

PLANNING COMMISSION

Anna Butler
Beau Livingston
Robert J. Matkowski
Elaine McGruder
S. Michelle Nooney
David Roberts
Marie Rodriguez



ACTING CITY MANAGER

Michelle Owens

COMMUNITY DEVELOPMENT DIRECTOR

George Shaw

CITY ATTORNEY

Edward M. Hughes
Tracy O'Connell

**Planning Commission Meeting
MINUTES
April 15, 2024**

Vice Chair Michelle Nooney called the April 15, 2024, Tybee Island Planning Commission meeting to order. Commissioners present were **Anna Butler, Marie Rodriguez, Beau Livingston, David Roberts, Robert Matkowski** and **Michelle Nooney**. **Elaine McGruder** was absent.

Consideration of Minutes:

Vice Chair Michelle Nooney asked for consideration of the March 18, 2024, meeting minutes. **Marie Rodriguez** made a motion to approve. **Robert Matkowski** seconded. The vote to approve was unanimous.

Disclosures/Recusals:

Vice Chair Michelle Nooney asked if there were any Disclosures or Recusals. There were none.

Old Business:

Vice Chair Michelle Nooney asked if there was any old business. There was one.

New Business:

Site Plan: requesting to add roof to existing deck – 33 Meddin Dr. – 4001 13008 -Zone R-1/NEC – North Beach Bar & Grill/George Spriggs.

Walter Hattrich stated that the applicant would like to build a roof over the existing deck on the south side of the building. He stated it is a pole barn type construction which is consistent with the roof on the east side of the building that was previously constructed. It is in character with the remainder of the building. Staff recommends approval. **Robert Matkowski** stated it talked about the status of the project designer addressing the continued high moisture content beneath the area in depth. **Walter Hattrich** stated that he did speak to the drainage engineer that supplied the drainage letter and he stated the drainage run off for that side of the building currently goes on the existing wood deck, and that would be captured by a gutter system and down pipe that will then go into a planter. The water will be going to the same place it was previously. **David Roberts** stated he does not see any setbacks on this survey, and it looks like we would be enlarging the encroachment by allowing this roof. **Walter Hattrich** stated the City owns all of this property where you see the blue lines in the photo and there are no setbacks near this property's lines. **George Spriggs**, the applicant, approached the Planning Commission and stated that this proposal will be the same type of roof, work, and contractor as the roof that was added to the east side in 2019. **Anna Butler** asked if a structural engineer has reviewed these plans to make sure they conform to the codes for our high velocity winds area here? **Walter Hattrich** stated that all the plans do indicate they were reviewed by a professional engineer. **Anna Butler** stated yes, but there is no stamp from him on them. **David Roberts** stated following up on that I would add if there's a caveat and a request to come back that it would come back

with an accurate site plan showing where the roof is going relative to the site. Also, I realize this is a plat map but it's not even for this project necessarily, and I agree there are other things besides which neighbor is impacted by a setback. It could be a wooden structure next to another building that you would have to have a certain amount of horizontal distance from the international building code requirements. **Beau Livingston** stated that I just want to clarify something. If you could go back to the overhead view of the property. The blue lines around the property represent the property lines, correct? **Walter Hattrich** stated yes that is correct. **Beau Livingston** stated so the setbacks would be off of those blue lines and this project would not be anywhere close to those lot lines, correct? He stated this roof would not impede any sidewalks, roadways or the showers and restrooms. **Walter Hattrich** stated that is my understanding, yes.

Beau Livingston made a motion to approve. **Marie Rodriguez** seconded. **Anna Butler, Marie Rodriguez, Beau Livingston,** and **Robert Matkowski** voted for the approval. **David Roberts** voted against the approval. The vote was 4 to 1. The motion was approved.

Text amendment: STR Proposed Ordinance – City of Tybee.

Acting City Manager Michelle Owens stated this is a proposed text amendment to the land development code and essentially this is going to be chapter 4 – sec. 4-050-1 the proposed text amendment states in residential districts this ordinance will prohibit the transfer of short-term rental permits upon a sale. And lays out the process by which that particular instance of property transfers for permits will be audited for compliance and determine the status of that permit. There will also be a hearing process by which property owners can appeal a decision of termination. City council has sent this to planning commission for a recommendation. Marie Rodriguez asked if this was only for R-1, R-1-B and R-2 only. **Acting City Manager Michelle Owens** stated yes that is correct. **Vice Chair Michelle Nooney** asked if other methods to reduce STRs in the residential zones, such as enforcing the existing ordinances and revoking permits for those in violation have been considered. She also asked has anyone looked at how the 748 commercial and R-T STR's support the number of tourists that visit Tybee. **Acting City Manager Michelle Owens** stated that has not been looked at. **David Roberts** asked when the renewals took place this year did staff review the history to make sure they have satisfied the ongoing and existing requirement that was placed in October of 2022. **Acting City Manager Michelle Owens** stated the STR coordinator did do some level of reviews, and some went through the normal audit process. *(This question was corrected after the meeting. The correct answer is no).*

Keith Gay, who lives at 117 Catalina Dr. Stated he wanted to clarification to the question about the audit and the applications. The applications had been put on hold until the first of this month. So many of us are just now getting our applications in. so there will be no practical way to do any kind of audit on the registrations. **Dale Williams** spoke for the ordinance. **Roger Huff** spoke against the ordinance, **Dee Matkowski** spoke for the ordinance. **Keith Gay** spoke against the ordinance. **Dawn Shay** spoke for the ordinance. **Carol Nathan** spoke for the ordinance. **Ron Rimawi** spoke against the ordinance. **Todd Norman** spoke against the ordinance. **Shirley Wright** spoke for the ordinance. **Jenny Rutherford** spoke against the ordinance. **Tommy Thompson** spoke against the ordinance. **Beau Livingston** stated he would like to see a clause that would keep people from losing their property that have been in the family for generations. **David Roberts** stated he wants to make it clear on the amount of thought and sincerity people have put on both side of this issue. He quoted this attachment.

“April 15, 2024

Before the Planning Commission, City of Tybee Island

In the matter of Planning Commission review of the proposed ordinance (2024) that would terminate short-term rental ("STR") permits upon the sale or other specific disposition of properties in residential zoning districts R-1, R-1-B, and R-2-and that would preclude further or future assignment, transfer, or renewal of STR permits for those locations.

City Council has already enacted ordinances (Ord. 2022-04 and 2023-11 § 1) recognizing that STR's in residential zoning districts are, in fact, nonconforming uses. Therefore, Planning Commission's consideration of the proposed ordinance must be guided by these ten principles:

1. No quiet, peaceful, and entirely residential neighborhood will ever be a detriment to Tybee Island;
2. The proposed ordinance must not be judged based on conjecture. Although some voices have warned of the near-collapse of Tybee's economy if Council passes the proposed ordinance, not one person (of whom I am aware) has offered a single, specific example of a coastal island that has been abandoned or financially ruined by its elimination of STR's in favor of long-term rentals and/ or legitimate hotels;
3. There is simply no Constitutional right to conduct commerce within residential zoning districts in Georgia -a fact established by both the Georgia and U.S. Supreme Courts nearly 100 years ago;!
4. If additional STR's outside of commercial zoning districts are deemed desirable by the City, the City should create more conscientiously and purposefully designed zoning districts and district boundaries to allow them-rather than merely contorting the definitions of "use" of properties within existing residentially zoned districts;
5. It is legally incoherent to argue that the City must permit nonconforming STR commerce to be conducted in residential zoning districts because STR's are a source of tax revenues for the City-while simultaneously contending that the same city is somehow forbidden by law or policy from registering or listing the structures in which those nonconforming tax-revenue-generating commercial activities occur;
6. It is inconsistent to argue that the City must permit nonconforming SIR commerce to be conducted in residential zoning districts because SIR's are a source of tax revenues for the City-when City Administration is admittedly incapable of determining the exact sources and amounts of those alleged revenues -and is seemingly uninterested in ascertaining them;
7. The unlawful perpetuation of the inequities suffered by owners of conforming properties in residential zoning districts due to the City's failme to provide equal protection of the laws (guaranteed under the 14th Amendment of U.S. Constitution and Art. I, § 1, i II of the 1983 Georgia Constitution) can only be corrected if the City brings to an end over time all nonconforming commercial rental activities in those residentially zoned districts;
8. It is unjust for future purchasers of presently nonconforming STR properties in residential districts to possess STR rights superior to those that are entirely prohibited to current and future owners of conforming properties in those same districts;

See Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, (U.S. Supreme Court, 1926); and Howden v. Mayor and Aldermen of Savannah, 172 Ga. 833 (Supreme Court of Ga. 1931).

9. Although the City is entitled by law to correct the current unequal application and protection of the laws by abruptly terminating nonconforming STR use in residential zoning districts,£ City Council has, instead, proposed an ordinance that gradually (i.e., over decades of transition) brings all residential properties into parity and conformance - allowing those who presently operate STR' sunder lawfully issued STR permits³ to continue to operate them as long as they continue to: (a) own the subject properties; and (b) adhere to Tybee's ordinances governing their operation as STR's; and
10. Among the strongest factors favoring passage of the proposed ordinance is that it begins, albeit incrementally, to counter the effect of the disregard shown to-date by the City's administration toward: (a) ordinances already passed by City Council; and (b) the rights of owners of conforming residential properties, who suffer from the City's:

- a. *Refusal to insist (before issuing or renewing STR permits) that STR owners meet their initial burden under law of showing that their STR's are valid in the first place;*
- b. *Refusal to enforce capacity limits set out in the LDC for structures in one and two-family residential zoning districts;*
- c. *Refusal to apply enforcement remedies set out in the LDC against those who advertise for more STR guests than their property's STR permit allows (LDC§ 4-051.9(b));*
- d. *Refusal to enforce Tybee's island-wide parking regulations when it comes to right-of-way parking for STR properties west of Butler; and*
- e. *Willingness to impose on neighbors of offending STR's the burden of calling police to control violations of noise and STR-related ordinances-rather than the City's more-appropriate scheduling of patrols by Code Enforcement officers to control those violations (particularly violations that occur in hours in which noise is most jarring).*

Of course, all of these problems, when combined, unfairly diminish the quality of life for law-abiding citizens who happen to own conforming residential properties adjacent to or near nonconforming (often noisy and over-packed) STR properties-particularly those properties that are not entitled to STR permits in the first place.

Consequently, because the proposed ordinance prevents no person who presently and lawfully operates an STR in a residential zoning district from continuing otherwise-valid and ongoing STR rentals - and because the proposed ordinance is narrowly crafted to avoid continuing the City's unlawful, unequal enforcement and protection of our laws as presently applied-I support its passage.

Therefore, it is my opinion that, pursuant to its authority under LDC§ 11-110-and if the typo in§ 2 of the proposed ordinance is corrected from "40501.11" to read" 4-051.11" -the Planning Commission should favorably commend the proposed ordinance to City Council for passage.

*David A. Roberts, Member
Tybee Island Planning Commission*

See BBC Land & Development, Inc. v. Butts County, 281 Ga. 472,473 (2007) ("a governing authority can require a nonconforming use to be terminated in a reasonable time.").

See BBC Land, 281 Ga. at 473 ("a use which is merely contemplated for the future but is unrealized as of the effective date of the regulation [in this case October 13, 2022] does not constitute a nonconforming use."). Those properties should be forced to cease STR activities immediately."

David Roberts made a motion to approve with the correction of the typo. **Robert Matkowski** seconded. **Marie Rodriguez** abstained from voting, which counts as an affirmative vote. **Anna Butler, David Roberts,** and **Robert Matkowski** voted for the approval. **Beau Livingston** voted against the approval. The vote was 4 to 1. The motion was approved.

Vice Chair Michelle Nooney stated that the Planning Commission needs to consider time limits for public speaking and publishing those limits. She would like this on the next agenda to discuss.

Adjournment: 8:30pm
Lisa L. Schaaf