONING COMMISSION

Staff Report
July 12, 2011

REQUEST OF BANK FIRST TO: AMEND THE COMPREHENSIVE PLAN, FUTURE LAND USE MAP SO AS CHANGE THE DESIGNATION OF OFFICE TO COMMERCIAL ON THE PROPERTIES AT 1289 AND 1301 GENE STREET.

REQUEST OF BANK FIRST TO: AMEND THE OFFICIAL ZONING MAP SO AT TO CHANGE THE DESIGNATION OF OFFICE (O-1) DISTRICT TO COMMERCIAL (C-3) DISTRICT ON TWO LOTS OF PROPERTY AT 1289 AND 1301 GENE STREET.

These requests by Bank First are to amend the Comprehensive Plan future land use map and zoning map on two lots of property at 1289 and 1301 Gene Street from Office to Commercial. These two lots, fronting on Gene Street are combined in ownership with four other lots including the adjacent lot on Gene Street and the three adjacent lots fronting on West Fairbanks Avenue that are all designated Commercial.

This same request had been advertised for the March meeting of P&Z when the CPH engineering firm had made the request on behalf of McDonald’s who was prospectively either leasing or buying this entire property to use for a new fast food restaurant. The current application only states the request is for “all uses consistent with C-3 zoning including restaurant”, however, the staff assumes it is the same end user.

Restaurants are not permitted on properties designated as “office”. They need to be designated “commercial”. So in order to build a restaurant, the applicant needs the City to change the Comprehensive Plan designation on these two lots from “office” to “commercial” and the zoning from O-1 to C-3.

The Approval Process

Should a drive-in restaurant like McDonald’s be the end user of this property then ultimately they will need three approvals from the City of Winter Park. They first need a change to the Comprehensive Plan future land use map, which is a “legislative” change. Then, if that is successful, they secondly need the companion rezoning from the existing office (O-1) zoning to commercial (C-3) zoning. The rezoning is a “quasi-judicial” decision because if the Comprehensive Plan future land use designation is changed to commercial then they are entitled to, in this case, commercial C-3 zoning.
Later on at a subsequent meeting if these approvals are granted; a drive-thru restaurant, like a McDonalds, would need a Conditional Use approval for a drive-in business. That also is a “quasi-judicial” decision.

**Legislative versus Quasi-Judicial decisions**

There are different standards for the consideration of “legislative” and “quasi-judicial” matters. Our assistant city attorney, Katie Reischmann, will be at the P&Z meeting to further explain. However, in summary, a “legislative” decision is more ‘big picture’ as in “what is in the best interests of the City”. It is also subject to the “fairly debatable” rule, if challenged in court. There can be reasons in favor of the request and reasons against the request. You don't have to have the best reasons or the most reasons. As long as the issue is “fairly debatable” then the City can decide in either way.

“Quasi-judicial” decisions however, are very fact specific. There are standards for approval of ‘quasi-judicial” matters (rezonings and conditional uses) in our Code. If the applicant demonstrates that they have satisfied those standards then the burden shifts to the City. The City must produce competent, substantial evidence as to why a project does not meet the standards for approval, in order to deny.

So it is important what the Planning Board is not doing at this point. Normally, P&Z is handling “quasi-judicial” requests and we are looking at traffic studies, storm water retention plans, landscape plans, architectural plans, sign plans, etc. Normally, P&Z is trying to figure out if a project ‘works’ on the site and how to make it a better project. The Planning Commission is not doing that now. This is primarily a legislative public hearing when you ask yourselves, “Is this the appropriate location for additional land to be designated for commercial business?” So staff is cautioning the Planning Commission not to get ‘down in the weeds’ about details of any future project but to stay focused on the ‘big picture’ as to whether this commercial intensity on these two lots is in the best interests of the City at this location, both now and in the future.

**Comprehensive Plan History**

These two lots in question have been designated as “office” in the Comprehensive Plan since the City adopted our first Comprehensive Plan in 1976. They have been zoned office at least since 1953. (That’s the earliest zoning map we have). So it seems helpful to ask the history question of why were/are these lots designated office in the first place.

When you look at the Comp. Plan future land use map, you could wonder why all the lots, at least on the north side of Gene Street, aren't designated commercial since they back up to commercial uses along Fairbanks Avenue.
The answer is likely that Gene Street, as a narrow brick street, was not and is not, built to handle the additional traffic that commercial businesses can produce versus office businesses. Also knowing that office allows residential use (most of the offices along Gene Street were residential conversions) and knowing that the Hollieanna Garden Apts. are very close by, the thinking in 1953 and in 1976 was likely that the traffic intensity and expanded night time and weekend hours of commercial businesses (most offices are 9-5) was deemed inappropriate so close to residential and on such a small brick street.

The public record reflects that the traffic study submitted for previous application that was withdrawn in March, 2011 for a fast food restaurant on this entire property indicated that due to the existing traffic congestion and access limitations on Fairbanks Avenue that 75% of the traffic for that fast food restaurant would need to use Gene Street in the rear for access into and out of the site. That would appear to be the case for a sit-down restaurant or any other commercial business.

The additional traffic generation when one changes from an office use to a commercial use can be very dramatic. The attached memo from the city’s traffic consultant shows the potential difference between two development scenarios. Under the current office designation, a two story 6,750 square foot office could be built on these two lots in question and that building would produce 74 car trips per day. Under commercial zoning, one could build a one story 4,800 square foot retail (convenience) store on this property. There is one at 2238 W. Fairbanks on the same sized parcel. That commercial use would produce 3,542 car trips per day. That is a 4,686% increase.

The question then is “If commercial land use produces more traffic than office land use and if the congestion and access onto Fairbanks Avenue will force most traffic onto Gene Street, then should the City change the land use designation to commercial thereby increasing traffic onto Gene Street ?”.

The other major difference between commercial and office land use is that it also represents an expansion of the hours of operation versus typical office businesses. So that is part of the Planning Commission’s consideration of this “legislative” question, as to whether that resultant increase in intensity (traffic & hours of operation) is in the best interests of the City at this location.

**West Fairbanks Avenue Improvement project and the Form Based Code**

The Planning Board is aware that the City is about to embark in September, 2011 on a West Fairbanks Avenue improvement project. It involves the extension of sanitary sewer throughout the corridor ($8 million). It also is a streetscape project involving the addition of new traffic signals and new street lights ($1.4 million) in order to foster redevelopment and to improve the appearance of this ‘gateway’ corridor into the City.
The Planning Board is also aware that the City Commission has hired the Placemakers consulting firm to develop a Form Based Code and Design Guidelines for redevelopment along the West Fairbanks Avenue corridor. The essential elements of the Form Based Code is to have future buildings oriented to the street; parking in the rear or on the side and screened from view to the maximum extent possible; interconnections with adjacent properties for access between sites and street front design that encourages pedestrian and bicycle access as opposed to being auto-centric.

It is very important to stress that the existing future land use designations already permit the commercial development of this entire property if the design conformed to the essential principles of the Form Based Code. Parking lots (even for commercial buildings) have been and are permitted on office designated land. So the owner can develop this entire property for a restaurant if the building and the commercial activities are located on the front portion of the property already designated commercial (which is primarily the front half). That is what the Form Based Code is intended to require. A retail store building or office building could be developed, again on the front half of the property with the parking in the rear. That is what the Form Based Code is intended to require.

The public record reflects that the site plan submitted for the previous application for this property, in March, 2011 showed a fast food restaurant on this entire property that did not adhere to the design elements that are incorporated in the Form Based Code. The staff is just pointing out that the previous site plan submitted represented the state-of-the-art 1970’s style of suburban auto-oriented land design. So the question the Planning Board is likely to hear is “If the City is not going to require development on this property to adhere to the Form based Code then why is the City going to require it for the rest of Fairbanks Avenue?”

**Code Standards of Analysis**

The City Code states that “all proposed comprehensive plan amendments shall be submitted to the planning and zoning commission for study and recommendation”. The planning and zoning commission shall study such proposals to determine:

*a. The need and justification for the change;*

The applicant indicates that they need the change to use the entire property for commercial for a restaurant and to avoid “piecemeal” development. Clearly the entire property can be redeveloped for a single user and there is nothing compelling “piecemeal development” for multiple buildings or users. The applicant cites other commercially designated property in proximity and as part of this ownership. It is unclear to staff why the change is needed since a restaurant building or other commercial/office could be placed on the front half of the property with the parking in the rear, conforming to the principles of the proposed
Form Based Code. It appears that anticipated development pattern for this property needs to have commercial building space or commercial activities on the rear half of the site.

b. When pertaining to the future land use designation of land, the effect of the change, if any, on the particular property and the surrounding properties;

A change from office to commercial land use increases the potential for significantly more traffic and more hours of operation. Both are true with a restaurant. The “local streets” of Gene Street, Shoreview and Nicolet Avenues are already overburdened as cut-thru routes from the Publix supermarket and Wells Fargo bank on US 17-92. Gene Street, as a two lane, brick surface, local street is not meant to be used as the “front door” for a restaurant handling the majority of the traffic generation and to have the “back door” (Fairbanks Avenue), a four lane arterial State highway handling the minority of the traffic generation.

c. When pertaining to the future land use designation of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested;

There is no shortage of commercial land on Fairbanks Avenue and along the US 17-92 corridor that is already designated commercial. This property is vacant now because a few months ago the existing buildings were demolished. That is the nature of development in Winter Park. Everything is redevelopment via the demolition of existing buildings.

d. The relationship of the proposed amendment to the goals, objectives and policies text of the city’s comprehensive plan, with appropriate consideration as to whether the proposed change will further, or at least not be contrary to the comprehensive plan.

The policies of the Comprehensive Plan encourage redevelopment when deemed compatible with the surrounding environment.

Summary and Recommendation

It seems to staff that if one is picking a site for a restaurant, you pick one that is zoned correctly. Second you pick a site that is not so restricted by traffic congestion and access limitations on the principal road frontage that you have put the majority of your traffic onto a two lane rear local street. Staff has demonstrated that this Comprehensive Plan change has the potential to create significant and detrimental additional traffic onto a local street and it creates additional (evening/weekend) hours of operation that are not compatible with the character of the surrounding area that includes residential properties.

STAFF RECOMMENDATION IS FOR DENIAL
MEMORANDUM

From: Mark S. Hardgrove, City Transportation Consultant
To: Jeff Briggs, Planning Director
Date: June 28, 2011
RE: Vacant Lots Located on Gene Street, Winter Park, Florida

As requested, the purpose of this memorandum is to provide a comparative analysis of potential trip generation for two currently vacant lots on Gene Street. The proposal is to convert these lots from an "office" land use to a "commercial" land use. The two lots together are 100 feet wide by 150 feet deep for 15,000 square feet in land area.

The City of Winter Park corresponding office (O-1) zoning has a maximum 45% floor area ratio (FAR). Research and discussions with City planning staff indicate that a realistic development scenario for these two lots would be a two story, 6,750 gross square foot (SF) general business office building. Based on that 45% FAR yield, the trip generation for a general office would be 74 daily trip ends, 10 A.M. peak hour trip ends and 10 P.M. peak hour trip ends.

As a comparison, the same analysis was conducted for a commercial scenario. The City of Winter Park’s corresponding commercial (C-3) zoning also has a maximum 45% floor area ratio. However, research and discussions with City planning staff indicate that that a single story retail commercial business would be more realistic, resulting in a yield of 30-35% floor area ratio. For example, the convenience store/food mart at 2238 W. Fairbanks Avenue is 4,800 gross square feet on generally the same sized parcel (12,726 square foot property) resulting in a floor area ratio of 38%. Based on a 32% floor area ratio for the 15,000 sq. ft. subject site, the trip generation for a 4,800 gross square foot retail convenience store without gasoline pumps, would be 3,542 daily trip ends, 322 A.M. peak hour trip ends and 252 P.M. peak hour trip ends.

The source for these traffic generation numbers is the 8th Edition ITE Trip Generation Report.

<table>
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<th>Land Use</th>
<th>Daily Trip Ends</th>
<th>A.M. Peak Hour Trip Ends</th>
<th>P.M. Peak Hour Trip Ends</th>
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<td>General Office – 6,750 SF</td>
<td>74</td>
<td>10</td>
<td>10</td>
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<tr>
<td>Convenience Market – 4,800 SF</td>
<td>3,542</td>
<td>322</td>
<td>252</td>
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I hope this information is useful. Please feel free to contact me should you have any questions or comments or require additional information.
ORDINANCE NO. 

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA AMENDING CHAPTER 58, "LAND DEVELOPMENT CODE", ARTICLE I "COMPREHENSIVE PLAN" FUTURE LAND USE MAP SO AS TO CHANGE THE FUTURE LAND USE DESIGNATION OF OFFICE TO COMMERCIAL ON THE PROPERTIES AT 1289 AND 1301 GENE STREET, MORE PARTICULARLY DESCRIBED HEREIN.

WHEREAS, this amendment of the Comprehensive Plan future land use designation meets the criteria established by Chapter 163, Florida Statutes and Rule 9J-5, Florida Administrative Code and pursuant to and in compliance with law, notice has been given to Orange County and to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held.

NOW THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 58 "Land Development Code", Article I, "Comprehensive Plan" future land use plan map is hereby amended so as to change the future land use map designation of office to commercial on the properties at 1289 and 1301 Gene Street, said properties being more particularly described as follows:

Lots 40 & 41, Beverly Park subdivision as recorded in Plat Book "K", Pages 45 of the Public Records of Orange County, Florida.

SECTION 2. This ordinance shall become effective 31 days after adoption on ____________, 2011. If this Ordinance is challenged pursuant to Florida Statutes Section 163.3187 within 30 days after adoption, it will not become effective until the State Land Planning Agency or the Administration Commission, respectively, issues a Final Order determining the Ordinance is in compliance with Chapter 163, Florida Statutes.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of ________________, 2011.

____________________________________
Mayor

Attest:

____________________________________
City Clerk
June 3, 2011

Mr. Jeff Briggs  
Planning & Community Development Director  
Winter Park Planning Dept.  
401 Park Avenue South  
Winter Park, FL 32789

Re: Comprehensive Plan Amendment and Rezoning

Dear Jeff,

Enclosed please find an application to amend the Comprehensive Plan Future Land Use and Rezone two lots on Gene Street ("Subject Property"), our Check No. 236811 in the amount of $1,000.00 fees as well as an Agent Authorization form. We are requesting that they be amended to Commercial/C-3.

The City Code sets forth the following criteria for consideration of Comprehensive Plan amendments:

(a) need and justification for the change;
(b) effect of the change, if any, on the particular property and the surrounding properties;
(c) the amount of undeveloped land in the general area and in the City having the same classification as requested;
(d) relationship of the proposed amendment to the goals, objectives and policies test of the City’s comprehensive plan, with appropriate consideration as to whether the proposed change will further, or at least not be contrary to the comprehensive plan.

Below please find an analysis of how each of these criteria is met:
(a) Need and Justification for the Change

The Subject Property is approximately 15,000 sq. ft. The adjacent property to the north and east are Commercial/C-3. To the south is the Hollieanna Shopping Center which is also Commercial/C-3. The Subject Property’s location as part of the 17-92 corridor (as set forth in the City’s Comprehensive Plan Planning Area J) and its proximity to the Hollieanna Shopping Center make it appropriate for commercial development. In addition, the property owner also owns the adjacent lot on Gene Street along with the adjacent three lots which face Fairbanks Avenue. These four lots are Commercial/C-3. In order to most efficiently redevelop those lots, they should be under a common development pattern instead of having piecemeal development.

(b) Effect of the Change

The change will not negatively affect the Subject Property or the surrounding properties. The Subject Property was previously developed, that development has been demolished and this property is now vacant. The Office/O-1 category allows up to .45 FAR which is the same intensity as allowed for Commercial/C-3. As to the surrounding properties, to the north, south and east they are all Commercial/C-3. The C-3 to the north is vacant; to the south is a large parking lot and the side of Tuesday Morning; and to the east is a drive-thru for a bank. To the west is a lot which is partially zoned C-3 and partially zoned O-1. The O-1 portion is a parking lot and the C-3 portion is a vacant flower shop and further west is a funeral home. The pattern of development surrounding the Subject Property is commercial and the proposed request is compatible with the surrounding properties.

(c) Amount of Undeveloped Land in the General Area

There is little, if any, undeveloped Commercial property in this area (with the exception of our adjacent lots). In addition, the City has been working to encourage redevelopment of its commercial corridors in order to enhance its commercial tax base. The change to the Subject Property’s designation will put it and four other lots back on the tax rolls as developed commercial property.

(d) Goals, Objectives and Policies

The proposed amendment is consistent with the City Goal 1-1 in particular by “allowing new growth and redevelopment which (i) enhances the City’s attractive environment; (ii) preserves the City’s economic, socio-economic and ethnic diversity; (iii) strengthens the City’s excellence, character and reputation by promoting quality in-fill development conducive to the most efficient provision of services; . . .” In addition, the Subject Property will also have to go through a Conditional Use Permit application process to ensure “good design, pedestrian connectivity, landscaping and buffering, harmonious building colors, materials and signage, outdoor photo metrics and good proportional relationships in design of building mass and scale.” (Policy 1-1.1.2)
As demonstrated above, the proposed request meets the City's criteria for a Comprehensive Plan Amendment and Rezoning. We are available to meet with staff to discuss any aspect of the application.

Very truly yours,

Mrs. Rebecca Wilson

MRW/nle
Enclosures
cc: Lynne West
    Ramon Santos
    Justin Polk
    Catherine Reischmann, Esq.
APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT AND/OR APPLICATION FOR A CHANGE IN ZONING CLASSIFICATION

General Instructions: To request a change in land use category, complete this application and submit it to the Planning Department along with the fee of $1,000 for less than one (1) acre or $6,000 for more than one (1) acre and all additional information necessary for public hearing before the Planning and Zoning and the City Commissions. All required documents must be submitted with the application.

I. APPLICANT

Name: Rebecca Wilson
Address: 215 N. Bola Drive
Orlando, FL 32801
Phone: 407-843-4600
Email Address: rebecca.wilson@lowndes-law.com

Is the property under contract for purchase or lease? ☒ Yes ☐ No

If the applicant is NOT the owner, attach a copy of the purchase or lease contract or option on the property, or a letter signed by the owner of record authorizing the applicant to act as agent for the owner. This information is requested to establish the legal status of the applicant and will be held in confidence, except as the information pertains to the zoning application.

Is the contract for purchase or lease contingent upon this approval? ☐ Yes ☒ No

II. PROPERTY

Street Address: 1301 Gene St. and 1289 Gene St.

PARCEL #12-22-29-0664-00-400 and 410 (same as tax ID number of Orange County property tax records)

Legal Description: Provide complete and accurate legal description below including Plat Book and Page Number OR attach a copy of the legal description to this application.

Lots 41 and 40 Beverly Park Subdivision, according to the Plat thereof as recorded in Plat Book K, Page 45, Public Records of Orange County, Florida.

III. ZONING MAP AMENDMENT/COMPREHENSIVE PLAN AMENDMENT

Current Future Land Use: Office

Current Zoning: 0-1

The applicant requests that the property be changed to a zoning/land use of Commercial/C-3, for the following specific use or uses:

All uses consistent with C-3 zoning including restaurant.

IV. CERTIFICATION

I certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate, and that I am:

☒ the owner of the property described herein
☐ a party to an agreement for purchase or lease of this property
☐ an agent for the owner or purchaser/lessee of this property

If applicable, it is understood and agreed that approval of this application by the Planning and Zoning Commission is contingent upon the recording of restrictive covenants designating the terms and conditions of an approval. These restrictive covenants will be executed by the owner of the property and recorded by the City of Winter Park. Said owner will be responsible for all fees associated with the recording of this document.

SIGNATURE: ___________________ DATE: 6/3/11

N:\depts\planning\FCOA\Applications\Rezoning\CP Application.doc 8/5/2010
AGENT AUTHORIZATION

I, Thomas Abelmann, as President of BankFIRST Realty, Inc., as the owner of the real property described as follows, 1301 Gene St. (#12-22-29-0664-00-400) and 1289 Gene St. (#12-22-29-0664-00-410), do hereby authorize Rebecca Wilson to act as our agent to execute any petitions or other documents necessary to affect the application approval requested and more specifically described as a comprehensive plan amendment, rezoning and to appear on my behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the application.

BANKFIRST REALTY, INC.

Thomas Abelmann, President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 1st day of June, 2011, by Thomas Abelmann, as Vice President of BankFIRST Realty, Inc., on behalf of the corporation. He ☑ is personally known to me or ☐ has produced as identification

(NOTARY SEAL) Notary Public Signature

Devon M. Artelt
(Name typed, printed or stamped)
CITY OF WINTER PARK
PLANNING AND ZONING COMMISSION

Staff Report
July 12, 2011

REQUEST OF THE CITY OF WINTER PARK TO: AMEND THE ALCOHOLIC BEVERAGE HOURS OF SALE FOR PROPERTIES IN THE HANNIBAL SQUARE NEIGHBORHOOD COMMERCIAL DISTRICT AND TO AUGMENT THE NOISE ORDINANCE FOR ADDITIONAL PROTECTIONS FOR RESIDENTIAL PROPERTIES WITHIN 300 FEET OF RESTAURANTS.

At the April 25th City Commission meeting there was considerable discussion by the public and the city commission concerning the issue of consistency of the hours for alcoholic sales and consumption. While most of the City operates with the ability for a 2:00 am closing time, the restaurants in the Hannibal Square neighborhood commercial district have an 11:00 pm closing on Sundays – Thursdays and 12:00 midnight on Friday-Saturday. The motion adopted by the city commission was to “have the planning department come back with a more consistent ordinance across the city”.

The planning staff ordinance proposal, advertised for adoption, would allow all business establishments to utilize a consistent 2:00 am closing time for the sale and consumption of alcoholic beverages. However, the planning staff ordinance proposal also calls for augmenting the city’s noise ordinance to would impose limits on musical entertainment audible 200 feet from any establishment after 11:00 pm on Sundays-Thursdays and 12:00 am midnight on Fridays –Saturdays. This is similar in concept to the noise ordinance controls that exist with musical entertainment along Park Avenue in the Central Business District that were implemented primarily due to proximity to the Park Plaza Hotel. The affected restaurants have signed a petition in favor of both of these new code changes.

This is a controversial topic and one that has come up at least three times before over the years. To the affected restaurants in the Hannibal Square neighborhood and on Fairbanks Avenue, their viewpoint is that if their business does not create any noise nuisances for neighbors then they should have the same hours of operation as everyone else. To many of the residents in the Hannibal Square neighborhood, they feel the current system is working and it is also about the ‘promise’ that the hours of operation would respect their residential neighborhood, churches, etc.

Background:

Since the late 1980’s the Planning Dept. and the Police Dept. have been working together using the zoning code and noise ordinance rules to try to provide peace and tranquility for the people who live in close proximity to restaurants which often evolve into bars and nightclubs after 9:00 pm. Depending on the location, there are differing hours of operation and the ability to have live bands.
Circa, Luma, 310 Park Avenue, Spice, Dexters, Chez Vincent/Hannibals, Shipyard Emporium, Boathouse/Drakes and Fiddlers Green are all very successful restaurants that evolve after 9:00 pm into bars or nightclubs where the predominant activity is the sale and consumption of alcoholic beverages.

On Park Avenue, which does not have many apartment/condo residents in close proximity to restaurants that can be open until 2:00 am, the complaint has been guests trying to sleep in the Park Plaza Hotel. While the noise from the sidewalk dining/drinking patrons can be disturbing, most of the complaints in the past involved live bands that would be disturbing to guests in the hotel. That problem has been solved with the Police Dept. enforcement of the noise ordinance regulations for the Central Business District. The noise ordinance for the CBD says that after 10:00 pm, if you can hear the live band music across the street, it has to stop. So the places on Park Avenue now have a folk singer or piano player after 10:00 pm but it is at a low volume.

In the Hannibal Square neighborhood it is more complicated. One reason is because a major justification for the CRA was the “blight” caused by the previous bars/nightclubs that once dominated that area. So when the City decided in 1996-1998 to allow new restaurants in Hannibal Square, the City wanted a restaurant district but not a nightclub district with live bands playing late into the night. So it was decided that earlier closing hours were advisable and the City adopted in 1997 by ordinance an 11:00 pm closing on Sundays-Thursdays and 12:00 am midnight on Friday-Saturday. This was also in recognition of the many apartments close by in the buildings on New England Avenue as were nearby homes on the adjacent streets. However, most of the noise disturbances are not from inside the restaurants. They are from the loud customers on their way to their cars or walking away. This tends to happen en mass after the band stops playing; then people pay their tabs and leave in a small period of time. By extending the hours of alcohol consumption, but not the hours of the live bands, it should spread out the activity of customers when they leave.

Chez Vincent/Hannibal’s and Dexters have expressed many times their belief it is not fair that they have to close before the Park Avenue restaurants. However, Hannibals and Dexters do not have to abide by the 10:00 pm live band cut-off, as their live band music can continue later into the evening. That is fine with Chez Vincent/Hannibals. However, Dexters has live bands playing until 11:30 pm on weekends and that is a very important part of their business model. Previously, the Planning staff, Planning and Zoning Board and CRA Advisory Board have not been able to support changing the rules that would then allow live amplified bands and loud customers out until 2:00 am in the morning so close to residential apartments and homes. This proposal adds a new proposal to effectively end the live music at 11:00 pm and 12:00 am midnight.

On other locations within 300 feet of residential, the City has established conditional use approvals with conditions regarding 12:00 am closing hours (Shipyard) or no live bands (Hot Olives/Urban Flats). PR’s closes at Midnight except for special events. Fiddlers Green and Boathouse/Drakes which pre-date the conditional use requirement have an employee in the parking lot late at night to make sure patrons leave quietly given their proximity to residential homes.
The public purpose of these city controls including limited hours of operation or limits on live entertainment has always been to protect those nearby residents so they can live and sleep in peace. One other important factor is that the City amended our Alcoholic Beverage code in 2009 so that now all establishments have to obtain an “extended hours” permit to allow the sale and consumption of alcoholic beverages after 11:00 pm. Then based upon complaints about noise, overflow parking, underage drinking, etc. the City can revoke that “extended hours” permit and restrict the hours to no later than 11:00 pm. That gives the City a real tool or threat that gets the attention of establishments if complaints arise.
HISTORY OF THE ALCOHOLIC BEVERAGE HOURS IN THE WESTSIDE – HANNIBAL SQUARE NEIGHBORHOOD

In 1996-1998, when the CRA redevelopment of the Hannibal Square neighborhood first began, the City reviewed conditional use requests to establish the Dexters restaurant, Chez Vincent restaurant and the Barbeque restaurant (former Hot Olives). At that time there was a concern about the potential impact of late night activity associated with these establishments. One major reason for the CRA in the first place and the “finding of blight” were the negative effects from the previous bars and nightclubs. Since we knew that restaurants many times can evolve into bars during the later night hours, the City was concerned primarily over the potential to regenerate late night noise and traffic activity becoming a nuisance to the nearby residential homes and apartments. In summary, the City worked to close bars and nightclubs because they were a problem and now we were being asked to open up new restaurant-bars, albeit catering to a different clientele.

As a result, the Planning and Zoning Commission and the City Commission approved these conditional uses for these three establishments with a one year trial period to insure that the character of their operation was not detrimental to the surrounding neighborhood. The other condition imposed on these restaurants was the more restrictive hours of operation. Later on these hours were put into the Zoning Code and the Alcoholic Beverage Code. This way the more restrictive hours for the sale and consumption of alcoholic beverages would apply to any and all restaurant establishments in the Hannibal Square neighborhood. This is the neighborhood area bounded by Denning Drive, Webster Avenue, New York Avenue and Comstock Avenue. While typically the hours permitted for the sale and consumption of alcoholic beverages in Winter Park are up until 2:00 am each day except midnight on Sundays, the regulations now in effect for the Hannibal Square neighborhood are up until 11:00 pm Sundays thru Thursdays and Midnight on Fridays and Saturdays.

The City has been asked formally three times to revisit these adopted hours of alcoholic beverage sales in the Hannibal Square neighborhood. After the original adoption in 1997, Dexters restaurant made a formal request to the City in July, 2000 to change the hours. That request was denied by the Planning and Zoning Commission and subsequently denied by the City Commission.

This same request came before the Planning Commission again in March 2006. The Planning Commission voted for denial by a 4-1 vote. When the matter was referred to the City Commission, they tabled the request and asked that the CRA Advisory Board to provide a recommendation as the City Commission felt the CRA Advisory Board had a better feel for the opinions of the area. That public hearing was held in August 2006 at the Community Center and drew a large turnout. The CRA Advisory Board voted 5-1 for denial of the change in hours. At that point, having received two recommendations for denial, Mr. Richardson (Dexters) withdrew his request.
In 2008 the same request was made again by Chez Vincent/Hannibals. On January 24, 2008 the CRA Advisory Board held another public hearing and voted unanimously to deny the request for extended hours. The Planning and Zoning Commission also held a public hearing on March 4, 2008 and voted unanimously to deny the request. It was scheduled for action by the City Commission on April 14, 2008 but withdrawn by the applicant given the two previous recommendations for denial.

One hears the words about a “promise” because for many people this issue is a matter of trust with the Hannibal Square neighborhood. One major reason for the creation of the CRA in 1994 was to encourage redevelopment of the Hannibal Square commercial district which was composed almost entirely of bars that were causing great distress and problems to the surrounding neighborhood. The City “promised” the residents that future restaurants would not cause the same late night noise and nuisance problems that had been experienced before. One way to help insure this, was in part, to require the hours for sale/consumption to end earlier than 2:00 am. The promise was that while the City would permit Hannibal Square to become a restaurant district, the City was not intending to allow it to become a nightclub district.
RESTAURANT/ALCOHOLIC BEVERAGE SALE AND CONSUMPTION RECAP

There are 47 restaurants serving alcoholic beverages in the City of Winter Park that generally are permitted hours of sale and consumption until 2:00 am daily and 12:00 am on Sunday. In some cases due to proximity of residential (within 300 feet) conditional use and zoning rules have established more restrictive hours in order to attempt to minimize any nuisances related to late night noise or parking/traffic concerns. Based on residential proximity the restaurants fall into the following categories:

CONDITIONAL USE (within 300 feet of residential) IN THE HANNIBAL SQUARE NEIGHBORHOOD:
(Hours limited to 11:00 pm Sundays-Thursdays & 12:00 am Fridays/Saturdays)

Dexter's of Winter Park, 588 W. New England Avenue
Chez Vincent/Hannibal’s, 533 W. New England Avenue
Former Hot Olives, 463 W. New England Avenue
Mi Tamatina,Paella Bar, 433 W. New England Ave.
Kata Thai Sushi, 610 W. Morse Boulevard
Tolla's Italian Deli Café, 240 N. Pennsylvania Avenue, Ste. 101

CONDITIONAL USE (within 300 feet of residential) ALONG THE FAIRBANKS AVENUE CORRIDOR:
(Hours generally not limited from standard 2:00 am but ** indicates prohibition on live music)

Shipyard Emporium, 200 W. Fairbanks Avenue** (10:00 pm closing)
Hot Olives, 310 W. Fairbanks Avenue**
Former Urban Flats, 320 W. Fairbanks Avenue**
PR's, 499 W. Fairbanks Avenue
Fiddler's Green, 544 W. Fairbanks Avenue
Boathouse/Drake’s, 511 W. Fairbanks Avenue
Houston's, 215 S. Orlando Avenue**
NON-CONDITIONAL USE IN THE CENTRAL BUSINESS DISTRICT: (Not within 300 feet of residential zoning and as such hours not limited from standard 2:00 am but noise ordinance controls live music after 10:00 pm)

Bosphorous, 108 S. Park Avenue

Luma on Park, 290 S. Park Avenue

Nelore of Winter Park, 111 E. Lyman Avenue

Park Plaza Garden, 319 S. Park Avenue

310 S. Park, 310 S. Park Avenue

Spice Steakhouse, 326 S. Park Avenue

Café De France, 526 S. Park Avenue

Orchid Thai, 305 N. Park Avenue

Panullo's Italian Restaurant, 216 S. Park Avenue

Paris Bistro, 216 N. Park Avenue

Trattoria Toscana, 521 S. Park Avenue

Circa, 358 N. Park Avenue

Brandywines Delicatessen, 505 N. Park Avenue

NON-CONDITIONAL USE: (Not within 300 feet of residential zoning and as such hours not limited from standard 2:00 am)

Cheesecake Factory (The), 520 N. Orlando Avenue

Fleming's Prime Steakhouse, 933 N. Orlando Avenue

Mitchell's Fish Market, 460 N. Orlando Avenue

Mt. Vernon Motor Lodge, 110 S. Orlando Avenue

Olive Garden Italian Restaurant, 665 N Orlando Avenue

Outback Steakhouse, 1927 Aloma Avenue

P.F. Changs China Bistro, 436 N. Orlando Avenue
Ravenous Pig (The), 1234 Orange Avenue
Rocco's Italian Grille, 400 S. Orlando Avenue
Ruth's Chris Steak House, 610 N. Orlando Avenue
Crisper's, 480 N. Orlando Avenue
El Bodegon Tapas & Wine, 400 S. Orlando Avenue
Jum-Bo, 1967 Aloma Avene
Odin's Den, 1335 Howell Branch Road
Saikyo Sushi Bar and Grill, 2522 Aloma Avenue
Tatame, 223 W. Fairbanks Avenue
Thai Place Restaurant, 501 N. Orlando Avenue
Tijuana Flats Burrito Co., 1955 Aloma Avenue
Winnie's Oriental Garden, Inc., 1346 Orange Avenue
Winter Park Fish Company, 761 Orange Avenue
Spatz, 1025 W. Fairbanks Avenue
# Petition to Support Alcoholic Beverage Hours

<table>
<thead>
<tr>
<th>Petition summary and background</th>
<th>Amendment to City of Winter Park Alcoholic Beverage Ordinance</th>
</tr>
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<tbody>
<tr>
<td><strong>Action petitioned for</strong></td>
<td>We, the undersigned, restaurant owners/general managers support the City ordinance changes to:</td>
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<td>1. Create uniform hours after the sale and consumption of alcoholic beverages throughout the City. (Up until 2:00 a.m.)</td>
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<td>2. Create a process in the noise ordinance to respond to complaints from live amplified musical entertainment after 11:00 p.m., Sunday thru Thursday and 12:00 midnight, Friday and Saturday.</td>
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<tr>
<th><strong>Printed Name</strong></th>
<th><strong>Signature</strong></th>
<th><strong>Business</strong></th>
<th><strong>Comment</strong></th>
<th><strong>Date</strong></th>
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</thead>
<tbody>
<tr>
<td>PERRY</td>
<td></td>
<td>PRI'S TOAST PALACE</td>
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<td>5/24/11</td>
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<td>STOKES</td>
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<td>SHIPYARD EMPORIUM</td>
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<td>5/24/11</td>
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<tr>
<td>DONAL O'BRIEN</td>
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<td>FIDDLER'S GREEN</td>
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<td>5/24/11</td>
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<td>RICHARDSON</td>
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<td>DEXTER OF PARK</td>
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<td>Adam Heath</td>
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<td>Boothouse + Drake's Bar</td>
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<td>5-24/11</td>
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<td>Vincent Gagliardo</td>
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<td>Crooked Tail</td>
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<td>5/24/11</td>
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</table>
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, REPEALING WITHIN CHAPTER 10 “ALCOHOLIC BEVERAGES” SECTION 10-33 SUBSECTIONS (g) AND (j) AND WITHIN CHAPTER 58 “LAND DEVELOPMENT CODE” ARTICLE III, “ZONING REGULATIONS” SECTION 58-84 “GENERAL PROVISIONS FOR NONRESIDENTIAL ZONING DISTRICTS”, SUBSECTION (x), SO AS TO REPEAL THE SPECIAL HOURS OF SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES FOR THE HANNIBAL SQUARE OR WESTSIDE NEIGHBORHOOD, PROVIDING FOR SEVERABILITY, CONFLICTS, PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 10 “Alcoholic Beverages”, of the Code of Ordinances is hereby amended and modified by repealing within Section 10-33 “Hours during which sales consumption and service are prohibited”, Subsections (g) and (j).

(g) Notwithstanding the restrictions on hours of sale and consumption of alcoholic beverages within the Westside neighborhood area outlined above in subsection (j), the hours shall be extended for the day starting on December 31st (New Year's Eve) until 1:00 am on the following day, January 1st.

(j) The city has established that restaurants, bars, taverns and cocktail lounges in the Westside neighborhood shall be limited in the hours of sale and consumption of alcoholic beverages due to the proximity of churches, residential homes and apartments and the related problems of nighttime activity and noise generated by these establishments. This restriction shall be in effect within the geographic area of the Westside community bounded by Denning Drive, Comstock Avenue, New York Avenue and Webster Avenue. The restriction shall limit the hours of sale and consumption of alcoholic beverages to no later than 11:00 p.m. on Sundays through Thursdays and no later than 12:00 a.m. (midnight) on Fridays and Saturdays.

Restaurant, bar, tavern, lounge; conditional uses in the Hannibal Square neighborhood. The city has established that restaurants, bars, taverns or lounges, in the Hannibal Square Neighborhood Commercial District shall be limited in the hours of sale and consumption of alcoholic beverages due to the proximity of residential homes and apartments and the related problems of nighttime activity and noise generated by these establishments and their customers outside the establishments. This restriction shall be in effect within the geographic area of the Hannibal Square neighborhood bounded by Denning Drive, Comstock Avenue, New York Avenue and Webster Avenue. The restriction shall limit the hours of sale and consumption of alcoholic beverages to no later than 11:00 p.m. on Sundays through Thursdays and no later than 12:00 a.m. (midnight) on Fridays and Saturdays, except for New Year’s Eve when the hours are extended until 1:00 am.

SECTION 2. Severability. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 3. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. Effective Date. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of ______________, 2011.

__________________________________________
Mayor

ATTEST:

__________________________________________
City Clerk
ORDINANCE NO. __________

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 62 "OFFENSES AND MISCELLANEOUS PROVISIONS" SO AS TO REVISE SECTION 62-98, REGARDING NOISE ORDINANCE VIOLATIONS WITHIN THE CENTRAL BUSINESS DISTRICT, THE HANNIBAL SQUARE NEIGHBORHOOD COMMERCIAL DISTRICT AND OTHER COMMERCIAL PROPERTIES LOCATED WITHIN 300 FEET OF RESIDENTIAL PROPERTIES, PROVIDING FOR SEVERABILITY, CONFLICTS, PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 62 "Offenses and Miscellaneous Provisions", of the Code of Ordinances is hereby amended and modified by repealing and readopting Section 62-98 "Central Business District" to read as follows:

Sec. 62-98. - Central business district, the Hannibal Square neighborhood commercial district and other commercial properties located within 300 feet of residential property.

(a) As used in this section, the central business district is defined as that part of the city bordered by Webster Avenue on the north, Interlachen Avenue on the east, Fairbanks Avenue on the south and New York Avenue, on the west, and that part of the city zoned central business (C-2) district.

(b) It shall be unlawful for any person operating or occupying a motor vehicle on a street or highway between the hours of 10:00 p.m. and 7:00 a.m. to operate or amplify the sound produced by a radio, tape player, or other mechanical sound making device or instrument from within the motor vehicle so that the sound:

(1) Is plainly audible on a public street or highway within the central business district but outside the motor vehicle in which the sound is created;

(2) Is plainly audible within a hotel or restaurant located within the central business district; or

(3) Is at a level that equals or exceeds 50 dBA measured at the property line of the recipient of such sound.

(c) It shall be unlawful for any person on a public street or highway between the hours of 10:00 p.m. and 7:00 a.m. to operate or amplify the sound produced by a radio, tape player, or other mechanical sound making device or instrument so that the sound:
(1) Is plainly audible within a hotel or restaurant located within the central business district; or

(2) Is at a level that equals or exceeds 50 dBA measured at the property line of the recipient of such sound.

(d) If a sound prohibited in subsection (b) of this section is created within a motor vehicle, the driver and each passenger shall be presumed to have individually and collectively used, operated or maintained such sound amplification device in violation of this section.

(e) It shall be unlawful for any person, business or establishment between the hours of 10:00 p.m. and 7:00 a.m. to provide musical entertainment in such manner as to create a plainly audible sound or detectable vibration that:

(1) Unreasonably disturbs the peace;

(2) Can be heard or felt at a distance of 50 feet from the building or structure in which such musical entertainment is located;

(3) Can be heard or felt inside any residential occupancy within another building or any tenant space within the same building; or

(4) Is in excess of 50 dBA as measured with a sound level meter inside any receiving property.

(f) This section shall apply to any commercial property in the City of Winter Park that is located within 300 feet of a residentially zoned property; which shall also include the Hannibal Square neighborhood commercial district as defined as any property zoned commercial within that part of the city bordered by Canton Avenue on the north, New York Avenue on the east, Fairbanks Avenue on the south and Denning Drive on the west. Within such defined area and on any commercial property located within 300 feet of a residentially zoned property, it shall be unlawful for any person, business or establishment between the hours of 11:00 p.m. and 7:00 a.m. on Sundays through Thursdays and between the hours of 12:00 a.m. (Midnight) and 7:00 a.m. on Friday and Saturday to provide musical entertainment in such manner as to create a plainly audible sound or detectable vibration that:

(1) Unreasonably disturbs the peace; or;

(2) Can be heard or felt at a distance of 200 feet from the building or structure in which such musical entertainment is located, or;

(3) Can be heard or felt inside any residential occupancy within another building or any residential occupancy within the same building.

(fg) A violation of any provision of this section shall be classified as a class II violation. Each successive repeated violation of this section shall be subject to a civil
penalty for the next higher violation classification. For example, a first violation of this section will be fined as a class II violation, a second violation will be fined as a class III violation, and so on. Nothing shall prohibit the city from enforcing this section by any other means. Further, the city commission shall have the right to revoke or suspend the permission for any musical entertainment for a period of time to be determined by the city commission in the case of repeated violations of this section.

(gh) Exempted from the prohibitions of this section is the use of sound amplification devices in connection with the use of emergency, fire, police and ambulance vehicles, railway locomotives or railway crossing warning devices, emergency warning systems, and theft alarms, as well as the use of horns or other warning devices required by F.S. § 316.271 when necessary to ensure safe operation of the motor vehicle to which the horn or device is attached. Also exempted from this section is the use of sound amplification devices in connection with an event sanctioned by prior resolution or approval of the city commission or for which a special permit has been issued by the city, and the event has been given specific authority to produce sound amplification or noise within the scope of the permit.

SECTION 2. Severability. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 3. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. Effective Date. This ordinance shall become effective immediately upon its final passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of ________________, 2011.

______________________________________________
Mayor

ATTEST:

______________________________________________
City Clerk