

**MINUTES**  
**VIEUX CARRÉ COMMISSION**  
**WEDNESDAY, February 5, 2014 - 1:30 P.M.**  
**City Council Chamber, City Hall - 1300 Perdido Street**

PRESENT: E. Ralph Lupin, M.D., Chairman  
Nick Musso, Vice-Chairman  
C.J. Blanda  
Alfred "Pio" Lyons  
Michael Skinner  
Leslie Stokes  
Daniel Taylor

ABSENT: Pat Denechaud, Secretary  
Jorge A. Henriquez

STAFF PRESENT: Lary P. Hesdorffer, Director; Gordon McLeod, & Sarah Ripple, Building Plans Examiners; Melissa Quigley, Assistant City Attorney.

STAFF ABSENT: Nicholas G. Albrecht, Building Inspector.

OTHERS PRESENT: Betty Norris, Robert Vanlangendonck, Anthony N. Johnson, Brett Oncale, Brett Davis, Margaret Handley, Hank Smith, Kirk Fabacher, Fred Herman, Brian Skinner, Jim Zhu, Yvette A. D'Aunoy, Subia Weber.

I. ROLL CALL

Vice-Chairman Musso called the meeting to order at approximately 1:30 PM and, after noting there would be no Chairman's or Director's Reports, requested the roll call. Mr. Hesdorffer called the roll, noting the presence of a quorum with seven members in attendance, which also requires five (5) favorable votes to pass any action.

II. OLD BUSINESS

400 Conti /336-40 Decatur/ 341 N. Peters Street: Joseph Paciera, owner; Kirk Fabacher, architect/applicant. Reconsideration of proposal to **demolish** existing structure and billboard; and construct new 2-story commercial structure with roof terrace, in conjunction with future **change of use** from *vacant/parking* to *restaurant* per application & drawings received 02/04/13 & 10/09/13, respectively, and based upon the tenant/developer's proposed Use Restrictions to allow for only limited tenant types as outlined in draft documents received 01/17/14.

Mr. McLeod made the staff presentation with Messrs. Fabacher and Herman (attorney for the property developer, Mike Motwani) present on behalf of the application. In the report, Mr. McLeod outlined the limited proposed uses noted in the applicant's Use Restrictions document, intending to create a limited framework for potential tenants to occupy the proposed structure, as well as the inherent limitations in the existing VCE-1 zoning. Mr. Musso stated that he had reservations about approving the proposal due to variability related to use and density (ie. use type, intensity and occupancy loads.). Dr. Lupin expressed his further concern with granting approval for a new building without a specific proposed use, stating that he would ultimately like to see building constructed but with assurance of the use to which it would be put.

Mr. Fabacher, noting the square footage limitations, stated that he saw no problem in adding a clause to the Use Restrictions limiting the tenancy to one tenant, both floors. (Such a restriction would effectively prohibit a retail use due to floor area restrictions contained in the CZO.) Mr. Musso added that the document should also contain language further restricting any tenant's ability to sublet or subdivide the leasable area. Mr. Herman stated that the developer's intent is to obtain feedback from the Commission based on the draft Use Restriction document, and that he did not think his client would object to restricting the use of the building to a single tenant, nor would there be any objection to eliminating the possibility of two or more subtenants. Mr. Herman further said that the developer intends to construct a restaurant venue, but that there has been considerable difficulty in obtaining a tenant without the building first being constructed, and that the developer's objective in the Use Restriction document is to obtain approval to erect the proposed building in order to create a viable commercial use for the property and to be able to locate a third party tenant.

Mr. Musso stated that he did not object to a single or double use for the building. Mr. Hesdorffer stated that the staff's report aimed to focus on the suitability of the building's design for potential uses, and that the character of the preliminary design that gained conceptual approval had been based on a specific use. He elaborated that the proposed use of the building was paramount in that the design of the building was a glazed box whereby the use of the interior would be

translated to the exterior. Mr. Hesdorffer further noted that any new or alternative uses may lead to design revisions. Dr. Lupin stated the Commission's duty was to protect and preserve the French Quarter and that whatever is allowed or denied will be based on that primary role of protecting the Vieux Carre.

Mr. Vanlangendonck asked if the rooftop of the structure would be developed. Mr. Musso stated that use of the rooftop had been part of the earlier conceptual proposal but that it had been for that particular tenant. At this time, a commitment for rooftop use would be premature. Ms. Lousteau stated that she was concerned with the building's transparency and that some of the conditional uses permitted in VCE-1 zoning, especially *supper-clubs*, had a propensity to morph into *nightclubs*. Ms. Lousteau also requested clarification on the applicant's use restriction, stating that she understood that the City cannot enter into or require covenants. Ms. Quigley stated that the City was not requiring that the applicant enter into a covenant with the City, but rather the applicant was voluntarily self-restricting the project, and that any approval could be contingent on the covenant being legally recorded in both the mortgage and conveyance records. Ms. Lousteau inquired whether the City could enforce such a covenant. Ms. Quigley affirmed that the City can enforce such a covenant, and has done so in the past.

Mr. Taylor stated that the previous conceptual approval had been tied to a particular use, and that he remains uncomfortable moving forward to approve the new structure as proposed but without a declared use. Mrs. Stokes moved, Dr. Lupin seconded, to **defer** the application for further development of the plans and discussion to take place. Mr. Herman stated that the developer would prefer an up or down vote to a deferral. The motion carried unanimously. Mr. Hesdorffer noted that further revisions and consideration may be given to the proposed Use Restriction document and design revisions may also be pursued with the Architectural Committee while tenants are still being sought. Mr. Herman stated that the developer may not wish to proceed without an approval given the difficulty in securing a tenant for a building that was yet to be built or even permitted.

724 Barracks: Ronald Pincus, owner; Harry Baker Smith, Jr., architect/applicant. Proposal to demolish existing accessory structure and construct new structure along rear property line, per application & materials received 11/18/13 & 01/14/14. [**NOTE: this meeting marks the beginning of the 30-day layover period**]

Ms. Ripple presented the staff report with Mr. Smith representing the application. Mr. Smith recognized the on-going conversation regarding the exterior light fixtures for the new construction and requested clarification on the meaning and/or intention of the 30-day layover period for demolition, which Messrs. Musso and Hesdorffer both elucidated. Mr. Taylor moved, and Mr. Blanda seconded, for **approval** of the demolition and construction proposal based on the revised drawings and waived the 30-day demolition layover period, with the exterior light fixtures to be subject to final review and approval by the VCC staff. The motion carried unanimously.

### III. CHANGE OF USE HEARINGS

609 Decatur: 609 DECATUR LLC, owner; Jim Zhu, applicant. Proposal to install signage in conjunction with a **change of use** from *retail* (clothing) to *personal services*, per application & materials received 12/17/13.

Mr. McLeod gave the staff report with Mr. Zhu and Ms. D'Aunoy in attendance representing the application. Ms. D'Aunoy stated that the proposed *personal services* use was not to be a day spa with predominantly reflexology or foot massage, and that the applicant was aware of all laws and regulations pertaining to signage and solicitation. With no additional discussion, Mr. Taylor moved, Dr. Lupin seconded, to **approve** the **change of use** from *retail* (clothing) to *personal service* as outlined in the report. The motion carried unanimously.

### IV. VIOLATIONS & APPEALS

1224 Decatur: James F. Fontenelle, owner; Rodney Ratliff, architect/applicant. Proposal to make miscellaneous repairs and correct outstanding violations, including the demolition of courtyard infill and the construction of new balconies on the existing rear service-ell, all in conjunction with a **change of use** from *vacant* to *commercial* (1<sup>st</sup>) & *residential* (2<sup>nd</sup> & 3<sup>rd</sup>), per application & rehabilitation plans/materials received 10/08/13 & 01/21/14, respectively. [**Notice of Violation sent 07/31/13; Administrative Adjudication Hearing held 08/16/13**] [**NOTE: this meeting marks beginning of 30-day layover period**]

Mr. McLeod made the staff presentation. Mr. Ratliff and Ms. Weber were in attendance to represent the application. Mr. Ratliff stated that the application had been submitted to the Board of Zoning Adjustments for the requisite density variance and that he was preparing construction documents to the staff for review by the Architecture Committee. Mr. Taylor inquired about the

HVAC revisions. Mr. Ratliff confirmed that the size of the proposed units had been reduced and the proposed platform had been modified to be less visible.

Mr. Taylor moved, Dr. Lupin seconded, to **approve** the demolition of the brown-rated courtyard infill and to **waive** the required **30-day layover period** given the deteriorated state of the infill construction, and to **approve** the **change of use** from *vacant* to *commercial* (1<sup>st</sup>) & *residential* (2<sup>nd</sup> & 3<sup>rd</sup>) and to **support** the application to the BZA for a density variance to allow for a second residential unit, with the applicant to develop construction documents and return to the Architecture Committee for review and final approval.

934-40 Bourbon/736-40 St. Philip: Bourbon Saint Philip Inc., owner; Michael J. Palazzo, Jr., applicant. Proposal to install copper gutters and downspouts and to retain roofing installed without benefit of permit, per application received 11/21/13. [**STOP WORK ORDER** posted **07/21/11**; **Notices of Violation** sent **03/04/08, 10/01/12 & 10/03/13**]

Mr. McLeod noted that the applicant was not in attendance, but that the Commission may elect to review the application despite his absence considering the long-standing violations on the property. Ms. Quigley confirmed that the applicant's presence is not required in order for the Commission to consider the application. Mr. McLeod gave the staff report on the property. Following the staff presentation, Mr. Taylor moved, Mrs. Stokes seconded, to **deny** the application and to immediately direct the case to **Administrative Adjudication**. The motion carried unanimously.

919-21 Dauphine: Ed & Margaret Handley, owners; Brett Oncale, applicant. Proposal to complete swimming pool construction begun without benefit of a permit, as well as review of work performed without benefit of a permit and proposed revisions/corrections, per application & materials received 12/26/13 & 01/23/14, respectively. [**STOP WORK ORDER** issued **12/20/13**]

Ms. Ripple gave the staff report with Messrs. Oncale and Davis and Mrs. Handley representing the application. Following the presentation, Mr. Musso reiterated the staff recommendation for approval of the proposed resolution of violations, which includes six caveats, of which all must be completed. Dr. Lupin reproached staff for hastiness and poor judgment in the handling of this application, expressed his disapproval of the staff's review and recommendations, and demanded that staff revisit the violations. Dr. Lupin further demanded that the owner be required to deconstruct all the work performed without benefit of a permit and moved to **deny** the application. The motion died for lack of a second.

Mr. Skinner questioned whether the Commission could permit the construction of the swimming pool and courtyard separately from the doors, shutters, and sidewalk paving, and further stated his unease about lifting the STOP WORK ORDER (SWO). Mr. Hesdorffer clarified that the SWO would officially remain in place until a permit was issued with all caveats addressed. Mr. Musso stated that he would like to see the entirety of the proposed scope of work addressed in a set of drawings, noting all six caveats, as is typical with most submissions.

Mr. Taylor commented that items 1-3 and 6, as listed in the staff report, are all corrective actions upon which the Commission could make a decision; whereas items 4 and 5 are the issues causing particular displeasure. He added that issues 1-3 and 6 could be readdressed by the Architectural Committee, at which time the Committee would review new drawings. He explained that the installation of contemporary French doors on the rear of the main residence, as well as the installation of batten shutters on the accessory structure, are nonconforming elements, the retention of which staff is recommending approval. Mr. Taylor requested that further discussion is needed on items 4 and 5.

Dr. Lupin reiterated his concern about allowing the owner to continue any work on the property, based on the owner's blatant violation of the Commission's rules and regulations. Mr. Musso then clarified that when completed, some of the items, including the proposed swimming pool, with corrected size as well as revised details, would comply with VCC guidelines. He added that he thought Mr. Taylor's suggestion had been to send the proposal for the swimming pool and courtyard paving back to the Architectural Committee just so that all those design details would be reviewed for acceptability and approval.

Mr. Hesdorffer then reminded the Commission that the responsibility of the VCC as a regulatory agency is to review proposals and to guide applicants to a point of acceptability for approvable work that is satisfactory or acceptable and in line with the preservation of the historic French Quarter. He added that the VCC is not constituted to act as a court of law and that if the Commission would like to exercise punitive action for work done in violation, the correct process would be to cite the property for violations and to send those violations to Administrative Adjudication. He added that the staff analysis and recommendations for this project have been moving toward the correction of violations in ways acceptable, following the Commission's guidelines.

Mr. Taylor moved, Mr. Blanda seconded, for **approval** of all proposed resolutions, based on the staff's analysis and recommendations, provided that the applicant returns to the Architectural Committee for review and approval of drawings that detail each of the design changes prior to issuance of any permits. The motion carried with six votes in favor. Dr. Lupin cast the one vote in opposition.

Mrs. Handley requested to speak for the record, claiming that she had applied for all the necessary permits. She expressed her personal offense at the allegation that she flippantly disregarded the rules of the Commission.

V. RATIFICATION of Architectural Committee and Staff actions since the January 10, 2014 meeting of the Vieux Carré Commission.

Mr. Taylor moved, and Mr. Blanda seconded, to **ratify** the actions of the Architecture Committee and Staff actions since the January 10, 2014 meeting of the Vieux Carré Commission. The motion carried unanimously.

VI. REVIEW OF MINUTES from meetings of December 4, 2013 & January 10, 2014

Noting that the Review of Minutes had been skipped over at the beginning of the meeting, the Director explained that the minutes from January 10, 2014 were only in draft form, but that the minutes from the December 4, 2013 meeting were complete and ready for approval. Mr. Taylor moved, Mr. Blanda seconded, to approve the minutes from the VCC meeting of December 4, 2013. The motion passed unanimously.

Mr. Taylor moved, Mrs. Stokes seconded, to adjourn the meeting. The motion carried unanimously.

There being no further business, the meeting was adjourned at approximately 2:30 P.M.

APPROVED: \_\_\_\_\_  
Pat Denechaud, Secretary

NOTE: These minutes are a summary of actions taken and are not a verbatim transcription of the meeting.