

PLANNING COMMISSION
April 24, 2019
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, April 24, 2019**, 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 Debra Roberts

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
William Wiatt	Present
Ron Miller	Absent
Tom Coward	Present
Joe Scarpelli	Present

STAFF

Emily Schemper, Acting Sr. Director of Planning and Environmental Resources	Present
Peter Morris, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Devin Rains, Planning & Development Permit Services Manager	Present
Bradley Stein, Development Review Manager	Absent
Debra Roberts, Planning 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. Debra Roberts confirmed receipt of all necessary paperwork.

ANNOUNCEMENT

Mr. Wolfe announced that Commissioner Miller had just called in sick. There being only four Commissioners present, applicants/appellants could elect to postpone their hearings as they are entitled to have five Commissioners present.

Mr. Lee Rohe, representing Mr. Edwin Handte, announced that he would like a continuance for Items 1 and 2. Due to various Commissioners having pre-scheduled absences, Items 1 and 2 were continued to a date certain of July 31, 2019.

Motion: Commissioner Wiatt made a motion to approve the requested continuance of Items 1 and 2 to the July 30, 2019 meeting. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

APPROVAL OF MINUTES

Chair Werling stated that approval of the February minutes would be postponed until the May meeting.

A break was taken from 10:08 a.m. to 10:15 a.m.

Mr. Robert Charney elected to go forward with Item 3, with only four Commissioners present.

SWEARING OF COUNTY STAFF

Not required.

CHANGES TO THE AGENDA

Items 1 and 2 were continued to July 30, 2019.

MEETING

3. ROBERT CHARNEY; 172 FLORIDA AVE LLC, 172 FLORIDA AVENUE, KEY LARGO, FLORIDA, MILE MARKER 92, FLORIDA BAY SIDE: A PUBLIC HEARING CONCERNING AN APPEAL, PURSUANT TO SECTION 102-185 OF THE MONROE COUNTY LAND DEVELOPMENT CODE, BY THE PROPERTY OWNER TO THE PLANNING COMMISSION CONCERNING A LETTER OF DEVELOPMENT RIGHTS DETERMINATION DATED OCTOBER 31, 2018 BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS BLOCK 2, LOT 16 AND 17, TAVERNIER SUBDIVISION (PLAT BOOK 1 PAGE 105) MONROE COUNTY, FLORIDA, HAVING PROPERTY ID NUMBER 00478760-000000. (File 2018-217)

Mr. Devin Rains, Planning and Development Permit Services Manager, presented the staff report. This is an appeal of the findings of the letter of development rights determination. This property is located at 172 Florida Avenue in Tavernier, approximately mile marker 92, bay side. Mr. Rains presented photographs showing the subject property and surrounding properties. The structure in question is Mixed Use Zoning, having a separate garage structure on the property. The building permit history reflects structure additions and maintenance. The pre-ROGO history from 1967 through 1988 begins with the 1967 original building permit for a residence and business, a 25-by-30 two-story structure containing a 2-bedroom dwelling unit. In 1967 a permit was issued for addition of first-floor storage and second-floor living area for watchman. The remaining permits are for the accessory structure, a one-car detached garage, and other later work such as reroofing, awnings, windows, doors, repairs, et cetera.

The 1967 permit was discussed and compared to current photographs. A set of stairs is seen leading to the second floor, and the floor plans reflect two units. The ground level reflects business occupancy on the left with an office area and bathroom. The permit states the type of

construction is residential/business, two-story. The first floor consists of an overhead door leading into one large space, illuminated by overhead fluorescents, a window to an interior office space and a bathroom. The second level enters into a kitchen area, a common living/dining space and a full bathroom which is also accessed by one of the two bedrooms. A first-floor business occupancy and one second-floor dwelling unit is reflected in 1967. In 1976, an addition was permitted. At that time a new overhead door was permitted and an extension of the first floor business occupancy and the second floor was permitted as watchman's quarters, accessed by an additional set of stairs coming onto a porch and entering into the unit. These are the two units recognized through the building permit process.

Staff recommends the Commission uphold the October 31, 2018, letter of development rights determination which does recognize the two permanent residential dwelling units having been lawfully established on or about July 13, 1992, and exempt from the ROGO allocation process; though unable to recognize four permanent residential dwelling units as requested by the owner. This is established through the building permit history through that time, backed up by property record cards and aerial imagery. Anything constructed after 1992 would have been required to have had building permits and ROGO allocations.

Mr. Steve Williams asked Mr. Rains to clarify that there are three different bedrooms, two of which were approved in 1967 to create one dwelling unit, and then in 1976 a second dwelling unit was permitted. Mr. Rains confirmed that to be staff's position. Commissioner Wiatt asked how many kitchens were in the building. Mr. Rains responded that he had not toured the building as it is currently occupied, but rather relied on the historical records on file. There is a memorandum of understanding with the State of Florida describing what constitutes a dwelling unit and it can be a combination of things, generally in threes, such as a separate or inter-lockable entrance within the unit, a kitchen and a full bath. Chair Werling asked if any of the units upstairs were accessible from an interior stairwell connecting to the business downstairs. Mr. Rains responded that the permits and observations reflect only independent stairways to each of the upper-floor units.

Mr. Robert Charney, the applicant, after being sworn in by Mr. Wolfe, gave a brief history of his knowledge of the property and his ownership. Mr. Charney explained that he has owned Mangrove Marina across the street from the subject property since 2009. He purchased the subject property in approximately March of 2017, as he often has workers who are in need of housing. Prior to that, it had always been what it currently is, a two-story apartment building with a garage. At some point in time he had applied for an LDRD. Mr. Rains was able to substantiate two of the four units present, which are those on the second floor. The permits or existence of the two ground-floor units could not be established. Mr. Charney presented photographs reflecting two individual doors entering into two separate apartments on the ground floor, each having a kitchen, bathroom and bedroom, and are currently occupied. When the LDRD came back with only two, Mr. Charney attempted to find documented evidence of the preexistence of the remaining two dwellings prior to 1992. He found that the utility companies do not retain records that far back, and there has always been one water meter for the entire property. Mr. Charney then started knocking on doors and talking to neighbors. He has affidavits in his packet from many people who have lived in this neighborhood for their whole lives, many being third-generation residents, who have provided substantiation that this has

always been a four-unit apartment building, which is what it was when he acquired it, and since he had acquired the marina. Some of the neighbors had volunteered to come and speak on his behalf at this meeting. However, none wanted to make the drive from Tavernier to Marathon for that, so he has no firsthand witnesses present.

Commissioner Wiatt asked whether Mr. Charney had found any old lease agreements from anyone who had actually lived there. Mr. Charney had not. Commissioner Wiatt indicated he had reviewed the affidavits provided and that the level of information in them was pretty sparse. Mr. Charney added that he had found some old records from when it was originally a house back in 1957, and then was converted with some storage downstairs. After that, it was converted into an apartment building and has been so for the last thirty to forty years.

Mr. Williams interjected that though there have been some written statements submitted to the Commission by people, they are hearsay, and he would not concur legally that they are affidavits as they are not sworn or notarized.

Commissioner Wiatt stated that without the building permits, a large body of evidence is required. Mr. Charney stated he would have had the statements notarized if he'd thought it would make a difference. He would be willing to go back and get the statements notarized. He added that these statements were not given flippantly, and he'd had to discuss at length with many of these people what he was doing and why. Commissioner Wiatt added that finding someone who had actually lived there prior to 1992 stating it was in fact four separate units and they lived in unit number three would provide a better level of familiarity. Having no building permit ratchets up the amount of additional information needed to justify allowing this. Mr. Charney asked if he could acquire and resubmit this type of evidence. Mr. Williams stated the County would object to a continuance. Mr. Charney asked for either a continuance, postponement or to reschedule to allow him to collect the information that would allow the Commission to make a more informed decision. He would like to accept the prior invitation to wait for five Commissioners. Mr. Williams stated that this is the middle of the trial and a time-out cannot be requested at this time. The planning decision had already been reached. However, Mr. Charney could reapply for another LDRD with additional information. Commissioner Wiatt confirmed there would be nothing to prohibit Mr. Charney reapplying with Ms. Emily Schemper. Ms. Schemper did emphasize that there would be no guarantee that it would change things. Mr. Charney asked if he were to reapply and submitted evidence that people had actually witnessed the kitchens in the two lower units, if staff would consider that. Ms. Schemper indicated that the prior evidence would still be evidence and would not be ignored. The Code requires at least two pieces of evidence, and there is a defined list of what those items can be. Affidavits are not a guaranteed piece of evidence and would need to be looked at for validity, and there would be secondary evidence required as well.

Mr. Charney again asked if he could have this appeal tabled or postponed rather than going back and reapplying. Mr. Williams explained that this is an appeal of a staff decision that must be performed in a certain time frame. Appeals are one of the Commission's more unique jurisdictions that they do. Mr. Wolfe noted that there is an avenue at least for him to reapply. As stated by Ms. Schemper, Mr. Charney would likely still lack that second piece. Chair Werling believed a discussion could be had with staff prior to incurring the additional expense of

reapplying. Mr. Charney stated that he has delivered nine letters/affidavits of individuals who have witnessed four apartments in this building prior to 1992, and he would like to get a vote favorable to that if he cannot get a continuance. Mr. Williams reiterated that he does not concur that any affidavits have been provided as they are unsworn hearsay statements. Mr. Wolfe interjected, confirming that Mr. Charney is correct that it is up to the Commission whether they want to grant him a continuance or not.

Commissioner Scarpelli noted that they also need to be concerned with any other non-conformities of the structure considering the units are below flood, a building needs to be sprinklered with four residential units in it, things like that. Ms. Schemper added that this process is really just about the dwelling units and whether they are exempt from the ROGO process. Commissioner Wiatt agreed it wasn't so much about the structure as about the dwelling units, but he is still struggling with the idea that the body of evidence here consists of only the letters. Although he is not opposed to a continuance, there is a process that needs to be followed. There are no pre-'92 pictures or lease agreements or any information other than folks seeing activity from the outside and he doesn't believe that meets the requirements in the Code. Chair Werling thought if someone had been in the units with someone living there, they should at least have a name of who that person was. Commissioner Wiatt added that the best way to approach this may be to start over rather than by a continuance because staff wouldn't have any of Mr. Charney's new information.

Mr. Williams pointed out page five of the staff report with the 2004 property record card reflecting that the only thing downstairs is the small corner living area. So, as recently as 2004, this was the situation and there have been no records as official as this to state otherwise. Mr. Rains added that the ROGO exemption date is July 13, 1992, and less than a month later is a property record card that was printed and submitted with the 1993 building permit application showing a ground floor garage, unfinished, an office area, and the second level is demonstrated as living area. A submitted document in 2004 included a ground floor area of garage and floor living area, and the property appraiser included floor living area whether it was residential or other. It only means it's drywalled and finished, which is the office space. At that time in 2004, part of what had been a covered porch had been enclosed. The 2004 permit lists the business name as All Fiberglass Repair, and the state records for this business lists this location as their principle business location through April 2006, at which time the property was conveyed. So, at least through 2006, there are records that substantiate business occupancy on the first floor.

Mr. Wolfe added that if the Commission were to deny the appeal, the LDRD stands and two units are still recognized as ROGO exempt, just not the four that are being requested.

Commissioner Scarpelli asked Mr. Charney if he had attempted to contact All Fiberglass Repair. Mr. Charney indicated that he had not, that the property had been conveyed to a company called Sun Vest. Chair Werling thought that would be the party to contact. Commissioner Coward added that the body of evidence shows these two units were built in the 2008-2011 timeframe, obviously post-ROGO. Something from inside that shows something happened before '92 would be needed. The evidence shows one phone line, one water meter and one electric meter. Commissioner Scarpelli indicated agreement with Commissioner Coward.

Mr. Rains added that the property does have enough density for an affordable dwelling unit application should lawful establishment of additional units be pursued. Mr. Charney noted that the current affordable ROGO rules don't allow for retired people or Section 8 people, so if he converted to that he'd have to kick them out. Ms. Schemper wasn't sure that was exactly correct. Mr. Charney indicated he had been told that by Ms. Tiffany Stankiewicz. Ms. Schemper stated that it is dependent on the specific deed restrictions for individual properties. Mr. Williams clarified that the County is not asking that four living quarters be taken out of the building. There are no Code actions and this LDRD had been done at Mr. Charney's request.

There was no public present.

Mr. Wolfe stated that prior to making a motion to approve or deny the appeal, a motion should be made on the continuance requested by the appellant, noting that staff is objecting to the continuance.

Motion: Commissioner Wiatt made a motion to deny the appellant's requested continuance. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Scarpelli made a motion to deny the appeal. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:10 a.m.