

PLANNING COMMISSION
February 26, 2014
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 26, 2014**, beginning at 10:01 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

William Wiatt, Chair	Present
Jeb Hale, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Denise Werling	Present

STAFF

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Joe Haberman, Planning & Development Review Manager	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Laurie McHargue, Senior Biologist	Present
Matt Coyle, Planner	Present
Karl Bursa, 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

County staff members were sworn in by Mr. Wolfe.

APPROVAL OF MINUTES

Commissioner Lustberg noted that the January 29, 2014 meeting minutes should have listed the location as Key Largo as opposed to Marathon. **Motion: Commissioner Werling made a motion to approve the minutes of the January 29, 2014 meeting with the noted correction.**

Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

CHANGES TO THE AGENDA

Mr. Schwab asked to move Item 1 to the end of the meeting in deference to the members of the public present for other items. Ms. Creech stated Item 2 was taken off the agenda.

MEETING

New Items:

3.MATOVSKI PROPERTY, NORTHEAST CORNER OF CORAL AVENUE AND MARIPOSA ROAD INTERSECTION, RAMROD KEY, MILE MARKER 27: A request for approval of a variance of ten (10) feet from the required twenty-five (25) foot front yard setback along the property line abutting the right-of-way of Mariposa Road in order to construct a new single-family residence. The subject parcel is legally described as the Northerly 33.92' of Lot 21, Ramrod Shores Second Addition (Plat Book 4, Page 108), Ramrod Key, Monroe County, Florida, having real estate number 00209760.000000. (File 2013-146)

(10:04 a.m.) Mr. Coyle presented the staff report. Mr. Coyle reported that the property is approximately 4,070 square feet. The zoning is improved subdivision and this is a Tier III property. The community character of the immediate vicinity is single-family residential. When this lot was platted in 1959 the lot was 50 by 120 feet wide. It was replatted in December of 1959 as Ramrod Shores Marina Section and a portion of this lot became part of the Mariposa right-of-way. The property was zoned RU-1 prior to 1986 and the setbacks at that time would have been ten and five feet, for a total of 15 feet. In 1986 it was rezoned IS with setbacks of ten and 15 feet at that point. Then in 2006 an ordinance was adopted that made a corner lot have two front yard setbacks. The applicant is requesting ten feet from the required 25-foot setback along Mariposa Road to construct a 700 square foot detached dwelling unit, resulting in a setback of 15 feet. Mr. Coyle presented pictures of the property and surrounding areas from different angles. Staff finds that all eight standards required by the Monroe County Code as detailed in the staff report have been met and, therefore, recommended approval of the application with conditions. Those four conditions were then outlined.

Christopher Waldera, Esquire, present on behalf of the property owners, stated the applicants intend to build a small single-family residence on the property if the variance is granted. Commissioner Miller pointed out that the property was purchased in 2011 by the applicant for \$6,673. Mr. Waldera responded that the taxable value is \$15,925.

Zlate Matovski, the applicant, explained that a meeting was held on December 21 with County staff where staff informed him that the lot is buildable. Mr. Matovski informed Chair Wiatt that upon purchasing the property he was informed that the lot is buildable with a variance. Mr. Waldera clarified that the applicant met with staff in December of 2012.

Chair Wiatt asked for public comment.

Millie Donathan, neighbor, was sworn in by Mr. Wolfe. Ms. Donathan stated more neighbors would have been present but for their work schedules. The Nitzsches, the next door neighbors, are out of town for medical reasons, but have asked Ms. Donathan to speak for them. The neighbors are all against this proposed development. This area has beautiful million dollar homes. The neighbors are unclear how high the applicant is going up with this home. The neighboring property owners back in 1968 were told by the developer that the dock area was for the people that live in this area. Ms. Donathan suggested the neighbors should together buy a lot for the applicant.

James Olsen, neighbor, was sworn in by Mr. Wolfe. Mr. Olsen stated his complaint is the parking on this property will make it impossible to maneuver the corner. Mr. Olsen would like to see what they plan for parking. Mr. Olsen was told by his realtor the boat ramp was for the neighborhood's use and he has launched his boat there until the fence went up.

David Skawski was sworn in by Mr. Wolfe. Mr. Skawski stated this proposed development is out of character with the whole area and there is nothing in this neighborhood built above the ground two feet. Mr. Skawski believes the small and narrow walking area on this particular side of the street is very dangerous and will become more dangerous with cars parked alongside the road there because it is a blind corner.

Art Rogers, neighbor, was sworn in by Mr. Wolfe. Mr. Rogers believes this whole project is going to be out of character for the neighborhood, which character is defined partially by the setbacks in this area. Mr. Rogers believes this proposed low structure with the setbacks is going to add to the obstructed vision.

Patricia Olsen, neighbor, was sworn in by Mr. Wolfe. Ms. Olsen stated when she bought back in '09 she was under the understanding the boat ramp was public. Ms. Olsen stated the property owners in this neighborhood are proud of their subdivision and asked the Commissioners to leave it the way it is.

Bob Blunbury, neighbor, was sworn in by Mr. Wolfe. Mr. Blunbury is worried about the parking and the stormwater retention area.

Chair Wiatt asked for further public comment. There was none. Public comment was closed.

Mr. Waldera clarified the proposed development is an elevated house just like the rest of the neighborhood. Mr. Waldera pointed out there are two developed properties on Mariposa Road that are in similar situations as the subject site which frontage on Mariposa Road and another road, and one of these properties has development along the front yard setback on the Mariposa right-of-way. Mr. Waldera believes the biggest complaint is the inability of the neighbors to use the boat ramp. Mr. Matovski agreed that is the reason the neighbors are complaining.

Commissioner Miller inquired about the other properties on Mariposa that have received variances. Mr. Coyle explained that there is a property that did not receive a variance, but encroached into the setbacks prior to the current setback requirements. There are no other homes

in this area that are 14 feet wide. Mr. Wolfe advised the Commission that the boat ramp issue is not germane to this variance. Mr. Matovski added that there is a parking spot underneath the house and another parking spot 25 feet off the setback. Mr. Wolfe noted the applicant has to meet all of the requirements of the building permit. There were no further questions for the applicant.

Commissioner Miller asked what could be built on this property without a variance. Mr. Haberman responded if the applicant cannot build the house, which would be impossible without this variance, the only other uses that are allowed would essentially be a park, which by code is run by either a governmental or quasi-governmental agency. Commissioner Lustberg stated that regularly the Commission approves variances for pools or decks a little bit into a setback, but not the whole side of the house ten feet into the setback. Staying within the setbacks, the house could only be four feet wide. Commissioner Miller commented that this variance is different in that this property is impossible to build on without the variance. Commissioner Hale believes this is a unique lot with two front yard setbacks. Commissioner Werling stated she visited the site and believes upon seeing the size of the lot by itself and looking at the rest of the surrounding properties it would make a purchaser skeptical to think that this was just like the rest of the development in the area. Commissioner Werling believes putting a substantial house with a stop sign right there would create huge problems. Chair Wiatt feels this is about timing and believes the property owner in 2011 was familiar with the fact that the setbacks would have a negative effect on his ability to build.

Commissioner Miller commented that the proposed development looks like a mobile home up on stilts, which mobile homes are not permitted in IS zoning. Mr. Haberman responded that the difference with mobile homes is not just the way they look, but also the way they are constructed. Mr. Haberman believes the Commissioners should consider that a lot of the mobile home language was crafted in 1986, when mobile homes looked very different than today's manufactured housing, which should be considered. Mr. Haberman emphasized that if a variance were granted, the applicant could not put a mobile home or park along this property. Mr. Haberman added that there are a lot of narrow houses that have character and look like small houses as opposed to mobile homes. Commissioner Miller believes the difference is the Commission becomes an accomplice in creating a structure that is much smaller in this neighborhood by granting this variance. Mr. Haberman informed the Commissioners that the County has given several variances for corner lots since 2006 for new houses, most of which have been done administratively, which is how this application initially came in. Commissioner Hale cannot remember any for new construction. Commissioner Werling stated the tax records make it clear this property is basically taxed at an unbuildable, or certainly a difficult buildable status. Chair Wiatt believes that is important and it has been made clear in Item B under Section 102-186 that an exceptional hardship has not been established. Commissioner Werling agreed. Chair Wiatt also believes the timing of this purchase does not prove Item A regarding good and sufficient cause. Mr. Williams pointed out the reason this has not been seen for building before is that they were approved administratively. The purchase price was actually \$25,000. The County staff has found no violations here. This property would not be platted like this in modern times, but this was platted in 1959.

Mr. Williams cautioned the Commissioners what they do should be founded in the criteria for a variance. Community character is not one of the established criteria in denying a variance. Chair Wiatt pointed out that staff made their recommendations conditionally based on the consideration of public input, which they did not have until today. Based on that public input, Chair Wiatt believes the Commission has reasons under Item C for denial. Mr. Williams explained aesthetics are not a nuisance. Commissioner Miller stated Section B has not been met. Chair Wiatt agreed. Commissioner Lustberg noted that upon her visit she found the property to be a very small sliver of land between the road and the house next to it. Mr. Williams asked the Commissioners to consider that the road is built onto this property.

Motion: Commissioner Miller made a motion to deny the application because it has not been established that Section B is applicable. Mr. Williams asked the Commissioners to consider Paragraph E. Commissioner Miller believes the inverse of Section B means this applicant would be getting something that has not been granted previously in this neighborhood. Commissioner Werling agreed it would appear that section would give the applicant special privileges. **Commissioner Miller modified his motion to deny based on failure to meet Section B and Section E.** Mr. Haberman clarified that Section B would be Subsection 2 of the code and Section E would be Subsection 5 of the code. **Commissioner Miller modified his motion for denial based on the failure to meet Subsection 2 and Subsection 5 of the code. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.** Mr. Wolfe asked that the roll be called. **The roll was called with the following results: Commissioner Lustberg, Yes; Commissioner Hale, Yes; Commissioner Miller, Yes; Commissioner Werling, Yes; and Chair Wiatt, Yes.**

4.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 118 ENVIRONMENTAL PROTECTION; CREATING SECTION 118-13 PROVIDING FOR COORDINATION WITH THE UNITED STATES FISH AND WILDLIFE SERVICE FOR DEVELOPMENT PERMIT APPLICATIONS FOR PARCELS LOCATED IN CRITICAL HABITAT OR DESIGNATED POTENTIALLY SUITABLE HABITAT OF SPECIES NOT INCLUDED IN THE PERMIT REFERRAL PROCESS; 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 2013-149)

(10:58 a.m.) Ms. McHargue presented the staff report. Ms. McHargue reported that under the Permit Referral Process in effect since June 2012 Monroe County reviews development permit applications for properties that are located in the species focus areas for nine listed federally protected threatened and endangered species. Periodically the U.S. Fish & Wildlife Service lists additional species as endangered or threatened for Monroe County and new habitat areas may be designated for these newly listed species. If a development permit application is received for a property within this new habitat for these newly listed species, the applications are not reviewed under the existing Permit Referral Process. Those are only the nine species that were included in that review process. Nevertheless, the County, as well as the property owner, still have an obligation to comply with the Endangered Species Act. Therefore, this proposed ordinance

provides owners of properties located in habitats of newly listed species the ability to develop their property in a manner consistent with the Endangered Species Act. Property owners with properties located in these new habitat areas will be required to consult directly with the Fish & Wildlife Service and need to supply authorization from Fish & Wildlife before they can begin development of their property. Monroe County would then include any conditions or requirements required by the Fish & Wildlife Service in the conditions of the building permit. Ms. McHargue explained for Commissioner Miller that the RE list is the real estate property list, which is a formal list of properties prepared by Fish & Wildlife and approved by owners of properties that are located within the species focus areas, designated habitat areas for the nine listed endangered or threatened species of the Permit Referral Process. The real estate property list is online.

There were no comments or questions from staff or the public.

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

5.OCEANSIDE MARINA, 5950 AND 5970 PENINSULAR AVENUE, STOCK ISLAND,

MILE MARKER 5: A request for approval of an amendment to a major conditional use permit in order to redevelop the existing marina by improving the marina's facilities, constructing 78 new market rate residential dwelling units, constructing 5 new hotel rooms, constructing a new restaurant, and carrying out associated site improvements. The subject property is legally described as Block 60, portions of Lots 1, 2 and 3, Block 61, portions of Lots 1, 2 and 3, the portion of Maloney Avenue lying between Blocks 60 and 61, McDonald's Plat (Plat Book 1, Page 55), also described as parcel of land in Sections 26, 34, 35 and 36, Township 37 South and Range 25 East, having real estate numbers 00127420.000000 and 00127420.000100.

(File 2013-068)

(11:02 a.m.) Commissioner Werling disclosed that her husband is doing work for Mr. Noah Singh on a property that is not involved in this development and they have no financial involvement in this project. Mr. Wolfe advised Commissioner Werling since there is no financial involvement in this project there is no need to recuse herself from this item.

Mr. Haberman presented the staff report. Mr. Haberman reported that this is an application for an amendment to a major conditional use. The Planning Commission at a previous meeting conceptually approved the site plan and the uses, both of which have evolved a little bit since then, and the Planning Commission approved the concept of allowing this site to be built by moving the market rate TREs and allowing the affordable housing to be built by maintaining three mobile home parks owned by the applicant. The applicant at this point is proposing 78 market rate units which may or may not be used as vacation rentals, a hotel with four hotel rooms as opposed to five for density purposes, a smaller restaurant of 1,783 square feet because the kitchen and other things accessory to the restaurant are associated with the hotel residential use on site, but the number up to 150 seats is the same as previously reviewed. The applicant is also proposing 12 additional wet slips for a total of 15, at least three of which have to be dedicated to commercial fishing vessels. The marina store will be fixed up to function a little bit more with the proposed development. Mr. Haberman reminded the Commissioners this property

is mixed use and all these uses are permitted in the mixed use district and in the mixed use commercial land use category. Mr. Haberman described the property as it exists currently. The site plan was presented.

Mr. Haberman stated staff is recommending approval with a series of conditions. First, prior to the issuance of a resolution approving the application the applicant shall provide a revised traffic study. The next condition has already been satisfied, which is the submission of a new site plan with correct numbers. The third condition is that the applicant has to get a minor conditional use permit to move the required transferable development rights to the property. Next, the applicant must formally transfer the transferable ROGO exemptions. Prior to the CO all the required landscaping shall be formally approved. The conditional use rides with the development agreement, it does not supersede it, so if there are additional requirements in the development agreement the applicant is required to meet those as well. This application is not a final approval for development and a building permit may be required. This site has not been reviewed by the Building Department yet for compliance with the building code and this condition reserves the right to require any changes deemed necessary by them, as well as by Public Works. A boardwalk area along the shoreline will be included in this site plan, which will be open to the public. Staff is okay with the proposed architectural style of the buildings, but reserves the right to veto any change in style that is not in keeping with the style of that community. Areas approved as accessory to the hotel can only be used by occupants of the hotel and attached residential dwelling units' conversion to another use shall require additional approvals. The gated entrance to this community must remain open from 7 a.m. until dusk. At least 20 percent of the dockage controlled by the applicant will be reserved for use by licensed commercial fishing vessels.

Chair Wiatt asked if there are any provisions to maintain some level of support services for those in the marina that currently have services upland. Mr. Haberman responded there are some easements in existing agreements, which the applicant can explain, but some kind of condition could be crafted that certain things would have to be maintained so long as this approval is in place.

Pritam Singh and Noah Singh, the applicants, were sworn in by Mr. Wolfe. Mr. Pritam Singh explained an agreement was reached that the applicants would grant easements and sell a piece of land on which a bath house could be built with the applicant's approval of the design. The construction plans are being done now. The site plan was again presented and described.

Commissioner Miller asked if the BOCC in May approved what was previously approved by the Planning Commission. Mr. Haberman stated there were some revisions made mainly by Legal in order to meet certain provisions of the development agreement and it was approved by the BOCC. Ms. Grimsley confirmed that the seven-year hiatus with regard to the individuals living at the sender sites is part of the development agreement. Mr. Noah Singh added the sender sites are currently being redeveloped and upgraded.

Chair Wiatt asked for public comment. There was none. Public comment was closed.

Motion: Vice Chair Hale made a motion to approve according to the recommendations of the staff report with all of the conditions set forth therein. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, AMENDING SECTION 130-124, HOME OCCUPATION SPECIAL USE PERMIT, REVISING THE PROVISIONS TO ADDRESS MOBILE BUSINESSES THAT ARE BASED OR OPERATED FROM RESIDENCES, REVISING THE POSTING REQUIREMENTS FOR HOME OCCUPATION SPECIAL USE PERMIT APPLICATIONS, 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 2014-001)

(11:34 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this amendment consists of two slightly different issues included in the same section. There are a variety of applications that require posting and over time the posting requirements have changed based on the technology of what you could print and things of that nature. This amendment seeks to make the posting requirement consistent with how conditional uses are posted. The posting would be the same size and be of the same format to provide consistency. The second part of this amendment is to tighten up the language regarding businesses run out of a residence. A home occupation permit allows someone to work out of their home, and even allows one employee, but it should not be obvious to neighbors a business is being run out of the home. Some contractors and landscapers are storing equipment at their residence or are bringing landscape debris back to their home. This amendment should help Code Compliance address these issues.

Chair Wiatt asked how this amendment would affect fishermen who operate commercial fishing businesses out of their home. Mr. Haberman will review the language to make sure there are no unintended consequences in that regard. Mr. Haberman explained that most commercial fishermen operate out of a commercial fishing district, which allows commercial fishing as a use and allows a house as a use, making it a mixed use property. This amendment would not affect that. The decline in home occupation license applications was discussed. Mr. Haberman explained to Commissioner Miller that an ordinance regarding storage of commercial vehicles was recently passed. Commissioner Miller would like to see the storage of flatbed trailers covered by the storage ordinance. Mr. Haberman will discuss that issue further with Commissioner Miller.

Chair Wiatt asked for public comment. There was none. Public comment was closed.

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

BOARD DISCUSSION

Commissioner Miller asked to discuss pictures he brought of accessory buildings. Mr. Schwab asked to meet later to discuss that further. Mr. Haberman noted that prior County Planner Tim Finn researched as many South Florida codes as he could find and only one jurisdiction had language that regulated accessory structures cumulatively, which was the Village of Islamorada. Commissioner Miller then asked about outdoor storage under the Key Largo Livable CommuniKeys Plan. Mr. Haberman explained that no new outdoor storage is allowed as a principal use.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:46 a.m.