

DEVELOPMENT REVIEW COMMITTEE

Tuesday, January 25, 2011

Meeting Minutes

The Development Review Committee of Monroe County conducted a meeting on **Tuesday, January 25, 2011**, beginning at 10:03 a.m. at the Marathon Government Center, Media & Conference Room (1st floor, rear hallway), 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

ROLL CALL by Townsley Schwab

DRC MEMBERS:

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Joe Haberman, Planning and Development Review Manager	Present
Steven Biel, Senior Planner	Present
Rick Tassoni, Assistant Fire Marshal, Fire Prevention	Present

STAFF MEMBERS:

Mitch Harvey, Comprehensive Plan Manager	Present
Susan Grimsley, Assistant County Attorney	Present

APPROVAL OF MINUTES

Mr. Schwab approved the minutes of the DRC meetings of Tuesday, November 30, 2010, and Monday, December 13, 2010.

CHANGES TO THE AGENDA

There were no changes to the agenda.

MEETING

NEW ITEM:

1.VOF LLC Property, 1128 Greenbriar Road, Duck Key, Mile Marker 61: A request for approval of a minor conditional use permit in order to renovate the existing building and convert its approved single-family residential use to a commercial retail/office use, in the form of a rental management office; construct a swimming pool; redesign off-street parking areas to accommodate the new use; and carry out associated site improvements. The subject property is

legally described as Block 8, Lot 1, Indies Island, Duck Key, Section 1, Part 1, Toms Harbor (PB5-82), Duck Key, Monroe County, Florida, having real estate number 00377790.000000.

(10:06 a.m.) Mr. Haberman presented the history of the project. The first appeal was to build an accessory swimming pool at the site, which was denied by staff, and that appeal was upheld. There was a second appeal to allow a vacation rental management company on the site, which staff also denied. However, the Planning Commission disagreed and stated that the applicant could apply for the rental management company. The applicant is now asking for the vacation rental management company and for staff to analyze it under the different criteria for conditional use to determine if it can be approved, but they also added the pool back in and no longer classify it as an accessory use, but as a component of the minor conditional use or principal use. Mr. Haberman then presented the staff report.

It was confirmed that the applicant was going to keep the associated dwelling unit with the property for the time being. Staff recommended approval of a list of components of the application with conditions, which were then outlined. Staff recommended denial of the swimming pool and associated equipment and the shower/bath structure.

(10:16 a.m.) Donald Craig of The Craig Company was present on behalf of the applicant. Mr. Craig clarified that the Growth Management director determined that the pool would not be accepted as an accessory use to the real estate rental management office, but that the swimming pool should be considered a minor conditional use for the purpose of the application. It was noted that it was a misstatement in the staff report that the code did not list a swimming pool as an allowed use, because it in fact does. Mr. Craig further stated that staff's assertion that the swimming pool will have an adverse effect on the surrounding property to the south was a determination made without the basis of having a standard to reach that determination. Other than these clarifications, the applicant agrees with the staff report.

Where in the code it specifically lists a swimming pool as an allowed use was discussed. Mr. Craig provided Ms. Grimsley with a general description of the proposed development. Mr. Haberman suggested that the applicant confer with Diana Bair on whether the 50 percent rule would apply or if the applicant will need to come into full compliance with the flood plain since the use is changing from residential to commercial. The landscaping plan was described by Mr. Craig. Mr. Craig clarified that only customers of the rental management company who are renting units on Duck Key would be able to use the pool.

(10:41 a.m.) Tim Koenig was present on behalf of the applicant. Mr. Koenig stated that the applicant disagrees with two items in the staff report: One, the categorization of the swimming pool as a separate accessory use; and, two, the assertion that the pool was not included in the appeal. Mr. Koenig presented a brief history of this proposal. In early '08 an application for redevelopment of this site was filed, which included a plan to renovate the building and put in a swimming pool. The Growth Management director concluded and characterized the application as an application for an accessory use. Because of that characterization it resulted in the denial of the application, not because there was a swimming pool included with it, but because the site was not contiguous to the sites that the Growth Management director determined were the principal uses. A letter dated September 25, 2008 was sent to Mr. Drew Trivette and that letter

took the original application and re-characterized it as an as-of-right use, a conditional use. That was denied by the Growth Management director, and that decision was appealed as well. The Planning Commission on the first appeal concluded that the project could not be allowed as an accessory use, because one of the requirements of an accessory use was that the site be contiguous to the principal use. On the second appeal the Planning Commission concluded that, without that contiguous requirement, it should be permitted.

Portions of the transcript of the second appeal hearing were read into the record to show there is no question that the pool was part of the second appeal. Mr. Koenig stressed that it is very important when considering this proposal to remember that the applicant began with a plan that has never changed, and that characterizing the pool as an accessory use initially resulted in them being unable to meet those requirements. Mr. Koenig pointed out that referring to an accessory swimming pool in the staff report is incorrect because it is being processed as part of the minor conditional use application, and more importantly, there is nothing in the code to suggest that it would be restricted to use by the occupants of the principal use where those occupants are defined as employees of the business and would include its customers and its clients.

Mr. Koenig repeated that the Planning Commission did not deny the first appeal because there was a swimming pool present, but only because the site was not contiguous to what was presented to them as the principal uses, which were the off-site units that were to be rented. After the Planning Commission approved it as a permitted use, the next step was to apply for a building permit, which is when this issue came up all over again and the pool got separated out by Planning staff from an accessory use to a principal use.

Mr. Haberman clarified that the reason the building permit was denied was because the single-family use had not been converted to the commercial use at that point and the pool did not meet some of the standards for an accessory pool to a single-family use. It was requested that Page 8, 17 to 26, be stricken from the staff report due to it being confusing. Mr. Haberman further clarified that the first appeal was denied because both the swimming pool and guest check-in was considered accessory, and that he did not recollect the pool ever being mentioned as part of the second appeal, but the written transcript was not available to refer back to. Ms. Grimsley agreed that it would be necessary to go back to the transcript and look at what was done.

Mr. Schwab asked for public comments.

(11:04 a.m.) James White, Esquire, was present on behalf of Chris and Brian Lancaster, the adjacent neighbors across the canal. Mr. White stated that the pool was clearly determined by the Planning Commission as not being allowed and that the property owner is now trying to retrofit something on the site that does not belong. Mr. White remembers two administrative appeals: One, the guest check-in/welcome center and accessory pool; two, the alternative being a rental management company office. Mr. White further stated that allowing a rental management company on this property is inconsistent with code, but that his clients can live with that since it is a low-impact use.

Mr. White asked for clarification as to what the thought process was behind why the application was reclassified. Mr. Haberman explained that all applications are accepted and, not wanting to

speak for Ms. Hurley, thought that she felt that the term “accessory” made it inconsistent with the first appeal. Mr. White responded that there is a development order signed by the Planning Commission that the applicant chose not to appeal which clearly allows for a rental management company, but does not allow for an accessory use of a pool or welcome/check-in center. Mr. White agreed with staff that the minor conditional use would be appropriate for a rental management office, and that an accessory swimming pool associated with the rental management office is not allowed. Mr. White ended by asking that the DRC staff report be followed by not allowing an accessory swimming pool on the site.

Mr. Schwab asked for further public comment. There was none.

Mr. Koenig stated that he would provide the County with a copy of the transcript. It was agreed that the variance issue would be removed from the agenda until there is a decision on this application issue. Mr. Schwab assured all parties that they would be kept up-to-date on any determinations made.

A brief recess was held.

2.Comp Plan & Text Amendment – Amendment to Goal 107 & Objective 107.1: AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING GOAL 107 AND OBJECTIVE 107.1 OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN TO CLARIFY THE DEFINITION AND APPLICATION OF SUB AREA POLICY FOR PROPERTY LOCATED WITHIN UNINCORPORATED MONROE COUNTY; PROVIDING FOR SEVERABILITY; DIRECTING THE DIRECTOR OF PLANNING TO FORWARD A COPY TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR FILING WITH THE SECRETARY OF STATE; PROVIDING FOR THE INCORPORATION INTO THE COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

(11:34 a.m.) Mr. Harvey presented the staff report and stated that Last Stand has reviewed and is supportive of the recommended change. Mr. Haberman cautioned Mr. Harvey to further clarify the term “land” as possibly “environmentally sensitive land and wetland areas” so as not to allow those areas to be calculable when determining density. Mr. Harvey stated that he would work with the environmental experts to try to define that further. Mr. Schwab noted that Monroe is incorrectly spelled in the title as “Monrow.”

Naja Girard and Deb Curlee were both present. Ms. Girard emphasized that she was speaking before the Board on behalf of Last Stand regarding Goal 107.

3.Comp Plan Amendment – Transient Use Moratorium – Amendment to Policy 101.2.6: AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICY 101.2.6 OF THE MONROE COUNTY 2010 COMPREHENSIVE PLAN REGARDING THE MORATORIUM FOR TRANSIENT UNITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; DIRECTING THE PLANNING DIRECTOR TO FORWARD A COPY TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING

FOR FILING WITH THE SECRETARY OF STATE; PROVIDING FOR THE INCORPORATION INTO THE COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

(11:45 a.m.) Mr. Harvey presented the staff report. Mr. Haberman suggested taking the moratorium out of the comprehensive plan, replacing it with a basic policy that says Monroe County shall allocate a portion of total ROGO units allocated to the County for transient development, and then in the LDRs create the mechanism for doing that. Mr. Harvey stated that it would be necessary to figure out what the economic impact would be to reducing the number of ROGO units available for market rate. Mr. Haberman said that another thing to consider is the reasons a permanent unit and a transient unit are not allowed to be converted one way or the other is totally interpretive and arbitrary. The suggestion was made to let the market decide need because it fluctuates and it depends on too many variables. The hurricane evacuation models were discussed.

Mr. Schwab stated that a philosophical and broader planning discussion was needed to be able to submit to Christine Hurley a proposal on this matter. Mr. Harvey is to set up a meeting to discuss this further.

ADJOURNMENT

The Development Review Committee meeting was adjourned at 12:01 p.m.