

PLANNING COMMISSION
December 12, 2024

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Thursday, December 12, 2024**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Scarpelli

PLEDGE OF ALLEGIANCE

ROLL CALL by Jessica McKinney

PLANNING COMMISSION MEMBERS

Joe Scarpelli, Chair	Present
Ron Demes, Vice Chair	Present
George Neugent, Commissioner	Present
Eric Anderson, Commissioner	Present
Rosemary Thomas, Commissioner	Present
Douglas Pryor, Ex-Officio Member (MCSD)	Absent
Christina Gardner, Ex-Officio Member (NASKW)	Absent

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Mike Roberts, Assistant Director of Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Devin Tolpin, Principal Planner
Stephanie Reed, Planner
Peter Morris, Assistant County Attorney
Dirk Smits, Planning Commission Counsel
Ilze Aguila, Sr. Administrator, Operations, Planning and Environmental Resources
Jessica McKinney, Senior Planning Commission Coordinator

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SWEARING OF COUNTY STAFF

County staff and one public attendee were sworn in by Mr. Dirk Smits.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Jessica McKinney confirmed receipt of all necessary paperwork,

CHANGES TO THE AGENDA

Item 1 was withdrawn.

APPROVAL OF MINUTES

Motion: Commissioner Neugent made a motion to approve the November 13, 2024 meeting minutes. Commissioner Thomas seconded the motion. There was no opposition. The motion passed unanimously.

DISCLOSURE OF EX PARTE COMMUNICATIONS

None.

MEETING

AGENDA ITEMS

1. Application Withdrawn.

2. PUBLIX SUPER MARKETS, INC., 101499 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 101, OCEAN SIDE: A PUBLIC HEARING CONCERNING A REQUEST FOR A 3APS ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER, WINE AND LIQUOR PACKAGE SALES FOR OFF PREMISES CONSUMPTION. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND BEING A PORTION OF TRACT "A" OF THE PLAT "TRADEWINDS" AS RECORDED IN PLAT BOOK 7, AT PAGE 42 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00454611-000100. (FILE 2024-185)

(10:03 a.m.) Ms. Stephanie Reed, Planner, presented the staff report. An existing building, formerly a Kmart on the Tradewinds Shopping Center site was demolished and a new Publix Supermarket was redeveloped on the property. There are several other commercial businesses in the vicinity, some of which have alcoholic beverage permits and licenses. Ms. Reed pointed out the area proposed to be the new package sales store within the Publix Supermarket. The land use district of urban commercial allows for alcoholic beverage use permits. The applicant currently has an active 2APS alcoholic beverage use permit, approved in October of 2023 through Resolution 29-23, allowing for sales of beer and wine within the existing grocery store. Staff finds the property compliant with Section 3-7E of the Monroe County Florida Code of Ordinances and suitable as regards to the location, site characteristics and intended purpose. Staff does not anticipate that approval of this request would have a negative effect on the immediate neighbourhood, access, traffic, parking, utility demands or public services. As of the date of this report there are no open code compliance cases related to the property. Staff recommends approval with all standard conditions.

Chair Scarpelli asked if the applicant wished to speak. Mr. David Coviello, speaking on behalf of Publix, stated that staff had outlined the proposal very well and he has nothing to add, but is available for any questions. Commissioner Demes was curious as to why this hadn't been applied for at the time of the development of the supermarket. Mr. Coviello responded that he could not answer that question, but assumed it was a matter of Publix doing their market studies to see if there was a need. It is becoming popular for supermarkets to have their own liquor stores and it's a separate type of liquor permit that is required. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Neugent made a motion to approve. Commissioner Demes seconded the motion. Motion passed unanimously.

3. MARK AND RUTH ANN KNOWLES, 104120 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 104, BAY SIDE: A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO THE FENCE HEIGHT REQUIREMENTS SET FORTH IN CHAPTER 114, ARTICLE I OF THE MONROE COUNTY LAND DEVELOPMENT CODE IN ORDER TO CONSTRUCT A 6-FOOT-TALL FENCE WITH AN 18 FOOT WIDE, 6-FOOT-TALL GATE WITHIN THE FRONT YARD SETBACK. THE PROPERTY IS DESCRIBED AS LOT 9, BAY-WOOD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE(S) 102, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00439670-000000. (FILE 2024-127)

(10:10 a.m.) Ms. Stephanie Reed, Planner, presented the staff report. The applicant and property owners are requesting approvals from LDC Section 114-13 in order to construct a fence within the front yard setback of this property which is located in the urban commercial land use district and has a front yard setback of 15 feet. On October 15, 2019, Monroe County issued a certificate of occupancy for a single-family residence on the property. The community character in the immediate vicinity is residential, undeveloped, bar/nightclub, commercial retail, restaurant and RV Park. The property also abuts a multi-use trail serving pedestrian, bike and non-motorized traffic. LDC Section 114-13 dictates fence height, gate width, height, and length requirements. A fence shall not exceed four feet in height within any front yard setback. Driveway gates no wider than 12 feet may be permitted up to six feet in height provided the gates meet setback and site line requirements. For any parcel of land located along U.S. 1 or adjacent to the intersection of any two public roads, a fence shall not exceed three feet in height within a clear-site triangle. The submitted site plan shows a six-foot high fence in the front yard setback and an 18-foot wide, six-foot tall gate within the front yard setback and the clear-site triangle. The applicants are requesting approval of the variance to construct the gate and fence as per the submitted plans.

As per Section 102-187B, the Planning Commission is authorized to grant variances to fence height requirements in Chapter 114, Article I, if and only if the applicant demonstrates that all of the standards shown are met. Staff has reviewed the application and believes that all standards have been met if approval is conditioned. Staff does not disagree that the applicant demonstrated a showing of good and sufficient cause as the variance would contribute to the comfort, security, safety and privacy of the use of the property. Staff notes that the unique location of the property does present an exceptional hardship to the enjoyment of the property as the residence abuts a busy section of U.S. 1 and a popular non-residential property. Staff does not anticipate that granting the fence height variance or the gate height and width variance, if conditioned to a gate material which does not impair visibility for the whole gate, would result in increased public expenses, create a threat to public health and safety, a public nuisance, or cause fraud or victimization of the public. Staff recommends approval with standard conditions and the following special condition: The gate must be constructed of materials that do not impair visibility within the clear-site triangle as approved by the Planning Director.

Commissioner Demes asked if this six-foot height variance was only for the front in the setback or for the whole fence. Ms. Reed responded that it is just for within the site plan where the front yard setback is marked off and the area within the clear-site triangle, not for the sides. However, the sides would have a six-foot height requirement as well. Commissioner Demes asked if there was a back yard fence. Ms. Reed responded that there were side yard fences, but she was not sure about a back yard fence. There is a building permit for the four foot fence in the same footprint that the six-foot fence is being requested. Chair Scarpelli asked if the opening requirement between pickets needed to be clarified. Ms. Schemper responded that it's generally a fifty-fifty rule. Ms. Reed added that staff does review for that type of fencing and whether or not it impairs visibility. Ms. Schemper clarified that normally, the first four feet of height can be solid, but anything above that must be open and generally a fifty-fifty ratio is applied to that. The opaque fence versus open is more about the streetscape character, particularly in a residential neighbourhood. The applicants did not wish to speak. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Commissioner Demes stated that he is not opposed to this but has some comments. He was unfamiliar with the site so he went there. It is described that the property is immediately next door to the Caribbean Club creating enormous security and safety issues for this address. Ms. Schemper interjected that the actual club is separated from where the home is by a fairly large yard or parking area, but that on weekends and holidays it is incredibly full and boat trailers and cars are parked all the way up to the property line as it is located next to a busy public boat ramp. Commissioner Demes understood that with that type of patronage he could imagine people doing all kinds of things and swimming over to the neighbouring docks and hanging out, which is why he was wondering about the scope of this variance with the fence and was hoping there was going to be a fence in the back as this does nothing to stop people from hanging out on the private residence dock. Commissioner Demes referenced page 7, line 8 of the report regarding the wall and fence being consistent with adjoining properties. One property next to this lot is empty with no fence, and the other has a concrete wall/fence which is a tall six feet and is solid. Regarding consistency, he was taking the adjoining fence/wall into account which seems to be taller than six feet. As to the gate in this location, he believes the wider the better for safety. It would be dangerous to back a truck out onto U.S. 1. Commissioner Demes would move to approve this just for the privacy aspect and road noise. Ms. Devin Tolpin clarified that the language in the variance and code requirements limits it to six feet in height and it would be reviewed in the building process.

Motion: Commissioner Thomas made a motion to approve. Commissioner Demes seconded the motion. Motion passed unanimously.

4. A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION ADOPTING RULES AND PROCEDURES FOR THE ADMINISTRATION AND CONDUCT OF PROCEEDINGS AND HEARINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

(10:27 a.m.) Mr. Peter Morris, Assistant County Attorney, presented the resolution. This item is to obviate some of the forum shopping and vexatious litigation that ought not to soak up the

public's or this Commission's resources. This amendment addresses the instance in which more than 30 days has elapsed in order to take a timely appeal. For many years under the land development code it has been the law of Monroe County that should you let 30 days expire beyond the written determination, decision or interpretation, the opportunity to litigate should you wish to challenge that determination, decision or interpretation has passed and that is irrevocable. This amendment folds that into the Planning Commission's adopted rules of procedure as provided in the land development code. In a better world it wouldn't be necessary to duplicate what the code provides into the rules of procedure but in the past, enterprising plaintiffs' lawyers have insisted that notwithstanding the code, there is nothing in the Planning Commission's rules that says that, even in instances where a permit that expired say in December by operation of law is only the subject of a notice of appeal the following summer.

The second component of this amendment prevents novel theories by enterprising plaintiffs' lawyers and forum shopping in which a party receives a decision that they don't like, then let their appeal window lapse, then approaches another member of the Planning or Building Department asking the same question to elicit either a different or the same answer, and then the argument will follow that my appellate rights have been revised and I can file an appeal now because you just issued the same answer you told me six months ago. Again, in a more common-sense world this wouldn't be necessary.

The third component expressly folds into the rules of procedure the authority of the general counsel for the Planning Commission to reject motions for reconsideration that are really not motions for reconsideration but, in essence, to habitually over time asked for essentially a re-do where you see a reprise of the same arguments that for whatever reason did not carry the day at a previous hearing.

Commissioner Demes confirmed that the additions were underlined, and asked if the scope seems to be identified now because of the words that were added, non-appeal and non-appealing in paragraph A, first and second lines, so the Planning Director is instructed not to place any non-appeal application and non-appeal proposal, and asked why that was required. Mr. Morris responded that in the previous edition of the rules there was no distinction between applications to appeal or development applications. Since this change folds in the code's existing preclusion of litigation when the appellate window has lapsed, he needed to ensure that the first paragraph was consistent with what was being added. In essence, if someone has a development application or an application for a variance, they can go forward should they insist despite that arguably some technical requirements of the development application have not been met. The reason for that is because there's nothing specifically in the code that says that writ large failure to meet a general technical requirement precludes you from going forward. There's some play in the joints there because sometimes there are conditions precedent to filing an application but in general, people do have a right to have their application for a development proposal heard. That's distinct from when you've received an adverse decision and you wish to litigate. Your right to litigate exists for 30 days after that decision is rendered. That's why there is a distinction between the right to push forward with a non-appeal application versus what is being added in the underlying text on page one which is that you do not have a right to initiate litigation and sue should you let your 30-day appeal window lapse.

Commissioner Demes stated that he had to read this paragraph three times, and Chair Scarpelli agreed he had as well, but Commissioner Demes plans to use some of these phrases in his normal conversation, particularly reanimation and puratively recreated. And, he is pleased to know that when someone asks, "What do you do," that he can say he's on a sunshine panel collegial body. Commissioner Neugent added that when Commissioner Demes speaks those words, they will know from where they came.

Mr. Dirk Smits, Planning Commission Counsel, confirmed that Items 4 and 5 had not been blended together, and clarified that it appears he would be making a call on whether things are compliant with the application. Mr. Morris stated that would be a petition for writ of certiorari to the circuit court, but it would not be an incredibly discretionary call by the general counsel. The motion for reconsideration vehicle in the rules of procedure is very specific that the scope of relief for a motion for reconsideration to this body is limited to essentially asking for findings of fact or conclusions of law that are missing that are needed to be adequately on notice of why you were denied a development application or appeal. Since this vehicle has been furnished munificently to prospective adverse litigants, every motion for reconsideration that has been filed has reprised the exact same arguments that were unsuccessfully made. Just titling a document as a reconsideration motion and saying the same thing louder is not a proper motion. Mr. Smits confirmed with Mr. Morris that this was a delegation of authority to him. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to approve. Commissioner Anderson seconded the motion. Motion passed unanimously.

5. RATIFICATION OF PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT ADMINISTRATIVE RULE OF PROCEDURE NO. 01-24; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE. ADMINISTRATIVE RULE 01-24

(10:05 a.m.) Mr. Peter Morris, Assistant County Attorney, presented the administrative rule. Under Section 102-21(b)(2)(m) the Planning Director has plenary authority to adopt rules of procedure necessary for the administration of the responsibilities under the comprehensive plan or land development code. To that end, this administrative rule of procedure was promulgated by the Planning Director and provides that a party cannot use punitive silence as an argument that they have detrimentally relied on the silence as a form of consent to do something usually illegal. This is consistent with Florida general law that there is no detrimental reliance that you can base off of a non-affirmative act. This is being brought forward because pushback from enterprising plaintiffs' lawyers have tried to assert that their client said that they spoke many years ago to someone but they don't remember the name, and nothing is in writing with Building or Planning or Code that told them they could do this, that, or the other, and now they're doing it, and if we say that they can't, we've yanked the mat out from under their feet. The Department always endeavors to get to yes and, by extension, when the Department has to say no, it's because it's illegal. Unfortunately, there have been circumstances in which people have, with deficient credibility, asserted that they could reasonably rely on silence where if you don't get an answer, which most of the time people do and private applicants are not shy about running up the totem pole for an answer, whether different or for an answer if they didn't get one in the first

instance. This rule was promulgated by the Director to obviate that type of abuse and it would be helpful to additionally have the approval of this panel.

Commissioner Demes stated that he understands, especially in light of recent meetings, why this is needed but, at the same time, people know to follow up, and asked when saying failure to respond doesn't constitute approval, what is the cure when that becomes an issue. Mr. Morris responded that the legal remedy is to file a petition for writ of mandamus which is basically an order from the circuit court telling the relevant arm of government, "do your job." If someone files an application for a pre-app with a letter of understanding and the Department doesn't issue one for an extended period of time, the applicant has a right to petition for what's called an order for mandamus, which is fancy Latin for "do your job." Ms. Schemper interjected that they could also just call and ask for an answer. Mr. Morris added that the bar is very high so, as Ms. Schemper mentioned, the most common, sensible thing to do is call that employee's director because you have to demonstrate that you waited a really long time. Commissioner Demes believes the value in this is it's very much more explicit than in the convoluted stories they've sometimes listened to and hopefully it clears a lot of that up. Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Thomas made a motion to approve. Commissioner Demes seconded the motion. Motion passed unanimously.

BOARD DISCUSSION

The first meeting of 2025 was confirmed to be January 22, with approval of the dates for the remainder of the year to be handled at that first meeting.

Motion: Chair Thomas made a motion to approve the January 22, 2025 meeting date. Commissioner Demes seconded the motion. Motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

None.

RESOLUTIONS FOR SIGNATURE

None.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 10:46 a.m.