

BOARD OF ALDERMEN

ITEM NO. D(3)

AGENDA ITEM ABSTRACT

MEETING DATE: NOVEMBER 22, 2011

TITLE: MINOR MODIFICATION OF EXISTING CONDITIONAL USE PERMIT FOR 300 EAST MAIN STREET

DEPARTMENT: PLANNING DEPARTMENT	PUBLIC HEARING: YES <input type="checkbox"/> No <input checked="" type="checkbox"/>
ATTACHMENTS: A. RESOLUTION B. PROPOSED ALTERNATIVE DESIGNS FOR BOYD STREET C. STATEMENT FROM MR. RICARDO PALAO OF 103 BOYD STREET	FOR INFORMATION CONTACT: MARTY ROUPE, 918-7333

PURPOSE

Main Street Partners, LLC has submitted an application for a Minor Modification of the existing Conditional Use Permit for 300 East Main Street to allow for minor changes to the proposed design of Boyd Street. Town staff requests that the Board of Aldermen review the information and consider approving a resolution permitting the changes.

INFORMATION

Main Street Partners, LLC (MSP) is seeking permission to make minor changes to the approved design for Boyd Street. Review of the construction plans for the first portion of the project (hotel and part of the parking deck) is ongoing and nearly complete. One of the remaining issues that must be resolved prior to approval of the construction plans is the receipt of all necessary easements to allow for construction to take place. MSP has been working to obtain all such easements. One such situation involves Boyd Street. In order to construct street improvements as shown on the CUP plans, and construction plans prior to now, an easement is needed from neighboring property owners, Richardo Palao and Sally Harmon. Much discussion has taken place recently regarding the nature of the easement, whether it is temporary or permanent, and the long term impacts to what they will or will not be able to do with their property. Discussions and possible negotiations regarding an agreement to allow construction as designed is ongoing leading up to this meeting. Meanwhile, MSP submitted a Minor Modification application asking the Town to consider modifying the design for Boyd Street in a way that allows for construction without an easement on the neighboring property.

Two 'new' designs are proposed for Boyd Street (Attachment B). The applicant also submitted supplemental information explaining their traffic engineer's suggestions regarding the matter. Option one (1) narrows the sidewalk along Boyd Street from five-feet (5') to four-feet (4'), while leaving other previously-approved elements in place. Option two (2) narrows the curb-and-gutter section along both sides of the road by six-inches (6"), and allows other previously-approved elements in place. While the pavement width remains the same, the effective travel way width is reduced by one-foot (1'). Both designs involve the addition of a retaining wall along the neighboring property to the south in order to make it possible to construct the roadway improvements without the need for an easement from the Palao / Harmon family. Completing this work without disturbing their property will be difficult, but the project

engineer states that it can be done. The applicant is currently obtaining a letter, from the contractor they intend to construct the road improvements, stating as much.

Staff has reviewed the information and considered the situation. While it is understood that it may prove difficult or impossible to obtain the needed permissions from the neighbors, staff still strongly desires to see the road constructed as originally permitted. However, if the Board of Aldermen determines it is appropriate to approve the Minor Modification request to allow an alternative design, then staff recommends that the Board approve Option 2, which retains the 5' wide sidewalk. This design should still sufficiently accommodate traffic, while also retaining the full 5' sidewalk to maintain pedestrian safety. If the Board approves an alternative design, then the applicant and neighbor may continue negotiations, and possibly reach an agreement that allows the original design to be constructed. The attached resolution (Attachment A) reads accordingly. Of note, final design details related to the alternative design will need to be worked out between the applicant and Town Staff before construction plan approval is granted. It is possible that the recommended 'option 2' design may need to be modified before approval, to incorporate a 2-foot gutter section rather than the 18" section shown in the design. If such a change is made, then the asphalt width would further reduce by one-foot, but the useable face-of-curb to face-of-curb distance would remain the same. A condition covering this recommendation follows:

- That the final 'option 2' design may be modified as requested by Town Staff to incorporate standards and devices found acceptable to the Public Works Department prior to construction plan approval. The final design drawings must include all appropriate details for the retaining wall, guard rail, and other treatments.

Other considerations:

Letter from Neighbor:

Mr. Ricardo Palao submitted a written statement regarding the request for the Board's consideration. It is included as **Attachment A**. Mr. Palao requests installation of construction fencing along his property line to clearly demarcate where contractors may not go, if an alternative design is ultimately constructed. The applicant finds this request acceptable. A condition to this effect is included below:

- That if 'option 2' is the design constructed, that the construction plans must indicate construction fencing along the edge of the Boyd Street right of way in front of the Palao / Harmon properties (103 and 105 Boyd Street). This fencing must remain in place throughout construction of Boyd Street and the developer must clearly convey to all contractors that they are not in any circumstance allowed to cross the fence.

The letter also requests that the Board scrutinize the claim that Main Street Partners can accomplish the construction without any impact on the 103 and 105 Boyd Street properties or interaction with these properties. As briefly mentioned earlier, the applicant is obtaining a letter from their contractor regarding this matter, hopefully making it clear that this can be done.

Continued negotiations:

Both the applicant and the neighbor have indicated to staff that they intend to continue negotiating a possible agreement to allow for road construction as shown in the original CUP design. The following condition is recommended in relation to negotiations:

- That the developer must continue pursuing an easement to allow for construction of the originally-approved design for Boyd Street. This includes continued, good-faith negotiations with the

neighboring property owner until the actual construction of Boyd Street is imminent. If this time is reached without an agreement, then the developer must discuss the matter with staff and demonstrate that good-faith efforts have occurred, regularly, between the approval of the modification and the time leading to the meeting with staff.

RECOMMENDATION

Town staff requests that the Board of Aldermen review the information submitted and determine whether to require that Boyd Street be constructed in accordance with the design approved in the original CUP or whether to permit a modification to allow for construction of an alternative design. If the Board chooses to require construction in accordance with the original design, then no further action is needed. If the Board finds it acceptable to construct an alternative design, then the attached resolution may be adopted. If the alternative option is found acceptable, then staff recommends Option 2, which retains the 5' sidewalk width, subject to the following conditions:

- 1) That the final 'option 2' design may be modified as requested by Town Staff to incorporate standards and devices found acceptable to the Public Works Department prior to construction plan approval. The final design drawings must include all appropriate details for the retaining wall, guard rail, and other treatments.
- 2) That if 'option 2' is the design constructed, that the construction plans must indicate construction fencing along the edge of the Boyd Street right of way in front of the Palao / Harmon properties (103 and 105 Boyd Street). This fencing must remain in place throughout construction of Boyd Street and the developer must clearly convey to all contractors that they are not in any circumstance allowed to cross the fence.
- 3) That the developer must continue pursuing an easement to allow for construction of the originally-approved design for Boyd Street. This includes continued, good-faith negotiations with the neighboring property owner until the actual construction of Boyd Street is imminent. If this time is reached without an agreement, then the developer must discuss the matter with staff and demonstrate that good-faith efforts have occurred, regularly, between the approval of the modification and the time leading to the meeting with staff.