

DEVELOPMENT REVIEW COMMITTEE

Tuesday, January 26, 2016

MEETING MINUTES

The Monroe County Development Review Committee conducted a meeting on **Tuesday, January 26, 2016**, beginning at 1:00 p.m. at the Marathon Government Center, Media & Conference Room (1st floor, rear hallway), 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

ROLL CALL by Debra Roberts

DRC MEMBERS

Mayte Santamaria, Senior Director of Planning and Environmental Resources	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present

STAFF

Steve Williams, Assistant County Attorney	Present
Matt Coyle, Principal Planner	Present
Devin Rains, Senior Planner	Present
Janene Sclafani, Planner	Present
Mitzi Crystal, Transportation Planner	Present
Debra Roberts, Staff Assistant	Present

CHANGES TO THE AGENDA

There were no changes to the agenda.

MINUTES FOR APPROVAL

Ms. Santamaria approved the meeting minutes of December 15, 2015, with no changes.

MEETING

New Items:

1.Henderson Building, Overseas Highway, Big Pine Key, mile marker 30: A public meeting concerning a request for a Minor Conditional Use Permit. The requested approval is required for the development of a proposed 8,000 square foot building with 2,600 square feet of commercial retail, low-intensity and office uses and six attached dwelling units designated as employee housing. The subject property is described as a parcel of land in Section 26, Township 66 South, Range 29 East, Big Pine Key, Monroe County, Florida, also known as Lots 12 and 13 of an unrecorded Plat of survey by C.G. Bailey, Reg. Florida Land Surveyor, No. 620 and dated September 19, 1952, having real estate number 00111560.000000.
(File 2015-218)

Mr. Coyle presented the staff report. Mr. Coyle reported that this property is 3,331 square feet, is zoned Suburban Commercial, designated a Tier III property and has a FLUM of Commercial. The site was previously developed, so it is disturbed and scarified, but also has some protected pineland habitat and some protected trees on the property. Relevant County actions on the property were described. A letter of understanding from 2008 addressed issues related to access from US-1 to the property. Although that redevelopment proposal was found to be consistent with a number of the comp plan policies, as well as the Big Pine and No Name master plan, some extra development controls were placed on the property because it was mixed use and has pineland habitat. It can only be low intensity commercial retail.

Mr. Coyle continued to report that the current building and the development proposal was found consistent with the community character of that part of Big Pine. The design minimizes adverse effects and visual impacts on adjacent properties. Six affordable housing ROGO allocations will be required for the development. Mr. Coyle suggested that the applicant consider doing a BOCC reservation since only six affordable housing ROGO allocations for Big Pine were available at the time of the staff report. No NROGO is needed since only 2600 square feet is being developed and the applicant is exempt over 6,000. The residential density and floor area, as well as open space, setback requirements and height limit are all in compliance. Preliminary drainage plans were found to be consistent with the County's requirement, but complete stormwater plans will be required during the building permit process. All of the environmental issues were found to be in compliance. A bicycle rack and wheel stops for the parking spaces up against the setback or required buffer yard need to be shown on the plan. The loading space needs to be made larger or that requirement needs to be reduced. All of the buffer yards and landscaping meet code. There are a few issues related to access to the site. There is not enough space between the existing curb cuts to meet the County's requirement. If the applicant wants to maintain access on US-1 a Planning Commission variance would need to be applied for and received. The County's transportation planner believes the applicant's existing curb cuts would meet FDOT requirements. The County's traffic consultant, as well as Judy Clarke from the Engineering Department, found the sight distance of the Sandy Circle access unsafe and proposed relocating that driveway further south which would make a T intersection. Mr. Coyle recited the nine conditions as listed in the staff report.

John Arrieta, the County's traffic consultant, joined the meeting by phone.

Barbara Mitchell, of Mitchell Planning and Design, was present on behalf of the applicant, Ginger Henderson, and her husband, Bruce Schmitt. Her clients were introduced. The applicant's architect, Bill Horn, and traffic consultant, Karl Peterson, were also present. Ms. Mitchell pointed out that this was an existing site and was developed for many years. A sewage treatment plant remains on the property that will be closed down and removed as part of this project. There has been historical access to this site from US-1 for many years until the Overseas Heritage Trail was installed in that section. Historically this site has had a high intensity commercial development use. The applicant is proposing a low density use, a real estate office, and six units of affordable housing. The applicant has avoided using the portion of the property that contains pinelands. Ms. Mitchell then clarified that the commercial square footage is the 2,605 square feet as demonstrated on the floor plans, which fixes the loading zone issue.

Ms. Mitchell then discussed the access issue. Ms. Mitchell stated FDOT earlier last summer indicated that they wanted an ingress-only access from US-1 on this site, which has been proposed. That reduces the traffic impact on US-1 by 50 percent. Commercial access is needed for this project or it is not going to work. Ms. Mitchell submitted an e-mail received from FDOT confirming that their requirements have been fulfilled except for an area of eight feet that would require an administrative FDOT variance. Ms. Mitchell stated through her search through County actions and in discussions with previous County Planning Directors and Planning Commissioners an example of the 400-foot standard for curb cuts could not be found. Ms. Mitchell pointed out that FDOT has a standard of only 245 feet from either side of the curb cut. The Overseas Heritage Trail implementation has eradicated the opportunity to use a parallel access road as an option. Ms. Mitchell believes Monroe County Code needs to be amended to reflect current FDOT standards. Ms. Santamaria responded that although staff is willing to work on future amendments, today the code has not been amended. For the applicant to come into compliance in that regard a Planning Commission variance would be needed, which is not an overly burdensome process. Ms. Mitchell reiterated that this standard has not been applied in the past and the code should be applied in a fair and consistent manner. Ms. Santamaria replied that the standard has been applied in the past and applicants have redesigned or included parallel access, but ignoring the code is not an option. Another possibility is applying for a code change, which is timely, but a Planning Commissioner variance is an easier route to go through in terms of time frame, but a text change can be applied for. Staff will be going over the code with the BOCC on March 1, 2016, and April 13, 2016, and that could become effective in June or July.

Karl Peterson, traffic engineering consultant for the applicant, stated FDOT has reviewed this and determined it meets substantial compliance with the criteria. The eight-foot variance that is required can be handled at the administrative level.

Bruce Schmitt, partner in this project, stated in all of the many projects he has been involved in, the standards that the County has set in this particular project could never have been met. Mr. Schmitt said there are areas where this standard has not been implemented by the County and feels like they are being targeted. \$50,000 have been invested to this point on a project that will likely cost over \$2 million. The issue brought about of an ingress point because of this 400-foot rule makes no sense to Mr. Schmitt. Mr. Schmitt wants to discuss this further with Ms. Henderson and put this application on hold until then.

Ms. Mitchell asked to discuss the Sandy Circle access since everybody involved is present in the room in case the project does go forward. Ms. Mitchell stated the right-of-way on Sandy Circle is encumbered by significant vegetation, making the line of sight at this intersection very dangerous. The applicant's access point was considered and selected very carefully. The applicant is trying to locate the accessory uses adjacent to the building. Mr. Peterson explained that a 30 percent clearance 30 feet back from the proposed driveway would not only benefit the driveway location proposed in the current plan, but it fixes an existing roadway problem that currently exists. Creating a stop condition on both legs of the approach would be another option, although not as ideal. Ms. Mitchell added that the property is County right-of-way.

Mr. Arrieta pointed out that although it is an existing condition, Mr. Peterson's suggestion adds to a less-than-ideal situation by putting more vehicles in a less desirable location. Also, it then

becomes the onus of the County to maintain and have permanent clearing in that area. Putting the driveway in without proper sight distance significantly increases the potential for a crash because it creates more traffic conflicts. That is why the County proposed making a T intersection where a stop sign will be controlling one of the approaches, which is probably going to be the southbound approach. Mr. Peterson emphasized that, regardless of whether this project goes forward or not, this area is what is known as a horizontal sight distance obstruction. Again, there are two solutions: Clearing the vegetation in that corner to address an existing sight distance issue or creating a stop control condition at that intersection to address the lack of adequate horizontal sight distance there. Ms. Santamaria noted that the County does not regulate the right-of-way. If the applicant wishes to table this item, staff will have the ability to continue to work with them and explore the options that are available. Ms. Mitchell clarified for Ms. Santamaria that the garbage containers will be rolled out to the street, so Waste Management will not be required to back onto the property to empty a dumpster.

Mr. Arrieta again discussed the fact that although conflicts are present or introduced every time a driveway is introduced, additional conflicts should not be introduced when there are sight distance issues. Mr. Schmitt commented that the Sandy Circle issue can probably be negotiated, but there is no reason to negotiate if there is no settlement on the ingress issue. Mr. Schmitt asked to table this discussion. Ms. Mitchell asked if the fees for the variance would be waived due to the inconsistency in the way the code is written. Ms. Santamaria and Mr. Williams agreed there would not be a waiver of fees. Mr. Williams pointed out that to get a variance the applicant will have to show a hardship. Ms. Santamaria also stressed that if the applicant proposed the change to the BOCC, the BOCC would have to choose to include it in the Land Development Code being processed now. If not, the applicant would have to do their own separate amendment. Ms. Mitchell requested tabling this item.

Joyce Newman of Big Pine Key asked for and received information regarding the property owners adjacent to the Sandy Circle corner lot.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY COMPREHENSIVE PLAN CREATING POLICY 101.5.31 TO ADDRESS HEIGHT EXCEPTIONS FOR NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF MASTER PLANNED COMMUNITY; AND CREATING POLICIES 101.5.32 AND 101.5.33 TO PROVIDE CERTAIN EXCEPTIONS TO THE HEIGHT LIMIT IN ORDER TO PROTECT PROPERTY FROM FLOODING AND REDUCE FLOOD INSURANCE COSTS; 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; PROVIDING FOR AN EFFECTIVE DATE. (File 2015-006)

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE AMENDING SECTION 101-1 TO CREATE DEFINITIONS RELATED TO FLOOD PROTECTION HEIGHT EXCEPTIONS; AND AMENDING SECTION 130-187 TO PROVIDE CERTAIN EXCEPTIONS TO THE HEIGHT LIMIT IN ORDER TO PROTECT

PROPERTY FROM FLOODING AND REDUCE FLOOD INSURANCE COSTS AND TO ADDRESS HEIGHT EXCEPTIONS FOR NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF MASTER PLANNED COMMUNITY; PROVIDING FOR SEVERABILITY; 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 CODE; PROVIDING FOR AN EFFECTIVE DATE.

(File #2015-171)

Ms. Santamaria presented the staff report. Ms. Santamaria reported that this is the most recent draft of five of the County's height amendments. Starting with the comp plan, Policy 101.5.30 is being amended and the definition of "height" is being incorporated within the policy. Policy 101.5.31 is being created, which is specific to Ocean Reef as a master-planned community to allow for non-habitable architectural decorative features up to a max total of 40 feet. Policy 101.5.32 is being created, which creates a new flood protection height exception up to a five-foot increase to allow for elevating to meet or exceed FEMA base flood elevations. Policy 101.5.33 is being created, which is a flood exception policy for lawfully established and existing buildings that already exceed the 35-foot height limit to elevate their structure to meet base flood provided they have the same intensity, floor, area, building envelope, density and type of use. If proposing to go over 40 feet, then they would have to go before the BOCC for review and a determination for the max height that they would be allowed.

Ms. Santamaria then reported on the amendments to the Land Development Code. Section 130-187 has been amended to highlight the exceptions that are created in the policies: Provision A for Ocean Reef to have their decorative features and Provision B for the flood exception. Brand new buildings can have three feet to exceed FEMA base flood. Lawfully established existing multifamily buildings can either meet or exceed FEMA base flood up to five feet. These options are only eligible if at least FEMA base flood is met. This exception will not be provided in AE10 or VE 10 or greater because those are riskier areas and the County does not want to incentivize the flood exceptions in those areas. Existing multifamily buildings which already exceed the height limit are allowed to elevate up to 40 feet. Lawfully existing multifamily structures that already exceed the 40-foot height limit would have to go before the BOCC for a public hearing and state which criteria they meet. The BOCC would have to specify their findings of these criteria and set the max total height of what the building could be rebuilt as.

Ms. Santamaria asked for staff and public comments.

Deb Curlee, resident of Cudjoe Key, asked for clarification of the term "redevelop" for buildings that already exist over 35 feet. Ms. Santamaria explained that could include a tear-down, but it states specifically a lawfully established existing building may be repaired, improved, redeveloped and/or elevated to meet required FEMA base flood elevation provided the building does not exceed a total maximum building height of 40 feet and the building is limited to the existing lawfully established intensity, floor area, building envelope, floor-to-floor height, density and type of use. So they are confined to the existing footprint and envelope.

Joyce Newman, Big Pine Key resident, asked about the slab-to-slab height increase request from Ocean Reef. Ms. Santamaria stated that has not been included in this draft. Ocean Reef was to provide certain information to staff to give a general picture of what the heights would amount to, and that information has not been received to date. Ms. Newman noted that Last Stand believes it is not a good idea to have these height increase requests go directly to the BOCC because that completely politicizes the whole process. The Planning Commission is the logical body to review these requests because they know the right questions to ask and is considerably less political. Ms. Newman added that Last Stand remains opposed to the exception to the height limit of 35 feet for new buildings because there is no burden that exists there. Construction of new buildings can adhere to the existing 35-foot height limit and provide two stories over parking while adding voluntary clearance to BFE.

Bill Hunter, resident of Sugarloaf Key, feels that the new building exemption can be taken advantage of by somebody who has to choose between either elevation or an extra story, but because of sea level rise and how Monroe County is going to adapt to it, Mr. Hunter supports the new building height exemption as it is written.

Ms. Santamaria asked for further staff or public comment on this item. There was none.

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY COMPREHENSIVE PLAN CREATING A DEFINITION OF OFFSHORE ISLAND; AMENDING POLICIES 101.5.8 AND 101.13.5 WITHIN THE FUTURE LAND USE ELEMENT AND POLICY 207.1.2 WITHIN THE CONSERVATION AND COASTAL MANAGEMENT ELEMENT TO FURTHER CLARIFY THE DEVELOPMENT OF OFFSHORE ISLANDS; 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; PROVIDING FOR AN EFFECTIVE DATE.

(File 2015-007)

Ms. Santamaria presented the staff report. Ms. Santamaria reported that this is the fifth DRC meeting on this item and this amendment is very similar to the previous drafts. This stems from the comp plan update when the BOCC asked staff to move the provisions related to offshore islands out of the comp plan update and process it separately as a stand-alone issue. The amendments in this draft reflect what was already transmitted to the State in terms of Policy 101.6.8 and Policy 101.13.3. The new changes from the last meeting are only to Policy 206.1.2. Policy 206.1.2 relates to nesting areas of birds and states “Development shall be prohibited on offshore islands (including spoil islands) which have been documented as an established bird rookery based on resource agency best available data or survey.” New text included in today’s draft is: “As used in this policy, established bird rookery refers to the location where colonial birds nest. The nesting area may include nest structures, shallow depressions in sand, soil or vegetation, crevices in rocks, burrows and cavities.” Policy 101.6.8 includes language that the receiver site for TREs will not be an offshore island and Policy 101.13.3 includes the criteria that an offshore island will not be a receiver site for TDRs. Ms. Santamaria asked for staff and public comments.

Bart Smith, Esquire, on behalf of FEB Corp., asked Mr. Roberts if he was involved in drafting the additional definitions in the glossary. Mr. Roberts replied that he reviewed them. Mr. Roberts then pointed out that the definition of an established bird rookery is specific to this policy and is not overriding throughout the comp plan. Mr. Smith explained that Phil Frank, a biologist on behalf of FEB Corp., suggested utilizing the term “colonial nesting water birds” in Policy 206.1.2 since the colonial nesting birds in the Florida Keys are water birds. Mr. Smith then read aloud a proposed definition of the term “colonial nesting water birds.” Mr. Smith noted that Mr. Frank’s proposed definition mirrors Wikipedia’s definition of that term. Mr. Smith explained that Mr. Frank also suggested the language “Bird rookery means communal nesting ground for colonial nesting water birds.” Mr. Roberts agreed that the birds that are addressed when talking about colonial nesting birds are water fowl, but stated there are other birds that nest colonially that are not water birds that use the Atlantic flyway.

Mr. Hunter asked if solitary birds like the white crown pigeons would be protected under the proposed definitions. Mr. Roberts explained that generally speaking the density of nests in a rookery are much closer than what you find in a white crown pigeon nesting situation, but Mr. Roberts will look at the literature to see if the experts consider white crown pigeons to be a colonial nesting bird. Ms. Santamaria agreed that staff will review this because there are other policies in the comp plan related to listed species and threatened species. Ms. Newman noted that there are a lot more birds that nest on these spoil banks than just wading birds and water birds.

Julie Dick from the Everglades Law Center on behalf of Last Stand and Florida Keys Environmental Fund voiced concerns with respect to Policy 206.1.2. The reference to “based on resource agency best available data or survey” should be opened up to include just “best available data and survey” so as not to be limited to a specific source of information. Ms. Dick also believes that an on-site verification from the County biologist would be appropriate to determine the existence or lack thereof of bird rookeries or nesting sites or areas. “Nesting area” should be included so there is consistency in the use of terminology throughout the plan.

Naja Girard of Key West stated she is vehemently opposed to shrinking this definition down to just water fowl. Any species that are in any way protected through special designations by the State or the Federal Government should be spelled out as well. Ms. Girard agreed with Ms. Dick that the County should be open to whatever credible data and survey might come its way. Ms. Curlee asked that the importance of these spoil and offshore islands be emphasized for birds migrating through as resting spots. Ms. Dick followed up on that and stated that a rookery can be a roosting area as well as a nesting area.

Mr. Smith commented that Policy 206.1.2 is an absolute prohibition on development of the entire island. Mr. Smith suggested that there are other suitable means to protect the nesting area to allow for birds to land that make more sense with policies that deal with the actual area that it is in than to have an express and blanket prohibition.

Ms. Santamaria then asked for comments on the policies that relate to TREs and TDRs.

Julie Dick, on behalf of Last Stand and the Florida Keys Environmental Fund, voiced full support for the criteria for receiver sites in both Policies 101.6.8 and 101.13.3 that a receiver site may not be an offshore island. Ms. Dick asked that the same definition be used in the offshore island zoning designation and the offshore island definition in the comp plan so that owners of offshore islands may not be able to use this in the future to manipulate the intent to make some offshore islands receiver sites. Ms. Santamaria clarified that offshore island zoning is not included in the comp plan as a term that is defined, but she will review this further.

Mr. Smith agreed that it is superfluous to include the language “as defined in the glossary” and that it may imply any other time the term is used it is not being defined by the glossary. Mr. Smith then commented that the bank of ROGOs makes building in the County like energy: Lots are not going to be able to be created or destroyed; just transferred. Mr. Smith does not believe it is a good utilization of resources to have a prohibition on TREs for offshore islands and requiring owners to compete in ROGO and ultimately having the County faced with purchasing an island. Ms. Santamaria responded that the County, in terms of the comp plan update and code, is trying to incentivize through the ROGO process donation and dedication of lots to the County. Ms. Newman stated that someone who has the means to buy and develop an island should not be put in any better position than someone who has their hopes and dreams based on retiring and living in the Florida Keys.

Julie Dick noted that Monroe County is at its limit in terms of being able to evacuate this county within 24 hours in the face of a hurricane. For that reason, whatever incentive built into the comp plan that moves development away from the areas hardest to evacuate should be fully supported. Ms. Girard does not agree with Mr. Smith’s logic of sending ROGOs to offshore islands.

Ms. Santamaria concluded by stating all comments will be taken into consideration before taking this to the Planning Commission.

ADJOURNMENT

The Development Review Committee meeting was adjourned at 2:54 p.m.