

DRAFT



CITY OF FORT PIERCE
**HISTORIC PRESERVATION
BOARD**

Minutes

OF THE REGULAR MEETING OF THE FORT PIERCE HISTORIC PRESERVATION BOARD HELD ON MONDAY, MARCH 25, 2024, IN FORT PIERCE CITY HALL, COMMISSION CHAMBERS, 100 NORTH US HIGHWAY 1, FORT PIERCE, FLORIDA.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Present: Minnie Spivey; Andrea Anicito; Anthony Westbury; KeAndrea Davis, Vice-Chair; Betty Jo Starke; Patrece Frisbee; Charlie Hayek, Chairman

Staff Present: Sara Hedges, City Attorney
Kev Freeman, Planning Director
Andrea Duenas, Assistant City Attorney
Maria Lewicka, Historic Preservation Planner
Alicia Rosenthal, Executive Assistant

4. APPROVAL OF MINUTES

- a. Minutes from the February 26, 2024, Historic Preservation Board meeting

Motion was made by Andrea Anicito, and seconded by Betty Jo Starke to approve the minutes from the February 26, 2024, meeting.

AYE: Andrea Anicito, Anthony Westbury, Vice-Chair KeAndrea Davis, Betty Jo Starke, Patrece Frisbee, Minnie Spivey, Chairman Charlie Hayek

Passed

5. PUBLIC HEARINGS

b. CONTINUED HEARING - Conditional Use Application - Expansion of the Existing Outdoor Entertainment Area - 411 N. 2nd Street

Chairman Hayek recused himself.

The City Attorney explained the Quasi-Judicial Hearing procedures.

When acting as a quasi-judicial body, the Board is held to certain procedural requirements.

Quasi-judicial proceedings are less formal than proceedings before a circuit court, but are more formal than the other aspects of today's meeting. Quasi-judicial proceedings must follow basic standards of notice and due process, and decisions must be made based on competent substantial evidence. Therefore, board members have a duty to conduct quasi-judicial proceedings more like judges than legislators. This afternoon, the Board will follow the same uniform procedure in all quasi-judicial hearings.

The clerk introduced the Conditional Use Application for expansion of the existing outdoor entertainment area located at 411 N. 2nd Street, Pierced Ciderworks.

Vice-Chair Davis called the proceeding to order.

The clerk confirmed the City complied with the advertisement requirements.

Vice-Chair Davis inquired with the Board regarding ex-parte communications and asked the Clerk to call the roll:

Mr. Westbury - no

Ms. Starke - no

Dr. Frisbee - yes

Ms. Spivey - no

Ms. Anicito - yes

Vice-Chair Davis - no

Vice-Chair Davis opened the public hearing.

The clerk was asked to swear in those wanting to speak during this Quasi-Judicial hearing. Individuals in the audience intending to speak on the item were asked to stand, raise their right hand, and administered an oath to tell the truth, the whole truth, and nothing but the truth.

Staff Presentation:

Maria Lewicka, Historic Preservation Planner, gave a brief presentation on the Conditional Use application being continued from the February 26, 2024, meeting. Ms. Lewicka stated the applicant is requesting approval to expand the existing outdoor entertainment area on a designated historic site within the Edgartown Settlement Zoning District. The proposed expansion deviates from City Code Section 125-197(j), which allows for a maximum of 800 square feet of exterior space, whereas the proposed outdoor area will be approximately 5,000 square feet. Ms. Lewicka stated Code Enforcement initiated a case against the property where Sec. 125-197 – Edgartown Settlement (ES) Zoning District was violated. The Special Magistrate decided the business was in violation and the business was to reduce the area utilized for exterior restaurant/pub use to 800 square feet or obtain a Conditional Use permit to extend the area allowed to be utilized for exterior restaurant/pub use. Ms. Lewicka showed an aerial view of the location of the expanded entertainment area. Ms. Lewicka stated it is up to the Historic Preservation Board to decide if the Conditional Use is granted to the applicant/owner, or to the location/parcel. If granted to the applicant/owner, it would expire

with the property's sale. If granted to the location/parcel, the Conditional Use could be transferred to the subsequent property owner(s).

Board questions for staff: Vice-Chair Davis asked if all provisions of Chapter 26 must be followed. Ms. Lewicka agreed.

Applicant Presentation: Jon Nolli, owner of Pierced Ciderworks, sworn, stated the property is approximately 20,038 square feet. He said 800 square feet is less than 4% of the total property and the proposed 5,000 square feet is less than 25% of the total ground. He noted the city wanted Edgartown to be an eclectic area and Sailfish Brewery, which was at the same location, had to relocate due to the same issues he is having. Mr. Nolli said the outdoor area will not work at 800 square feet, and it is impossible to have his business with such constraints; it is impractical and not enforceable. He asked how he was supposed to keep people from assembling in other outdoor areas. He said the customers would feel like cattle.

Board questions for Applicant: Ms. Starke asked which direction the entertainment speakers were facing and if the issue with the space utilization was the noise or the people coming and going. Ms. Anicito asked Mr. Nolli what he was asking for if the 5,000 square feet entertainment area was not sufficient. Mr. Nolli stated he wants full use of his property. Ms. Anicito asked if it would be fair to use the entire space with a 10-foot landscape buffer to keep the peace with his neighbor. Mr. Nolli stated he did not think 10 feet of landscaping was going to make a difference. Ms. Starke asked the size of the surrounding parcels and if they had full use of their property. Ms. Spivey asked Mr. Nolli if he had considered a fence for privacy. Mr. Nolli said he has a shadow box fence on three sides of the property. Vice-Chair Davis asked if any changes to the property would cause alarm. Mr. Nolli said if someone goes outside the proposed area, there is no way to enforce it properly. Dr. Frisbee asked what was being done for safety compliance on the property. Mr. Nolli stated he has had no issues in the past six years, and it is a peaceful place. Vice-Chair Davis asked if the only entrance was from the front. Mr. Nolli confirmed.

Public comment: Tim O'Connell, resident, sworn, stated the whole problem is with the Edgartown ordinance. He said Pierced Cider is not supposed to be an outdoor concert venue, and he wants the ordinance enforced. Mr. O'Connell stated if Pierced Cider wants more seating he should build a bigger building.

Holly Theuns, resident, sworn, stated everything was good with Pierced Cider until they started having outdoor concerts during COVID. She said the owner knew the rules when he bought the business, and he needed to follow the ordinance. Ms. Theuns said Pierced Cider is not an event space and the business is ruining their homes. She asked the Board to deny the application.

Cynthia O'Connell, resident, sworn, said they were told Pierced Cider would be an eclectic bar, with an 800 square foot area for a singer/songwriter. She said she gave Mr. Nolli a copy of the Edgartown ordinance and noted acoustic music was okay. Ms. O'Connell said the other neighbors were afraid to complain because they did not want to get in the middle of the dispute. Ms. O'Connell asked the Board to deny the application.

Applicant final comments: Mr. Nolli said Pierced Cider did have live music on the stage during COVID, but they have not used the stage in two years. He said they have a solo musician and, once in a while, a duo. Mr. Nolli highlighted that Pierced Cider is a very quiet place and the concerts were in the past. Mr. Nolli said he would like to have events like a wedding, but the confined space would not allow it. He said the neighborhood originally wanted a brewery and now they don't. He noted the only way to keep the business going is to utilize the property he has.

Staff final comments: Mr. Freeman rounded up what was discussed. He said the application deals with the space available on site that can be used for outdoor entertainment. The code is restrictive to 800 square feet. The purpose of the Conditional Use application is to expand the outdoor entertainment area. Mr. Freeman said staff took preliminary measurements of the site and came up with a 5,000 square foot area. The applicant said that was not enough, and he asked for the whole of the outdoor area to be allowed for outdoor entertainment. Mr. Freeman stated the issue is whether the expansion of 800 feet is acceptable and, if acceptable, the extent of the outdoor entertainment area.

Chairman Hayek, seeing no one else, closed the public hearing.

Comments by the Board: Ms. Starke said she thinks Mr. Nolli is being reasonable, and she does not see anything wrong with being eclectic, which includes drawing people together at a brewery with music. Vice-Chair Davis said the Board is stuck in the middle of a neighborhood dispute. She thinks the issue is sound and that is not the request. Vice-Chair Davis said the suggestion from the public comment is that the Board tells businesses if they come to Fort Pierce and the neighbors don't like it, they have to leave. She told the Board to stick to the relevant information of what the application states and not consider all the outside things. Vice-Chair Davis concluded that even if the application is approved or not approved, they are still going to have problems in the neighborhood because they do not get along. Dr. Frisbee said if the issue is about space, you can have noise in 800 square feet at as loud as you can have noise in 5,000 square feet. If it is about space, the space should be used.

Motion was made by Andrea Anicito, and seconded by Vice-Chair KeAndrea Davis to approve the Conditional Use for 411 N. 2nd Street allowing for deviation from City Code section 125-197 (j) to allow for 5,000 square feet of exterior space to be used and for the Conditional Use to run with the property following all provisions of Chapter 26.

AYE: Anthony Westbury, Betty Jo Starke, Patrece Frisbee, Minnie Spivey, Andrea Anicito, Vice-Chair KeAndrea Davis

Other: Chairman Charlie Hayek (ABSTAIN)

Passed

6. NEW BUSINESS

a. Administratively Approved Certificates of Appropriateness - January 2024

b. **Open Government Presentation**

Ms. Hedges gave a presentation on Sunshine Law, Public Records and Voting Conflicts of Interest.

She discussed the three basic requirements for a meeting, and she noted Board members do not want to have shade meetings because of accidental conversations. Ms. Hedges stated Sunshine Law does not apply to fact-finding meetings, but since the City of Fort Pierce does not have any fact-finding boards, all boards have to abide by the Sunshine Law. Ms. Hedges said ex-officio members are subject to Sunshine Law even if they don't vote and Sunshine Law does not apply to discussions with staff members as long as another Board member is not present. She explained that a Board member cannot use others as a liaison to have communication with other members of the Board. Ms. Hedges explained the types of communication constituting a meeting, which are telephone conversations, text

conversations, e-mails, public social media posts, and private social media communication. Ms. Hedges said, technically, a Board member can have one way of communication, but once there is a response from the group or one individual, a meeting is triggered and Sunshine Law applies. Ms. Hedges explained there are rules in place for meetings and the public has to have reasonable opportunities for public comment. Ms. Hedges discussed the prohibited restrictions on meetings. She said the Board cannot ask someone to voluntarily leave a meeting, they cannot ban videotaping and recording, they cannot require an identification card for attending a meeting and they cannot have a secret ballot. Ms. Hedges explained the consequences of violating the Sunshine Law and the penalties.

Ms. Hedges reviewed the Florida Public Records Act. She said a public record must be disclosed unless there is a statutory exemption or confidentiality reason. Ms. Hedges provided the definition of public records, and she explained that personal notes that perpetuate knowledge of some type are considered a public record. Ms. Hedges suggested the Board members keep a separate e-mail address for board matters or create a board folder in their personal email account. Ms. Hedges explained that all public records have a specific retention schedule. She said the best practice is to keep anything related to the board and not to alter it. Ms. Hedges said there is a cost associated with public requests and the city can not ask who or why they are making the request. She said the request can be verbal and the production of the request cannot be delayed except for the reasonable time it takes to retrieve and redact the records. Ms. Hedges said there are penalties for not complying with the public records laws.

Ms. Hedges explained the Voting Conflicts of Interest, and she said a board member cannot abstain from voting unless there is a conflict of interest. She said if a Board member has an issue with an agenda item, they should call the city attorney's office as soon as possible to decide if there is a conflict of interest. Ms. Hedges noted that with a quasi-judicial proceeding, a Board member may abstain from voting if the abstention is to assure a fair proceeding from potential bias or prejudice. Ms. Hedges said a voting conflict of interest exists when voting on any matter that would lead to the special private gain or loss of the person voting, their relative, their business associate, or a principal by whom they are retained. She reviewed the factors considered when determining whether a special private gain or loss exists and the additional conflicts of interest. Ms. Hedges said if a Board member has a conflict, to announce it to the board, abstain from voting and fill out the Memorandum of Voting Conflict form 8b. She said a Board member can participate even if they have a conflict, but she recommends the Board member remove them self from the dais for a fair proceeding. Ms. Hedges concluded by staying 1,000 feet away from the line with voting conflicts of interest.

7. COMMENTS FROM THE PUBLIC

There were no comments from the public.

8. CONSIDERATION OF ABSENCES

All members were in attendance.

9. ADJOURNMENT

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME ADAMEK CHARLES CAROL	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE HIST. PRESERVATION BOARD
MAILING ADDRESS 1111 FERNANDINO ST. ST. LUCIE	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY FORT PIERCE ST. LUCIE	NAME OF POLITICAL SUBDIVISION: FORT PIERCE
DATE ON WHICH VOTE OCCURRED 2-26-24	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____ ;
- inured to the special gain or loss of my relative, _____ ;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

OWN Mortgage on property

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

2-26-24
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.