

DEVELOPMENT REVIEW COMMITTEE

Tuesday, January 24, 2023

MEETING MINUTES

The Monroe County Development Review Committee conducted a virtual meeting on **Monday, January 24, 2023**, beginning at 1:01 p.m. via Communications Media Technology (CMT).

CALL TO ORDER by Cheryl Cioffari at 1:01 p.m.

ROLL CALL by Debra Roberts

DRC MEMBERS PRESENT

Cheryl Cioffari, Assistant Director of Planning
Mike Roberts, Assistant Director, Environmental Resources
Bradley Stein, Development Review Manager
Rey Ortiz, Assistant Building Official
Craig Marston, Fire Marshal
Christina Gardner, Naval Air Station Key West
Eric Penfield, FDOT Representative

STAFF MEMBERS PRESENT

Peter Morris, Assistant County Attorney
Devin Tolpin, Principal Planner
Debra Roberts, Senior Planning Commission Coordinator

APPLICANTS & PUBLIC SPEAKERS PRESENT

Jason Green Jess Goodall Ty Harris Ann Helmers Patricia McGrath Dottie Moses

CHANGES TO THE AGENDA

There were no changes to the agenda.

MINUTES FOR APPROVAL

Approval of the meeting minutes for Tuesday, November 14, 2022, by Cheryl Cioffari.

MEETING

1. 7-ELEVEN (DANIEL BARRY, Jr. & ARCHER BARRY), 98200 OVERSEAS HIGHWAY, KEY LARGO, FL 33037 MILE MARKER 98: A PUBLIC MEETING CONCERNING A REQUEST FOR A MAJOR CONDITIONAL USE PERMIT BY AXIS INFRASTRUCTURE, LLC. ON BEHALF OF DANIEL & ARCHER BARRY, FOR THE CONSTRUCTION OF A HIGH INTENSITY COMMERCIAL 7-ELEVEN CONVENIENCE STORE WITH 12 FUELING STATIONS, ON PROPERTY DESCRIBED AS LOTS 1 THROUGH 6, BLOCK 1, ROCK HARBOR ESTATES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, AT PAGE 187, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, CURRENTLY HAVING PARCEL ID NUMBER 00519590-000000. (FILE 2022-021)

(1:03 p.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This item is a request for a major conditional use permit to develop a high-intensity commercial retail use at 98200 Overseas Highway, mile marker 98 in Key Largo. This property is in the Suburban Commercial zoning district and the Mixed Use Commercial FLUM designation. There is currently a commercial retail use on the property of medium intensity. This request is to redevelop with a 4,730 square foot high-intensity convenience store with eleven fueling stations. Two community meetings have been held for input which has been included in the file and transmitted to the officials voting on this application. Ms. Tolpin noted that there is a concurrent application related to the same project for a variance to the required access standards and county code required distance between driveways onto U.S. 1. That variance will go before the Planning Commission tomorrow. Ms. Tolpin presented the proposed site plan. There is adequate parking proposed showing five dual fueling stations and a single station for boats on the southern portion of the property, a loading zone, and the four proposed access drives. Staff has reviewed the application for consistency and compliance with the community and applicable standards of all conditional uses in accordance with the Land Development Code. Ms. Tolpin presented a list of those standards which are described in great detail in the staff report. This application is in compliance with all required standards except for the access requirement. For that reason, staff is recommending that prior to this application moving forward to the Planning Commission, compliance with the access standards be obtained. Compliance can be attained either through Planning Commission approval or revision of the site plan.

Ms. Cheryl Cioffari, Assistant Director of Planning, asked for questions or comments from the DRC members. Mr. Craig Marston, Fire Marshal, stated that the access width of the drives by the fuel tanks will need to be increased to a minimum of 20 feet from curb to curb. Ms. Cioffari asked if that was for a single lane. Mr. Marston stated that the code calls for 10 feet per lane. Ms. Cioffari noted that all of the access aisles are one way and asked if it is still required to be 20 feet having a one way entrance and exit. Mr. Marston responded that it is not, providing it is designated and maintained, at which point he would have no comment. Ms. Cioffari responded that his comments would be noted. There were no further comments from DRC members. Ms. Cioffari then asked for comments from the applicant. Jason Green, for the applicant, had no additional comment. Ms. Cioffari then asked for public comment.

Ms. Patricia McGrath stated that a conditional use that comes before any county governing body should be considered a big deal, especially in Monroe County, an area of critical concern, having such packed roads. Oftentimes people are waiting to get into and out of the Keys twelve miles out onto the turnpike. The Monroe County Planning Department should be in the business of protecting the citizens from developments like these. No more gas stations are needed, nor are more people coming in. The Planning Department's role should be as a protection role. The county needs no more high-intensity uses of any kind. The corporate developers come here because it's easy in comparison to other counties to slide on in because the people don't have access to the Planning Commission or anyone anymore. It's all community meetings and webinars. Ms. McGrath is concerned about the level of service on U.S. 1 and does not believe there has been an adequate traffic study done. There's been a lot of development in a short amount of time. The level of service on U.S. 1 as it passes this property is going to be difficult because of the raised trips of boats, tankers and RVs trying to get in and out. They will have to come to a complete stop to turn into the building. Ms. McGrath has read the Suburban Commercial land use description and it says established areas for commercial uses designed and intended primarily to serve needs of the immediate planning area. Ms. McGrath asked how this 7-11 would serve the immediate area.

Mr. Peter Morris, Assistant County Attorney, stated that the DRC meeting with respect to this item is not a quasi-judicial proceeding for the professional staff to be cross-examined on an item. The only action undertaken is a recommendation, if that, for the Planning Commission to conduct the first administrative proceeding to quasi-judicially review whether or not the application should be decided on the merits in favor of the applicant or not. Every attendee member of the public has an unalterable right to participate, as does the applicant, but it's not appropriate for the staff to be engaged in cross-examination. Ms. Cioffari explained that this item will go before the Planning Commission and Ms. McGrath's comments would be welcomed at that time as the Planning Commission is the decision maker for the final application. Staff reviews the application and makes a recommendation to the Planning Commission. Ms. McGrath had no further comments.

Ms. Ann Helmers, as a representative for the Rock Harbor Estates community, thanked staff for answering questions on procedures and methodology and timing. Ms. Helmers stated that her understanding as a lay person from reading the staff report is that the Planning staff is recommending denial of the variance related to the curb cut requirement, and asked if a time line could be given as to how this process would play out from this point forward. Understanding that the Planning Commission meeting is tomorrow for the vote on the variance, how does this all fit together, and when and how will the applicant be coming back for the final major conditional use. Assuming the variance is denied, what would be required for the applicant. Ms. Tolpin responded that they won't know until after the Planning Commission decides on the variance. After that, it would be up to the applicant to determine how they want to move forward. At this point in time, staff is recommending that this item not go to the Planning Commission until compliance with the access standard is obtained. Ms. Helmers then asked if the Planning Commission decides tomorrow to accept the variance request, how that would affect the eventual major conditional use permit vote or process. Ms. Tolpin responded that that would be an appropriate time for the major conditional use permit to be moved to a Planning Commission agenda and be presented. If the variance is granted, then compliance with the access standards is met.

Mr. Jason Green, speaking for the applicant, asked if it was a requirement to get names and addresses for speakers. Ms. Cioffari responded that name is required but not addresses. Mr. Morris responded that it's not imperative that addresses be provided, as this is not an appellant record being created and the list of attendees is extensive. The typical merits reason to have that on the record isn't critical.

Ms. Dottie Moses, President of the Island of Key Largo Federation of Homeowners Association, stated that many members are directly impacted by this development. This project is a very large traffic concern. She is worried about the traffic and the fact that deceleration lanes are not being required with or without the changed access points. Because the County has put so much time into addressing the traffic problems on U.S. 1, she cannot understand why they would move forward with a high-intensity commercial use which will exasperate the traffic currently being dealt with on the highway. This affects the entire Upper Keys and anyone passing through Key Largo to other locations in Monroe County.

There being no further public comment at this time, Ms. Tolpin asked a question of Mr. Eric Penfield with FDOT. With regards to the FDOT permitting requirements for existing developments and existing access drives, for a project such as this with four drives, would a variance from the FDOT access standards be required or would something else be required as

part of the FDOT permitting for a development like this. Mr. Eric Penfield responded that it would. If the spacing criteria is not satisfying state statute and the Florida Administrative Code governing access management standards for state roadways, then a variance through FDOT would be required. Any kind of change in use on the property that would result in an impact or change in the number of trips that would be using the driveways could also necessitate such a variance. Ms. Tolpin then asked if he had the ability to see if one had been applied for, if the process has been started for this application. Mr. Penfield responded that he would coordinate with Shereen Yee Fong to get an answer on that.

Ty Harris of Tavernier also asked Mr. Eric Penfield that if there was a conflict between the state and municipal code standards for driveways, which standard would control if only one or the other could be met. Mr. Peter Morris stated that FDOT's general counsel was not present so Mr. Penfield could respond to the extent he feels comfortable without counsel but is certainly under no obligation as this appears to be a pure question of law. Mr. Harris stated that he is not an attorney, rather a traffic engineer, and agreed with that assessment. Ms. Cioffari added that Mr. Harris' comment would be taken under advisement and that that question could be raised at the Planning Commission meeting. Mr. Harris believes this will be the issue of the day as far as the variance goes, which standard controls, and does the FDOT standard control if you get a variance for one but are not in compliance with the other. This seems to be a bit problematic.

Mr. Bradley Stein, Development Review Manager, added that the required 20 percent of the notifications had been submitted and approval for the major conditional on this project would require a supermajority approval, meaning four out of five Planning Commissioners will need to vote yes to approve this project. There was no further public comment. Public comment was closed.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND DEVELOPMENT CODE SECTIONS 101-1, 138-47, AND 130-164 TO EXCLUDE COVERED, ENCLOSED BOAT RACKS NOT ASSOCIATED WITH THE RETAIL SALE OF BOATS ("BOAT BARNS") THAT ARE LOCATED ON PARCELS WITHIN THE MARITIME INDUSTRIES (MI), MIXED USE (MU) OR DESTINATION RESORT (DR) LAND USE (ZONING) DISTRICTS ON STOCK ISLAND FROM THE DEFINITION OF FLOOR AREA, NONRESIDENTIAL INTENSITY CALCULATIONS, AND NROGO ALLOCATION REQUIREMENTS, AS PROPOSED BY SMITH HAWKS, PL; 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 LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-076)

(1:31 p.m.) Ms. Devin Tolpin, Principal Planner, presented the staff report. This item is a request by a private applicant to amend the County's Land Development Code in three sections to essentially exclude covered and enclosed boat racks that are not associated with the retail sale of boats that are located on parcels within the Destination Resort, Maritime Industries or Mixed Use land use zoning districts on Stock Island from the definition of floor area, the non-residential intensity calculations, and the NROGO allocation requirements. The three sections proposed to be amended through this text amendment are Section 101-1, Section 130-164 and Section 138-47.

This proposal only applies to properties on Stock Island within DR, MI or MU zoning districts. Ms. Tolpin presented a map of those types of parcels. Staff will be requesting documentation from the applicant to justify why the proposed amendment is proposed only on Stock Island. In reviewing the amendment there are not many issues that staff has with this in regard to the overall objective except there has not been justification or documentation for why it should be limited to these zoning districts on this island only.

There were some inconsistencies with the changed definitions in the intensity table between the proposed amendment and the County's adopted Comp Plan. Ms. Tolpin presented two examples. The first proposed amendment to the definition of floor area to exclude these parcels, if adopted, would be inconsistent with the Comp Plan glossary which has a definition of floor area. The County is unable to recommend approval of an amendment to the code which would result in an inconsistency with the Comp Plan. The same would be for the definition of non-residential floor area in LDC Section 138-47. The proposed addition is still inconsistent with the adopted definition of floor area in the Comp Plan. Additionally, the Comp Plan has an adopted definition of boat barns which appears to describe the exact structure that the applicant is requesting be omitted from the definition of non-residential floor area. Staff is recommending that the applicant explore using the term "boat barn" in place of the language which states "covered and enclosed boat racks" to demonstrate consistency in that there is already an adopted term that appears to fulfill that purpose.

Another inconsistency is the proposed change to the density and intensity table in Section 138-47. Ms. Tolpin presented a portion of that table showing at the bottom where the applicant is proposing (g) that is illuminating boat racks within the zoning districts on Stock Island to be factored into the non-residential floor area intensity calculation. Comp Plan Policy 101.5.25 has an almost identical table. Adding (g) to the code and not to the Comp Plan would result in an inconsistency. Staff is recommending that the applicant address the comments and consistency issues described in greater detail throughout the staff report in Sections 4 and 5 in order to develop a proposal that is consistent with the code and Comp Plan; and, staff is recommending the applicant submit justification as to why this proposed amendment is limited to only the DR, MI and MU zoning districts, and why only to Stock Island, as opposed to the rest of unincorporated Monroe County.

Ms. Cioffari asked for questions and comments from DRC members. Mr. Bradley Stein asked if something like this on one particular location would not be considered an overlay, and why the applicant did not do that. Mr. Jess Goodall, speaking on behalf of the applicant, stated that the reason is that there are multiple parcels that may be affected by it. He will draw up a rationale as to why this is on Stock Island and he will provide it to staff. There were no further DRC member comments. Ms. Cioffari then asked for public comment.

Ms. Dottie Moses stated that Stock Island is an exceptionally densely populated area already having way too much intensity for its space. She cannot understand why the County would want to make it easier to increase intensity on that island. She would not support this application for that reason. There was no further public comment. Public comment was closed.

ADJOURNMENT

The Development Review Committee meeting was adjourned at 1:41 p.m.