

PLANNING COMMISSION
January 25, 2017
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, January 25, 2017**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilza Aguila

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
William Wiatt, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Beth Ramsay-Vickrey	Absent

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Emily Schemper, Comprehensive Planning Manager	Present
Kevin Bond, Planning & Development Review Manager	Present
Devin Rains, Principal Planner	Present
Janene Sclafani, Planner	Present
Devin Tolpin, Planner	Present
Gail Creech, Sr. Planning Commission Coordinator	Present
Ilze Aguila, Sr. Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Aguila stated there was a request for Item 4 to be continued to the February 22, 2017, Planning Commission Meeting. Staff has requested that Items 5 and 6 be read together. Item 8 needs to be rescheduled to the February 22, 2017, Planning Commission Meeting.

Motion: Commissioner Lustberg made a motion to allow Item 8 to be rescheduled for February 22, 2017. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Mr. Wolfe asked the applicants for Item 4, James and Ginger Hanson, if they had any objection to a continuance. Mr. Hanson indicated he and his wife would prefer to move forward with their item today. Mr. Wolfe explained that due to the absence of one commissioner, three out of four votes would be required to succeed as opposed to three out of four votes. Mr. Batty, on behalf of the appellant, indicated his client was requesting the continuance in an attempt to work with the Hansons and potentially resolve the issues. Mr. Hanson further explained that he would be willing to work with the neighbor on any of their concerns and has dealt with the property manager and has been cooperative, but would still prefer the matter be heard today.

Commissioner Miller stated he would prefer to have a larger map representation of the project and for that reason, would like to continue the item, only allowing one continuance in an effort to be fair to the property owner. Commissioner Wiatt expressed concern for the property owner who came in good faith to have the item heard indicating he was not prepared to second such a motion. Commissioner Lustberg stated she could go either way, understanding both sides of the issue, again emphasizing that today there was one less commissioner present for either side to potentially persuade. Chair Werling indicated she would be more comfortable affording everyone an opportunity to be heard and to be a part of the process, understanding that it does put the applicant behind a month. Commissioner Lustberg clarified they could limit the continuance to only one month to prevent dragging the issue out any further.

Motion: Commissioner Miller made a motion to allow the continuance of Item 4. Commissioner Lustberg seconded the motion. The roll was called with the following results: Commissioner Wiatt, No; Commissioner Lustberg, Yes; Commissioner Miller, Yes; and Chair Werling, Yes. The motion passed.

Mr. Wolfe instructed that another motion was required to continue the item to a date certain of February 22, 2017.

Motion: Commissioner Miller made a motion to continue Item 4 to February 22, 2017. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

Chair Werling took a few moments to acknowledge that this was the last meeting Ms. Creech would be attending, thanking her and wishing her well. Ms. Creech indicated she had enjoyed working with everyone, would miss them, but was confident everything was being left in the capable hands of Ms. Aguila.

APPROVAL OF MINUTES

Motion: Commissioner Lustberg made a motion to approve the December 15, 20, 2016, meeting minutes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Mr. Wolfe announced to all present that being short one Commissioner, as Chair Werling had previously mentioned, any applicant on today's agenda would be afforded the courtesy and opportunity for a continuance since getting approval required three out of four votes rather than three out of five. There were no requests for a continuance.

MEETING

New Items:

1. ISLANDER VILLAGE, LLC/DRIVE IN HOMEBUILDERS, LLC, 5020 & 5030 FIFTH AVENUE, STOCK ISLAND: A PUBLIC HEARING CONCERNING A REQUEST FOR A ONE-YEAR TIME EXTENSION PURSUANT TO MONROE COUNTY CODE SECTION 110-73(A)(1) TO A MAJOR CONDITIONAL USE PERMIT, ORIGINALLY APPROVED BY PLANNING COMMISSION RESOLUTION NO. P35-05, FOR THE CONSTRUCTION OF 111 RESIDENTIAL DWELLING UNITS, INCLUDING 89 AFFORDABLE AND 22 MARKET-RATE UNITS, ON PROPERTY LEGALLY DESCRIBED AS BEING PART OF BLOCK 59, MALONEY SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1 AT PAGE 55, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, AND ADJACENT SUBMERGED LANDS, AND HAVING REAL ESTATE NUMBERS 00127400-000000, 00127400-000100, 00127400-000120, 00127400-000121, 00127400-000122, 00127400-000123, 00127400-000124, 00127400-000125, 00127400-000126, 00127400-000127, 00127400-000128, 00127400-000129, 00127400-000132, 00127400-000133, 00127400-000134, 00127400-000135, 00127400-000136, 00127400-000138, 00127400-000139, 00127400-000140, 00127400-000141, 00127400-000142, 00127400-000143, 00127400-000144, 00127400-000145, 00127400-000146, 00127400-000147, 00127400-000148, 00127400-000149, 00127400-000171, 00127400-000172, 00127400-000173, 00127400-000174, 00127400-000175, 00127400-000176, 00127400-000177, 00127400-000178, 00127400-000179, 00127400-000180, 00127400-000181, 00127400-000182, 00127400-000183, 00127401-010900, 00127401-010910, 00127401-010920, 00127401-010930, 00127401-010940, 00127401-010950, 00127401-010970, 00127401-010980, 00127401-011000, 00127401-011020, 00127401-011030, 00127401-011040, 00127401-011050, 00127401-011060, 00127401-011070, 00127401-011080, 00127401-011090, 00127401-011100.
(FILE #2016-191)

(10:16 a.m.) Mr. Kevin Bond presented the staff report. This request is for a one-year time extension to a major conditional use permit originally approved by Planning Commission Resolution No. P35-05; extending the expiration date from December 7, 2016 to December 7, 2017, to allow the owner to obtain all certificates of occupancy. The last one-year time extension was on September 30, 2015. The expiration of the original major conditional use permit approved in 2005 has been extended multiple times. This request for the time extension

was timely filed on November 10, 2016. All of the affordable units are completed. This extension will allow completion of the remaining three market-rate units at Islander States. Staff recommends approval with the one condition in the report.

Nick Batty, agent for the applicant, reiterated the request for the one-year extension, stating that the 89 affordable units are built and one of the market rate units had been CO'd last week, leaving only two outstanding market rate units. One is finished awaiting final inspection. The last one has the columns up and should be completed within two to three months. Though the full year extension is likely not necessary, they would like to get it anyway.

Chair Werling noted that she was glad the affordable were completed. Mr. Batty agreed. Commissioner Miller asked if that was a requirement and Chair Werling indicated it was.

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

Motion: Commissioner Wiatt made a motion to allow the extension. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

2. MCDONALD'S/DOLLAR TREE, 101000 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 101: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO THE ACCESS STANDARDS IN CHAPTER 114, ARTICLE VII OF THE LAND DEVELOPMENT CODE. APPROVAL WOULD RESULT IN TWO CURB CUTS TO U.S. 1 THAT ARE SPACED LESS THAN 400 FEET FROM EACH OTHER AND AN EXISTING STREET ON THE SAME SIDE OF U.S. 1. THE VARIANCE IS REQUESTED FOR THE TWO U.S. 1 CURB CUTS ASSOCIATED WITH THE PROPOSED DEVELOPMENT OF A PROPOSED 3,116 SQUARE-FOOT COMMERCIAL RETAIL MCDONALD'S RESTAURANT WITH A DRIVE-THROUGH AND A NEW 5,000 SQUARE-FOOT RETAIL BUILDING. THE SUBJECT PROPERTY IS DESCRIBED AS THAT PORTION OF LOT 8 IN SECTION 28, TOWNSHIP 61 SOUTH, RANGE 39 EAST, ON KEY LARGO, ACCORDING TO MODEL LAND COMPANY'S PLAT BY P.F. JENKINS, CIVIL ENGINEER, RECORDED IN PLAT BOOK 1 AT PAGE 68, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, LYING NORTHWESTERLY OF STATE ROAD NO. 5 (U.S. NO. 1), KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00087350-000000.

(FILE #2016-214)

(10:22 a.m.) Mr. Kevin Bond presented the staff report. This request is for variance to the access standards in the Land Development Code that would result in two curb cuts less than 400 feet apart, with one of those curb cuts being less than 400 feet from an existing street on the same side of U.S. 1. The code requirement is that curb cuts must be spaced at least 400 feet from one another and from streets on the same side of U.S. 1. This is a preliminary variance relating to a pending major conditional use permit. This is the Dollar Tree property along with the Island Marketplace located at mile marker 101. The two existing driveways are approximately 120 feet apart and Kay Drive is 483 feet to the north. The existing median opening is directly across from the south driveway. The proposed plan would increase the spacing between the two driveways

from 120 feet to 248 feet, and reduce the space between the north driveway and Kay Drive to 250 feet. Spacing to Lauderdale Drive would remain the same.

Code Section 114-199 requires nonconforming access to be brought into compliance due to the reconstruction of the retail floor area. In order to grant the requested variance, the applicant must demonstrate certain standards are met. This is an existing driveway configuration and the improvements meet FDOT standards. Failure to grant the variance could result in inadequate driveway circulation, hampering vehicular circulation for not only customers, but emergency vehicles, delivery vehicles and garbage trucks. Staff found the proposed development would bring existing driveways into compliance with the current FDOT standards, includes a southbound right-turn deceleration lane for the northern driveway, and an improved two-driveway configuration which meets public health and safety standards. Staff found compliance with the unique and peculiar circumstances criteria because the design improves vehicular circulation and brings almost all aspects of the property into full compliance with the Land Development Code. There are no other similarly situated properties in the immediate neighborhood. The variance is not being based on disabilities, handicaps or domestic difficulties of the applicant. This is the minimum variance necessary to provide relief. Therefore, staff is recommending approval with the two conditions outlined in the report. Chris Collins is the agent for the property owner and also has a presentation.

Mr. Collins of CPH, the architecture and engineering firm representing the landowners, was sworn in by Mr. Wolfe prior to speaking. He explained they will be coming before the Commission again for a major conditional use approval, but needed to apply for this variance first. The property has two limitations with the redevelopment; one being that the existing Dollar Tree is remaining with everything around it being redeveloped; and two, that there is an existing median opening which is critical to the development. There is a proposed amendment to the Land Development Code which would remove the 400-foot spacing requirement if the roadway speed was 45 miles per hour or higher, which this property is. They had been operating under the impression that this amendment had been approved in early 2016, but were notified in the later part of 2016 that there had been an appeal keeping the prior code requirement in effect. At that point is when this variance was applied for which pushed the major conditional use to February. It is critical to maintain the existing full access to U.S. 1 and, in addition, have a driveway to the north to properly circulate emergency and delivery vehicles as well as guests. The proposed site plan meets all FDOT criteria and FDOT has provided a letter in support of the redevelopment confirming the spacing meets their requirements. The applicant believes access is being improved. If the variance is not approved, the driveway would need to be moved, resulting in a conflict with the median cut, causing northbound vehicles to make a U-turn and maneuver across traffic lanes to another driveway which is a more dangerous scenario. Mr. Collins indicated a lot of his presentation had been covered by Mr. Bond, and he is available to answer questions.

Commissioner Miller asked if the deceleration lane was on the north entrance. Mr. Collins confirmed this and explained that it would meet all FDOT criteria. Commissioner Lustberg asked Mr. Collins to show how traffic would flow on U.S. 1 based on the existing median cuts. Mr. Collins explained and demonstrated using the site plan on the overhead screen. Commissioner Lustberg noted there was only the curb cut in front of one of the two driveways.

Mr. Collins stated that was correct, and the other driveway provided only right-in/right-out access. Commissioner Lustberg asked if this would be made clear on the property so drivers didn't turn right and go down and make a U-turn through the median cut, and Mr. Collins indicated it would be. Commissioner Miller stated it didn't matter, that people would still do it.

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

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

3. OMAR FERNANDEZ, 643 SAWYER DRIVE, CUDJOE KEY, MILE MARKER 21 (OCEAN SIDE OF US1): A PUBLIC HEARING CONCERNING A REQUEST FOR A HOME OCCUPATION SPECIAL USE PERMIT, THE REQUESTED APPROVAL IS REQUIRED FOR THE PROPERTY OWNER TO OPERATE A FEDERAL FIREARMS LICENSED (FFL) SALES AND TRANSFERS BUSINESS FROM HIS RESIDENCE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 40, BLOCK 3, CUDJOE GARDENS SECOND ADDITION, (PB4-159), CUDJOE KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER #00173830-000000.
(File #2016-214)

(10:33 a.m.) Ms. Janene Sclafani presented the staff report. This request is for a home occupation special use permit for property owner Mr. Fernandez in order to operate ACTO Guns from his current residence. ACTO Guns was previously operating from his previous residence. Mr. Fernandez relocated, at which time he applied for this new home occupation special use permit. During the 30-day appeal process, letters of objection were received and are in the file. His property is located in the Improved Subdivision land use district where home occupations are permitted. Staff recommended approval to the Planning Director with the conditions on file and the Planning Director's proposed decision was for approval. Surrounding property owners were notified and letters of objection were received by the County, which is why the item is before the Planning Commission for a decision.

Mr. Omar Fernandez introduced himself as the applicant and was sworn in by Mr. Wolfe. He explained he has owned a home in Cudjoe Gardens for 24 years, along with his wife. His two sons no longer live at home. The family originally built their home in Cudjoe Gardens West on Second Avenue, two blocks from his current home on Sawyer Drive. As background, Mr. Fernandez has had a 28-year career with the Hialeah Fire Department and in 2000 began working with the Monroe County Sheriff's Office. In 2002, he resumed his firefighter career with Monroe County and retired as a captain in 2015. He explained that he cares deeply about his neighbors and neighborhood and would never allow any of his activities to become a nuisance in any way to the community. Mr. Fernandez explained he had received his Federal Firearms License from the Bureau of Alcohol Tobacco and Firearms on February 1, 2016, while residing at the Second Avenue West address. The license is difficult to obtain involving a lengthy process of character and background checks and a routine visit to his home by an ATF agent. Upon receiving his home occupational license after a thorough review by county staff, he also obtained a Monroe County Business Tax Receipt and a Florida Resale Certificate for

quarterly sales tax filings. The fire marshal wrote a letter certifying that his home has no fire deficiencies and complies with NFPA 101, the national fire life safety standards.

The sole purpose for the home occupation license is to transfer his current license to his new home. A physical address is required to maintain his FFL. These same requirements were met at his previous residence. Neighbors there raised no objections throughout his operations there. The residence is only used to work on the computer and to occasionally receive packages averaging less than once a month. This is no different than a resident working as a realtor, commercial fisherman or attorney from their home. All transactions are conducted online or by phone. Packages from FedEx or UPS must be personally signed for or it's not delivered. The package is then taken to the buyer's premises. The buyer does not get possession until they are approved by the FBI background check run online while at the buyer's location. Responses are routinely received immediately from the FBI through FDLE in Florida. A concern was raised about a website created stating he held concealed weapons classes at his home. This website was created by a friend and that statement was placed on the website through miscommunication. He is not certified to conduct concealed weapons training and interested parties are referred to a friend. He has never held a concealed weapons class at his home, nor does he plan to do so. Due to these concerns, the website has been taken down and no new website will be created. Sales are on a case-by-case basis. Once received, they are logged as required by the ATF, placed in a locked safe until delivery which is usually the same or following day. Firearms are not stockpiled at his home.

There was another erroneous statement made that he would be selling all manner of firearms including assault weapons. An AR-15 or AK-47, which are commercially available to anyone passing a background check, may look like an assault rifle but is not. Assault weapons fire multiple rounds with a single squeeze of the trigger; i.e., are fully automatic. The ATF requires a separate license to sell automatic weapons, silencers and short-barreled rifles and he does not hold that license nor does he plan to obtain it. His home will remain a single-family residence and will not look like a retail store. There will be no signs or a showroom or customers coming to the home. The county license prohibits this and this has never been his intent. The home occupation will never become a nuisance or danger to the community.

Commissioner Lustberg wanted to double check that when packages were received for a customer that the item was taken to the customer rather than the customer coming to his home. Mr. Fernandez explained that he makes arrangements with the customer to meet either at the customer's residence or place of business. He does not want anyone coming to his house and this is how he's always conducted business.

Commissioner Miller asked if the County license prohibited certain things and asked for a copy. Mr. Fernandez said it did, and that the license should be in the paperwork. Ms. Santamaria indicated that the standards were on page three and four of the most recent staff report. Mr. Williams cited Section 130-124. Commissioner Miller asked for clarification between the County license and the Federal Firearms License. Mr. Fernandez clarified the federal firearms license had already been obtained from the ATF and this was strictly for the home occupation license. Commissioner Miller asked for the definition of a 01-type firearm license. Mr. Fernandez explained he could sell, buy and receive any type of firearm that is not a National

Firearms Act qualified firearm, which covers automatic weapons, destructive devices, silencers, short-barreled rifles and shotguns. Commissioner Miller asked if a pistol was not considered an automatic weapon. Mr. Fernandez said they could be, but most pistols are not. Most are semi-automatic; one pull of a trigger with one round as opposed to one pull of a trigger with multiple rounds. Those weapons he cannot sell. The 01 type license prohibits sale of automatic weapons.

Chair Werling asked for public comment.

Mr. Thomas Fulweiler (phonetic) of Cudjoe Gardens was sworn in by Mr. Wolfe and stated he had been a previous next-door neighbor to Mr. Fernandez and his family for 10 or more years. He wanted to assure everyone that everything Mr. Fernandez had said was the absolute truth. Mr. Bill Hunter of Sugarloaf was sworn in by Mr. Wolfe and asked if Mr. Fernandez' previous address was in Cudjoe Gardens. Chair Werling answered that it was. Mr. Hunter then asked if the FFL was issued in 2016. Chair Werling responded that she believed that to be correct. Mr. Hunter was concerned about customers coming to the home and picking up firearms and Mr. Fernandez selling NFA weapons, and asked if the approval could be conditioned on those two things. Commissioner Lustberg stated that under the rules of a home occupation special use permit this is prohibited under (C)(5) and read the section aloud. Commissioner Wiatt noted that item 10 of the special use permit prohibits an increase in average daily automobile traffic. Chair Werling stated that no one should be able to see it, smell it or touch it. Mr. Wolfe added this has always been a part of home occupational permits. Mr. Hunter admitted that if the neighbors were concerned, they would be here and Chair Werling agreed. Mr. Hunter continued that he is still concerned about the severity and capabilities of the weapons and he is not sure a home occupational approval can be conditioned on something like that. Chair Werling responded that the FFL addresses that. Mr. Williams stated that the FFL is a type of a license, for lack of a better term, a traditional gun smith would obtain, not a retailer. The FFL restricts his abilities and if that license were to change, then the home occupational license would need to be readdressed. Mr. Hunter thought that sounded acceptable.

There was no further public comment. Public comment was closed.

Commissioner Miller asked if there were any change in the FFL license, would it make the home occupation license void. Mr. Williams responded that he hadn't dealt with it in some time, but believed a change would trigger a repeat visit from the ATF agents and the County would be put on notice of the change. Mr. Williams advised against Commissioners attempting to put stipulations on state and federal firearms regulations as this would not be a wise course of action for a local government agency. Mr. Devin Rains, Principal Planner, responded that the ATF agent had contacted the County to confirm Mr. Fernandez had a home occupation license in process to give him lawful use of his home, indicating there is coordination instigated by ATF with regard to the FFL license. Commissioner Miller wanted assurance that the County would be contacted if the license status changed, and also asked if there was a procedure for revoking a home occupational license. Ms. Santamaria indicated she had never revoked one and only a handful had been issued during her tenure, but that there is a process. Mr. Williams cited Section 131-24 and page four of four of the staff report, the last paragraph (H), adding that if the license is increased to the next step up, the ATF then has the right to show up at your home anytime,

anyplace, unannounced, show their badge and demand to be shown each and every automatic weapon on the log without warrant or due process, which is why most people do not obtain it.

Chair Werling added that her husband is a hunter and if someone purchases a gun and you're not physically at the location, but certified to own a gun, it must be shipped to someone who has a firearms license and there aren't that many in the Keys, so the gun would be shipped to Mr. Fernandez and then arrangements made to get it. Mr. Williams confirmed that she was correct, that any shipping of weapons has to be mailed to a local FFL, be signed in and delivered to the private citizen purchaser.

Mr. Fernandez wanted to add a couple points of clarification. Under his current license, he is subject to random visits by an ATF agent and they are very watchful. Also, in the period of time he has had the FFL and home occupation license, he has had only 14 transactions, 11 being firearm sales to friends and family. This is mostly a hobby and he enjoys it. Ms. Santamaria stated what could be done is under this home occupation, the Commission could state it is limited to the FFL license 01 and leave it at that. Commissioner Miller agreed, adding that would be his stipulation. Chair Werling asked for a motion.

Motion: Commissioner Miller made a motion to approve the home occupation license, stipulating it be limited to a 01 FFL. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Item 4 had been previously continued. Items 5 and 6 were read together per staff's request.

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP FROM RESIDENTIAL HIGH (RH) TO MIXED USE/COMMERCIAL (MC), FOR PROPERTY LOCATED AT 5713 FIRST AVENUE, SOUTH STOCK ISLAND, MILE MARKER 5, LEGALLY DESCRIBED AS BLOCK 34, LOTS 11, 12, 13, 14 AND 15, MCDONALD'S PLAT OF STOCK ISLAND (PLAT BOOK 1, PAGE 55), STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00124700-000000, AS PROPOSED BY STANDARD MARINE SUPPLY CORP; 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 INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN AND FOR AMENDMENT TO THE FUTURE LAND USE MAP; PROVIDING FOR AN EFFECTIVE DATE.

(File 2016-144)

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM URBAN RESIDENTIAL-MOBILE HOME (URM) TO MIXED USE (MU), FOR PROPERTY LOCATED AT 5713 FIRST AVENUE, SOUTH STOCK ISLAND, MILE MARKER 5, LEGALLY DESCRIBED AS BLOCK 34, LOTS 11, 12, 13, 14 AND 15, MCDONALD'S PLAT OF STOCK ISLAND (PLAT BOOK 1, PAGE 55), STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE #00124700-000000, AS

PROPOSED BY STANDARD MARINE SUPPLY CORP; 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 AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.
(File 2016-176)

(11:02 a.m.) Mr. Wolfe reminded the Commission that though Items 5 and 6 were being heard together, they would be voted on separately.

Ms. Emily Schemper presented the staff report. These two requests are for a FLUM amendment from Residential High to Mixed Use/Commercial and a Zoning Map amendment from Urban Residential-Mobile Home to Mixed Use. The property consists of five lots at the corner of First Street and First Avenue on Stock Island, is currently occupied by Car Quest Auto Parts, and had been a lawfully-established light-industrial use since the 1960s. This is a Tier 3 scarified site with surrounding uses consisting of mobile home parks, commercial retail, a restaurant and other light-industrial uses.

In 2012, the Planning Department issued a letter of development rights determination for this property that recognized the existing light-industrial use as lawfully established and also determined that it consisted of 9,963 square feet. That existing light-industrial use is not an allowed use within the RH FLUM category, and also is not a permitted use in the Urban Residential-Mobile Home Zoning district, so it is considered lawfully non-conforming to both the FLUM and Zoning categories.

In 2013, planning staff issued a letter of understanding regarding this property stating there was satisfactory evidence that this existing light-industrial use was lawfully established in 1992 and deemed non-conforming by final adoption of the Zoning Map. It also existed lawfully on the site in 1997 and was deemed non-conforming by the final adoption of the FLUM. The current Planning Department fee schedule includes a special provision for properties meeting those lawful non-conforming use requirements, making them eligible for a fee waiver if they propose to change their future land use and/or zoning to a category that would make the existing use conforming. These two applications both qualify for the fee waiver.

Additionally, the Livable CommuniKeys Plan for Stock Island and Key Haven have Strategy 2.2 and Action Item 2.2.1 that address non-conforming uses within that CommuniKeys area and instructs staff and the County to identify and change land use designations on parcels of land containing non-conforming uses and rezoning as appropriate. So this request is consistent with that strategy and action item within the Stock Island Livable CommuniKeys Plan.

In terms of changes in density and intensity for these map amendments, the change from Residential High to Mixed Use/Commercial, and the same for the change from Urban Residential-Mobile Home to Mixed Use would result in a decrease in permanent residential development potential, going down by 4.3 dwelling units. The total residential allocated density becomes .7 dwelling units making it not an option for the site. The transient density would go up by 3.6 rooms and spaces, but keeping in mind no new ROGO allocations are awarded for

transients, anything involving that would require moving transient ROGOs from a different site. The increase in floor area after these map amendments would be 12,500, keeping in mind the existing use on the site is almost 10,000 square feet already and has been there since the 1960s.

Commissioner Miller asked if Ms. Schemper was saying if transients could be brought in from another site, it would increase the density of this property under max net density. Ms. Schemper stated she did not have that in front of her, but if the max net density today was compared to the max net density under the new categories, it probably would increase because Urban Residential-Mobile Home doesn't even have a max net density. Commissioner Miller continued that the potential for increased density was here. Ms. Schemper stated that max net density requires the transfer of TDRs so, on this site, it would increase the potential number of units, but county-wide, there's no net increase because the development rights somewhere else needed to be retired. Commissioner Miller acquiesced that this was a good point.

Ms. Schemper continued indicating staff sees no problems in terms of compatibility with the surrounding area as the site is currently scarified Tier 3. There are no endangered species habitat focus areas or buffers. The adjacent uses include other light-industrial uses, commercial retail, restaurants and mobile home parks to the north. And, again, this use has been there since the 1960s so is consistent with the historical use. Staff found no adverse impacts on concurrency requirements for traffic, water, solid waste and sanitary sewer and this is consistent with the Comp Plan policies, the principles for guiding development, Florida statutes and the Livable CommuniKeys plan. The LDC requires the change be based on one of several factors, one being data errors. The applicant stated it was incorrectly zoned URM on the 1986 Zoning Maps as it has always been commercial. If the FLUM Amendment is approved, the Zoning Amendment needs to change the zoning to be consistent with the FLUM category as required by Florida statute. The applicant also stated these amendments address new issues because the commercial use of the property, although it may remain legally non-conforming, applying new zoning will make basic commercial activities such as installing a sign and other items less complicated.

For Item 5, staff recommends approval, changing from Residential High to Mixed Use/Commercial. For Item 6, staff recommends approval to amend the Zoning Map from Urban Residential-Mobile Home to Mixed Use. The recommendation is contingent on adoption and effectiveness of the accompanying change to the land use map amendment to keep them consistent. Ms. Schemper is available for questions and the applicant's representative, Laurie Thompson from Owen Trepanier's office, is also present for questions.

Commissioner Miller noted that a chunk of .72 acres was being taken out and the applicant states it is a mistake, though it is surrounded by URM. Ms. Schemper replied that what was being pointed out is when that zoning designation was given in the eighties, what likely happened was they looked at this area of Stock Island and said this is all mobile home parks, so it would make sense to zone it URM. Commissioner Miller asked if this business was there at that time, and Ms. Schemper indicated that it was and had already been there for over 20 years prior, noting that across the street to the south there is Mixed Use/Commercial zoning.

Commissioner Lustberg read aloud portions from the 2013 letter of understanding and asked for an explanation of what it would mean if this property were rezoned or re-FLUM'd as

Industrial/Commercial rather than Mixed Use/Commercial. Ms. Schemper stated she did not have all of the numbers in front of her but, by memory, believed the square footage would go up for commercial as it has a slightly higher FAR than other categories. Commissioner Lustberg continued, guessing that industrial might allow for uses not desired next to residences. Ms. Santamaria added, including heavy industrial. Commissioner Lustberg asked if Commercial would allow for greater floor area than would be allowed under Mixed Use, but not allow for residential or transient. Ms. Schemper responded she believed it to have increased floor area and smaller setbacks in the Commercial zone. In terms of what requires a conditional use permit is pretty similar. Commercial 1 and Commercial 2 zoning are very similar to Suburban Commercial and Mixed Use.

Commissioner Lustberg stated she definitely would not want to pursue industrial or Mixed Use/Commercial Fishing, but before making a decision would like to know what it would mean if it was re-FLUM'd as Commercial and then re-zoned as Commercial 1 or Commercial 2. Ms. Santamaria asked for a five-minute break to do those calculations. A brief recess was had.

Ms. Schemper explained, after doing the calculations, if this were proposed to be changed to the Commercial future land use category, the allocated density for permanent residences would be zero units, transient would be zero units, and the maximum floor area would be 15,625. The change then becomes minus 5 residential, minus 7.2 transient, and plus 15,625 square feet of non-residential.

Under the calculation for the current request to go from Mixed Use/Commercial, with the concern being about the transient units, if they tried to add transient units to the property, since the current 9,963 square foot building is already using 80 percent of the development potential, they would only be able to do 20 percent of the transient potential. The potential is 10.8 rooms under Mixed Use/Commercial.

Commissioner Miller asked if she was talking about the building footprint. Ms. Schemper said she was not, that it was a little confusing when comparing non-residential with transient and residential because non-residential is based on square footage while transient and residential are based on number of units. Commissioner Miller asked if it would matter if they put it on top of the building, and Ms. Schemper said it would not matter. So 80 percent of the development potential is used with the existing commercial. There is 20 percent remaining and 20 percent of the potential 10.8 rooms, the maximum would be 2 if they transferred in the ROGOs. Commissioner Lustberg spoke in terms of floor area between Mixed Use/Commercial and Commercial, with a difference of 12,500 and 15,625 equaling about 3,000 square feet more. She then read portions of the letter of understanding concerning amendments allowing increased density and a couple other policies concerning amendments affecting intensity, density or use of the land adjacent to or in close proximity to the Naval Air Station. This is different than what is in the staff report and the rules on how this works have changed between 2013 and now. Ms. Schemper asked whether it said it “would” or “may” increase, and believes that “would” is an error. Commissioner Lustberg responded that it states “would result in” and approval “may not be granted.”

Ms. Schemper stated it may be because at that time in the Comp Plan, in the density table, it was more general than it is today and estimated based on what the density, based on a grid, was for things like FLUM. That goes with URM zoning because it is one dwelling unit per lot. At that time in the Comp Plan it said approximately 1.6 dwelling units per acre. Commissioner Lustberg asked if they would have added everything together as opposed to figuring everything out and then figuring out how they could fit together. Ms. Santamaria interjected that in the 2010 Comp Plan, that policy had that Mixed Use/Commercial with a density of one to six dwelling units and it did not specify which zoning category that applied to. In the 2030 Comp Plan it was specifically stated that Mixed Use equals “this” and MI equals “that” so it’s very clear.

Laurie Thompson of Trepanier and Associates was sworn in by Mr. Wolfe. Ms. Thompson stated she had nothing to add and appreciated working with staff.

Chair Werling asked for public comment. Ms. Deb Curlee was sworn in by Mr. Wolfe and indicated she had two questions. First, was anyone living on the site that would be displaced; and second, if the applicant was only wanting to expand his business. The issue she has with these changes is that the plans aren’t known because they don’t have to say what they’re going to do. Commissioner Lustberg stated that when the Commission approves a map change, the applicant can do anything the map change allows. It’s more confusing to look at the plan because the plan could change and the property could be sold, so it’s irrelevant what they want to do with the property. Ms. Curlee stated it seemed backwards to her. Chair Werling reiterated that it is an auto parts store and there is no residential. Ms. Curlee agreed, but believes they are taking trailer areas where there were trailers. Chair Werling pointed out that there were never any trailers there, maybe before in the early sixties, but not recent..

There was no further public comment. Public comment was closed. Commissioner Wiatt stated he was good with the residential issue and going to Mixed Use.

Motion: Commissioner Miller made a motion to recommend approval of Item 5. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Miller made a motion to recommend approval of Item 6. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

7. MINKIN & JOHNSON, 243 HORVATH ROAD, BIG PINE KEY, MILE MARKER 30:
A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF 17 FEET, 7 INCHES TO THE REQUIRED 25-FOOT PRIMARY FRONT YARD NON-SHORELINE SETBACK, WHICH IS ADJACENT TO THE HORVATH ROAD RIGHT-OF-WAY. APPROVAL WOULD RESULT IN A SETBACK OF SEVEN (7) FEET, FIVE (5) INCHES. THE VARIANCE IS REQUESTED FOR THE DEVELOPMENT OF A PROPOSED SINGLE-FAMILY DETACHED DWELLING. THE SUBJECT PROPERTY IS LOT 13, BLOCK 8, CAHILL PINES AND PALMS (PLAT BOOK 3, PAGE 94), BIG PINE KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00245550-000000.
(File 2016-162)

(11:35 a.m.) Mr. Kevin Bond presented the staff report. This request is for a variance for a primary front-yard setback of 17 feet, 5 inches. The requirement is for a 25-foot primary front-yard setback, so the variance would be for a reduction of 17 feet, 7 inches, for a new single-family detached residence. The property is located on Big Pine Key ocean side, reached via Newfound Boulevard, on Horvath Road and is at the end of the street. The survey shows the road terminating at the top left, and the mean high water line with the canal is to the bottom right. Setbacks are measured from the mean high water line and the property lines. The proposed site plan shows the residence and the required setbacks. Along the top is the required five-foot secondary side setback. There are 20-foot shoreline setbacks to the right and bottom. The curved line is the required 25-foot primary setback from the end of Horvath Road, continuing towards the left where there is a 10-foot primary side setback along the left-hand property line. The variance requested is for that top left corner of the house.

As with all variances, the applicant must demonstrate compliance with eight criteria for staff to recommend approval. Staff found that the applicant failed to meet two of the eight criteria. One is failure to grant the variance would result in exceptional hardship to the applicant. Failure to grant the variance in this case would mean the proposed dwelling must meet all of the required setbacks. The resulting buildable area for this property, if it had to meet all of the required setbacks, would be 30 feet wide and 48 feet long or 1,440 square feet, plus the leftover area as a result of the curve added onto that. Most lots in the subdivision are 60 by 100 feet. After subtracting required setbacks for those regular 60 by 100 lots the buildable area is 2,475 feet. By adhering to required setbacks, they would have a smaller buildable area, but it would still be buildable.

There are other similarly-situated lots in this subdivision, shown on page five of the staff report. They are all at the end of the street and on canal corners. Out of these lots only one has a house currently on it, on Lobstertail Road, and is a 1,852 square foot residence built in full compliance with all required setbacks and no variance in a footprint of about 1,600 square feet. Staff found the burden on the property owner was not substantially different in kind or magnitude from the burden imposed on other similarly-situated property owners in the same subdivision.

The other criteria we found not in compliance is that the property owner has unique or peculiar circumstances that apply to this property that don't apply to other properties in the same zoning. The property isn't unique as there are other similarly-situated properties in the same subdivision as well as the rest of the county in the IS district. The applicant states the shoreline has been eroded over time, although there was no documentation submitted for that. It is possible the shoreline originally meandered the way it's shown on the survey. That's not uncommon, but there could be other reasons for the shoreline the way it is. The canal is also plugged and is not navigable, there are no boats shown in this aerial, so it's less likely there are tides affecting shoreline so the fact that the shoreline meanders is not a unique characteristic of the property.

Staff did find that the variance would not give the applicant special privileges denied other properties in the immediate neighborhood as there was no prior setback variance application in this subdivision. If the variance is approved, it would give the applicant a larger buildable area. Per the application, they would like a three-bedroom, two-bath 1,352 square foot house. The

property appraiser's records indicate the average size of residences in this subdivision is 1,274 square feet, so it's within reasonable range of the average size in this subdivision. Staff recommendation is denial based on the fact that two of the eight standards were not met. The applicant is here. Mr. Bond stated he is available for questions, now or later.

Commissioner Miller asked about the parcel beyond the curved section and how wide it would be if the curved section were built. Mr. Bond indicated it was about 15 feet.

Christina Weinhofer with Sweetwater Homes was sworn in by Mr. Wolfe and spoke on behalf of the applicant. This is an unusual property. It is on a plugged canal but does have significant erosion. After walking all of the lots in the neighborhood, this is the only lot that has 11 foot of erosion off of the corner. Most of the homes in the subdivision were built in the eighties. One has a dock so it has no erosion. The other vacant lots do not appear to have the same erosion as this lot. Being at the end of a dirt road, the applicant is required to have two 25-foot setbacks and two 20-foot setbacks from two corners. A 1,000 square-foot home is not going to accommodate a military family of four. They are asking for some reprieve. With maintaining the 20-foot setback on the canal sides, they would like help on the other side. There is plenty of room for fire truck and emergency vehicle access.

Commissioner Miller stated that the problem is that they already do mess with the 20-foot setback because there is a rule on the books that says if you have less than 4,000 square feet of property you can go within 10 feet of the canal. If this is allowed in some properties, a balcony needs to be allowed in that 20-foot setback. Right now there is no way to address it, but that would give this owner more space to have a balcony 10 feet wide.

Commissioner Lustberg asked if staff could address what Mr. Miller had just stated about shifting the house into the setback on the canal. Ms. Santamaria stated the house is not allowed to be within the shoreline setback. The provision referred to by Commissioner Miller is only for parcels less than 4,000 square feet. This parcel is approximately 7,200 square feet. Commissioner Miller stated that's what he was referring to and that there is no provision. But getting on the soapbox, he does not think it is equitable to allow some properties to go within 10 feet of the canal and other properties within 20 feet. Accommodation needs to be made and the answer would be an open balcony, not walls, and this is a good example.

Ms. Santamaria asked for clarification, if they could do an open balcony on this home if it would address the issues. Commissioner Miller stated the homeowner would have more of an ability to enjoy the home, assuming it would give the owner some kind of relief, though right now there is no ability to do that.

Commissioner Wiatt responded to Commissioner Miller that though he did not disagree with him, this would probably be better suited for new business, and he would throw in stairwells as well. Chair Werling indicated there was the porch on the front. Ms. Weinhofer concurred, a small porch on the front and the entry porch on the rear, stating the view for this property was actually on the roadside to the west.

Commissioner Miller stated his home has basically the same configuration with a 15-foot wide section sticking out, but after working with it realized he could build up. Ms. Weinhofer stated they did not have that luxury as a military family could not afford go two floors and a half-million dollar home. Chair Werling inquired if this home was a modular, which Ms. Weinhofer confirmed. Commissioner Wiatt asked how long the property owner has owned this property. Ms. Weinhofer responded a year or so. Commissioner Wiatt noted it could be assumed the erosion did not take place in the last year. Ms. Weinhofer agreed.

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

Commissioner Miller stated he feels for the homeowner wanting to maximize the space there, reiterating that this needs to be addressed in the future, but not with walls to maintain views.

Motion: Commissioner Miller made a motion to uphold the denial. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Chair Werling apologized to the applicant and Commissioner Lustberg explained that in the variances, they are not allowed to consider the hardship of the applicant. If it costs too much to go up another story, if the family is bigger than would fit within the footprint, these things would fall under the hardship of the applicant. Part of the reason for this is so the Commission doesn't give something to one person to help them, and then the owner turns around and sells it to someone else. It's a very dangerous road to go down to give something to one, and then not to another who doesn't have the same personal issues. Mr. Williams added that the short version of the variance law is that the hardship can't be self imposed. You can't create the hardship whether by family size, career choice, income or otherwise or building something in a place you shouldn't have. That can't be used in your own favor.

9. BUCKTOOTH ROOSER FARMS, 29943 OVERSEAS HIGHWAY, BIG PINE KEY, MILE MARKER 29.9: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE SPECIAL USE PERMIT, WHICH WOULD ALLOW BEER AND WINE FOR SALE BY THE DRINK (CONSUMPTION ON PREMISES) OR IN SEALED CONTAINERS FOR PACKAGE SALES, THE SUBJECT PROEPRTY IS LEGALLY DESCRIBED AS LOTS 1 AND 2, BLOCK 1, BIG PINE KEY INC. (PLAT BOOK 5, PAGE 4), BIG PINE KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00256540-000000.

(File 2016-209)

(11:53 a.m.) Mr. Kevin Bond presented the staff report. The requested alcohol license is for a 2COP which would allow beer and wine for sale by individual drink, consumption on premises, or in sealed containers. This is for the Bucktooth Rooster Restaurant, which is a new restaurant in a location that has been a restaurant for a long time located near mile marker 30 bay side. The property was built to be a restaurant as early as the late sixties and has continuously operated as a restaurant. The property previously had a 2COP license that expired in March of 2015, though the County found no record of that, so the new owner needed to apply for their own license. The applicant was found to be in compliance with the five criteria for alcohol beverage use permits. The existing parking is 36 spaces, where 17 spaces are required by code. Staff recommends

approval with three conditions outlined in the report. The applicant is here and Mr. Bond stated he is also available for questions.

Chair Werling asked if the applicant would like to speak, adding she has heard very good things about the restaurant and samples would have been appreciated.

The applicant, Rob DeGennaro, was sworn in by Mr. Wolfe and spoke on his own behalf, indicating that the prior 2COP license had fallen through the cracks and was not renewed. There have been several inspections by the health department and fire marshal and both have signed off. People love the restaurant now, and this will further accommodate the folks that want a beer or glass of wine with their meal. The hours are short, opening at 6:30 and closing around 9:30. They are not a bar, but a restaurant only looking to accommodate the locals. Commissioner Miller asked if it was quiet, with no music. Mr. DeGennaro stated there was only background music, a fun place with great food.

Chair Werling asked for public comment. Ms. Deb Curlee remarked that she has a 30-year background in food and beverage and loves the place, adding that it's wonderful to see people who open a place that "get it." Ms. Curlee asked if a package carryout license had to go with an application for wine and beer or if it was separate. Mr. Williams responded that a 2COP is what is being requested, and a 6COP is for package sales. Commissioner Miller announced, "Once again, folks, that's the Bucktooth Rooster Farms."

Chair Werling asked for further public comment or testimonials. Mr. Bill Hunter echoed Ms. Curlee's comments. Chair Werling then declared public comment closed.

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

NEW BUSINESS

Chair Werling asked if there was any new business. Commissioner Miller asked to discuss the setbacks since this has already been done for certain properties. He explained that he began building his home in 2004, and then things changed in 2005 allowing properties with 4,000 square feet or less to build 10 feet from the canal. With his neighbors able to build 10 feet from the canal and he was 20 feet back on two canals, they could obstruct his view down the canal because he had a property with 4,500 square feet. He does not see the equity in that where the smaller lots oftentimes end up having more square footage to build. Though he does not want to see walls go within 10 feet of the canal, and even that has already been done, he believes a balcony would be appropriate which would allow a line of sight. People may start closing in their balconies but that would be a matter for Code Enforcement.

Commissioner Wiatt also mentioned that the modular homes in the Keys have no soffits or roof overhangs. If a code change is being addressed with respect to setbacks, this topic should also be addressed. He agrees with exempting, say, five feet of balcony and stairways from shoreline and setback requirements, along with the soffits or roof overhang. The modular homes that are going up aren't good construction because the drip edge is too close to the walls, so water ends up

dripping down the wall and rotting the wall out over time. This is an example of a code requirement facilitating poor construction and it should be changed. And it looks like hell.

Commissioner Miller agreed and added if this is addressed, perhaps an amelioration would be instead of 60 percent, that you require more so that a home 68 to 70 feet long would not have 10 feet along the whole side, but allow some balcony, not stay with the same setback requirement if able to get this “special thing” because it would be a “special thing” since we’re talking about environmental setbacks.

Ms. Santamaria asked if he was suggesting a special approval process or simply that they could do this. Commissioner Miller stated a special approval process where the amount of setback required, swale area, open space, would be increased so that a balcony along a 70-foot home would not be 10 by 70, but maybe 10 by 30 or 10 by 40. Mr. Williams asked if he was referring to only platted lots with dual-canal frontage or single-canal frontage or all platted lots. Commissioner Miller stated that was another issue and his comment went to dual-canal issues. That’s the problem he sees. In his neighborhood there are 400 properties and approximately 15 corner lots. Mr. Williams noted as to the item from today’s agenda, there were another four to six similar vacant lots in that neighborhood that could come back for this, too, so it needs to be decided what kind of lots this should apply to.

Commissioner Wiatt thought the line-of-site concern will be the same on a single-canal lot. Limiting it to double-canal lots won’t address the single-canal lots. There are a lot of variance requests for a lot of small lots and people want to build the biggest homes on them as possible. If making any kind of a concession to setbacks, it should be on shoreline setbacks because that really doesn’t have any effect on neighboring properties other than line of site. There is already the 10 foot for lots of 4,000 feet or less, so folks with lots in excess of that are being penalized. A five-foot allowance for balconies and stairs to go into that setback for properties larger than 4,000 square feet, allow them to go out five feet. No stairway needs to be wider than five feet nor, really, any balcony. Commissioner Miller stated a five-foot balcony for him would not be feasible. Commissioner Wiatt clarified that he was talking about new construction and the issue would be that you wouldn’t need that additional five feet of variance. Chair Werling added she is more inclined to the shoreline because you’re not encroaching on someone else’s property, but that the problem with the variance is if you’re giving it to one, you’re taking it from somebody else.

Commissioner Lustberg disagreed with the idea that if you’re on the shoreline, you’re not impacting the neighbors as much stating that would only be true on open shoreline, not when your neighbor is sharing a canal in the back yard. When she lived on a canal she interacted with the people across the canal more than those next door or across the street. Chair Werling commented that that was because they make you. Commissioner Lustberg feels moving more into the back yard has a bigger impact on the neighbors than next door where there’s an option for a landscaping buffer. Commissioner Lustberg then asked for clarification on whether this was about getting rid of the ability to build your house into the 10-foot setback, instead of having 20 feet, and allowing everybody, not just people with the smaller lots, to build stairways and decks into that space.

Commissioner Miller responded that it wouldn't be allowing the walls of the home to encroach into the 20-foot setback, but allowing a balcony; and increase the open area required from 60 percent so it wouldn't be a huge balcony but give some relief, because balconies are "what we do down here." Commissioner Lustberg stated that for right now, only people who have small lots are allowed to go into that space. Commissioner Miller clarified that was for lots of 4,000 square feet or less. Commissioner Lustberg commented that this would open it up to people with larger lot sizes to build into it with a balcony. Commissioner Miller confirmed that that's what he was saying. Commissioner Lustberg asked if he was removing from the people with the 4,000 square foot lots or less, the ability to build walls in that space. Commissioner Wiatt responded, no, he wasn't looking at taking that away. Chair Werling agreed. Commissioner Miller stated he was, because he doesn't agree with obstructing the overwater views. They are important and the balcony is a way of dealing with this. Walls within 10 feet of the canal may give more privacy, but blocks the view down the canal. Chair Werling interjected that there is no guarantee of a view. Commissioner Lustberg asked if this was something that could be changed or if there were state regulations that would make this an academic discussion. Ms. Santamaria stated she was unaware of any state regulations, but it would be a change to the Comp Plan and Code and would go to the state for review and comment. The state could object to it and is pretty harsh on shoreline setbacks.

Commissioner Miller stated he was not looking for more habitable space, and a balcony would not be more habitable space. Ms. Santamaria summarized items mentioned; generally address gutters, overhangs, soffits and have an allowance in the setbacks. It had been previously discussed about setting a standard for very small parcels, the 50 by 50, that there is a max for those. Address shoreline setbacks for parcels greater than 4,000 square feet to allow provisions for open balconies and open stairwells. Consider open space ratio and possibly an exemption of five feet, addressing stormwater and vegetation as well. And then, maintain the existing provision where the parcel is less than 4,000 square feet can still build in the 10-foot setback.

Commissioner Miller stated he was going to come clean and disclose that he gotten a balcony under another planning director based on a special letter of approval and that it is 8 feet wide and 35 feet long. That's why he said his home was not complete until getting the balcony. His home is 20 feet wide, 18 feet wide between walls. On the end where the curve was taken out it is 13 feet wide between walls, just like the property before the Commission today. Yet, the home next door could be built 10 feet from the canal because they had 500 square feet less property. That is not equitable when considering overwater views.

Commissioner Lustberg voiced a thought, while thinking about soffits and gutters, et cetera, we want people to have nicer-looking overhangs which are better for the house, which could be put into community character, so while looking at giving people the ability to go into the setbacks in order to have this, the problem is that it doesn't matter how much is allowed, people want more and more and more. Could it be put in the building code that houses are required to have some form of runoff as a housing design or is it overreaching? Mr. Williams stated that gets into the building code. An additional item to include in terms of things that can encroach on setbacks would be raised attached air conditioners. Commissioner Miller stated that could get nasty as it causes noise. Mr. Williams stated he only wanted to mention it. Commissioner Lustberg thought a discussion should be had where everything is on the table. There are certain things that

are always approved in terms of variances in the setbacks, in which case, why have a variance process for it; such as paving stones next to the house was a variance process. However, she is hesitant to get rid of the boundary between properties as a protection for the neighbors. Chair Werling agreed.

Commissioner Lustberg further stated that people should not be encouraged to build big things on lots that aren't designed for it. Commissioner Wiatt agreed, adding if people are going to build as big as they can, that means no soffits or overhangs. There must be something that can be done saying we're not taking your square footage away from you, but if you do build a soffit or overhang of 16 inches, that is allowed. They aren't getting anything extra other than the architectural benefit of having the overhang from an aesthetics and better construction point of view.

Commissioner Miller again used his home as an example of having no overhangs because he couldn't spare it on the inside of the home and, as a result, on the west side he has mildew because the water runs off the house. Commissioner Miller had one more disclosure regarding installation of a gutter on the west side of his home. Chair Werling noted staff was being held over into lunch. Mr. Bill Hunter asked if allowing a balcony, if it would be covered with a roof. Chair Werling responded, a roof, but no walls. Commissioner Wiatt added that it still needed to be discussed. Mr. Williams stated that it would come under the discussion of whether you want open air or partial enclosures with screens, it would need to be defined. Commissioner Miller closed saying they could create about 300 scenarios.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:20 p.m.