

PLANNING COMMISSION
February 29, 2012
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 29, 2012**, beginning at 10:02 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Gail Creech

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
Randy Wall, Vice Chair	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
William Wiatt	Present

STAFF

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Administrator, Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Mitch Harvey, Comp Plan Manager	Present
Emily Schemper, Planner	Present
Tim Finn, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by John Wolfe.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

All staff members intending to speak were sworn in by John Wolfe.

CHANGES TO THE AGENDA

Agenda Item 3 will be heard as Item 2.

APPROVAL OF MINUTES

Motion: Vice Chair Wall made a motion to approve the minutes from the January 24, 2012 meeting. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 138-50, TYPE OF DEVELOPMENT NOT AFFECTED; AMENDING CRITERIA USED FOR DETERMINATION OF EXEMPTION FROM THE NONRESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO) PERMIT ALLOCATION SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2010-062)

(10:05 a.m.) Joe Haberman presented the staff report. Mr. Haberman reported that this text amendment for NROGO exemptions basically mimics the text amendment for ROGO exemptions brought before the Planning Commission a couple of months ago. The ROGO text amendment went to the BOCC, then to the State, and it is now effective. Mr. Haberman will correct an error in the NROGO text amendment that references a residential dwelling unit. This text amendment is almost verbatim to the ROGO text amendment with the exception of the date that one had to prove they were lawful. The date is 1992 for ROGO and is 2001, 2002 for NROGO. Another change being made is that nonprofits can be asked to be exempt from this process altogether, which is allowed in the comp plan. Also, health is another type of eligible nonprofit use being included, as it is in the comp plan as well.

Mr. Haberman explained to Chair Werling that if a nonprofit seeks a change of use, is abandoned or moves to another site, they either have to go through NROGO or find another eligible nonprofit to take its place or another use that is not subject to NROGO. Vice Chair Wall questioned the wording regarding transferring floor area limitations. Mr. Haberman explained that the Director of Growth Management has directed Keith & Schnars to look at NROGO and what changes would need to be made on the comp plan level, which would then trickle down into the code. Mr. Haberman will make a note to have them look at the transfer limits as well.

Mr. Haberman further explained to Vice Chair Wall the fee schedule for transferring floor area. If somebody has a known sender site, that is included in one application fee. Mr. Haberman stated that the language could be looked at to make it clearer in the code if Vice Chair Wall so desired. Mr. Haberman added that most people do not consider a transfer unless they need over 2500 square feet. If they want less than 2500, they will usually phase their project in.

Motion: Vice Chair Wall made a motion to approve. Commissioner Wiatt seconded the motion. Vice Chair Wall then amended the motion to include the correction of the one

error in the staff report that mentioned a residential dwelling unit that should be changed to nonresidential floor area. Commissioner Wiatt seconded the amended motion. There was no opposition. The motion passed unanimously.

2.Boan Residence, 500 Avenue C, Big Coppitt, Mile Marker 10: A request for approval of a variance of twenty (20) feet to the twenty-five (25) foot required front yard setback along the western property line in order to construct a deck. The subject property is legally described as Lot 8, Square 12, Johnsonville's Big Coppitt (PB1-53), Big Coppitt, Monroe County, Florida, having real estate number 00152540.000000.
(File 2011-136)

(10:16 a.m.) Rey Ortiz presented the staff report. Mr. Ortiz reported that this is a single-family home that has been there for quite some time and prior to this the area had some sort of concrete pad. The applicant has subsequently installed a decking and the property owner did not get the proper permitting. The applicant has subsequently applied for a building permit. It was discovered that the decking was within the setbacks, and the applicant is now requesting a variance to that setback requirement for the decking. This would not further violate the existing nonconformance on the site. Staff recommends approval with conditions, which conditions were then outlined.

The applicant did not wish to speak. Chair Werling asked for public comment. There was none.

Mr. Ortiz reported that nobody in the local community has commented about this to staff. Mr. Ortiz explained for Chair Werling that this property has two front yard setbacks. Chair Werling questioned why there was not a permit requested.

Jamie Derek Boan, the property owner's son, was sworn in by Mr. Wolfe. Mr. Boan explained that to conform with the permit to complete their sewer they had to fill in the septic tank, and to fill in the septic tank they had to eliminate the porch that was there to gain access to the house. The applicant assumed they could replace the porch. Mr. Boan further explained that everybody who lives in the home gains access through the rear of the home and the only way to gain access into the home was to put the decking back there because the home is four feet off the ground.

Motion: Vice Chair Wall made a motion to approve. Commissioner Hale seconded the motion. The roll was called with the following results: Commissioner Hale, Yes; Vice Chair Wall, Yes; Commissioner Lustberg, Yes; Commissioner Wiatt, Yes; and Chair Werling, No. The motion carried.

3.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE REGULATIONS PERTAINING TO FENCES IN MONROE COUNTY CODE SECTION 114-20, FENCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2011-093)

(10:24 a.m.) Rey Ortiz presented the staff report. Mr. Ortiz reported that back in July of last year staff had asked for direction from the Planning Commission in exploring some options to allow the Key Haven community to establish guidelines that would be unique to their area to facilitate the fact that they are a walkable community and the unique character of the area. They are already allowed six-foot fences, but there was not a mechanism in place to allow entry features. Staff took this opportunity to help clarify the height of fences within a side yard setback. In addition, staff also updated a third section of the code regarding utility lines so that when someone needed the fence to be higher to accommodate a separate code, a national code of some type, it would not conflict with the County's.

Vice Chair Wall discussed the new language in the ordinance about clear sight triangles. Mr. Ortiz pointed out that that language applies countywide. Vice Chair Wall asked about the language regarding lights on residential masonry fences being limited to two. Mr. Roberts confirmed that when staff reviews for a front wall, staff does limit that to two entry lights.

Motion: Commissioner Hale made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

Mr. Schwab introduced the County's new Planner, Emily Schemper.

Mr. Harvey gave an update on the Evaluation and Appraisal Report (EAR) progress. Mr. Harvey reported that the next meeting regarding the comp plan update will be the BOCC's review of Part 2 of the EAR on Monday, March 19 at 9:00 a.m. The adoption expected afterwards has not been scheduled yet. The community can monitor the website at keyscompplan.com, and if anybody has question regarding the comp plan they can call 1-800-488-1255, where Keith & Schnars will take all comments and will respond. The comp plan EAR-related amendments will be started up in the Fall and then will be adopted next year. Internal staff reviews will be held on the EAR regarding what amendments are going to be moving forward and they will be brought before the Planning Commission this Fall.

BOARD DISCUSSION

Vice Chair Wall asked for staff to address the Commissioners in the future concerning setback variances and staff's interpretation of hardship. Mr. Haberman pointed out that "exceptional hardship" is defined in the code, but is almost interpretive of what that definition means and that staff struggles with what it means as well. Mr. Wolfe and Mr. Schwab agreed that a discussion and a presentation is needed based on staff's interpretation of exceptional hardship. Mr. Haberman noted that staff has initiated a text amendment based on an analysis of the variances the Planning Commission has granted and tried to separate out that which was almost universally granted and allowed in the setbacks and would allow things, like walkways, with some standards. Staff is working through whether it would be allowed as of right or there would be some type of neighbor notification.

Commissioner Lustberg asked if prospective owners of properties are made aware of setbacks on properties. Mr. Wolfe replied that prospective owners are charged with knowing the law and

most people would educate themselves in that regard prior to purchasing property, but if it is a platted lot they basically have to be able to build something or it could be considered a taking.

Commissioner Wiatt commented that the setbacks are not for staff, nor the Planning Commission, but setbacks are for the community, the neighborhood. Commissioner Wiatt stated that what the local community thinks about a variance with respect to setbacks has a huge influence on him, regardless of what interpretations are and exactly what the code says.

Commissioner Lustberg questioned what criteria staff uses in deciding whether to bring minor changes made after the Planning Commission's approval back before the Planning Commission prior to taking it to the BOCC. Mr. Schwab replied that changes can be made between the Planning Commission and the BOCC at the prerogative of the Growth Management Director. The changes made are noted to the BOCC. An attempt is made to keep it as close as possible to the Planning Commission's recommendation. Ms. Grimsley explained that this is a transmittal of a future land use map change, so it can get changed as it goes along the process.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 10:53 a.m.