PLANNING COMMISSION
January 22, 2025

Meeting Minutes

The Planning Commission of Monroe County conducted a hybrid virtual and in-person meeting on **Wednesday, January 22, 2025,** 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
Matthew Restaino, Senior 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.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Jessica McKinney confirmed receipt of all necessary paperwork, and indicated that applicants for Item 3 had submitted a presentation.

SWEARING OF COUNTY STAFF

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

CHANGES TO THE AGENDA
None.

DISCLOSURE OF EX PARTE COMMUNICATIONS
Commissioner Demes stated that he'd recommended Commissioner Neugent take a look at the site for Item 1; and while at Roostica he had asked Mr. Bobby Mongelli if he had any financial or business interest in the property next to him, and he had responded that he did not.

Chair Scarpelli stated that he had spoken to the owner of Cayo Hueso Brewing Company and let him know that the gift card he'd been given when he coached his son was an appreciated gift but it would have nothing to do with today's vote. However, as a precaution, Chair Scarpelli stated that he would be recusing himself for Item 1 and had filled out a Form 8B as required by state statutes.

APPROVAL OF MINUTES
Motion: Commissioner Demes made a motion to approve the December 12, 2024 meeting minutes. Commissioner Neugent seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

AGENDA ITEMS

1. MARGARITA QUINTANA, 5630 MALONEY AVENUE, STOCK ISLAND, MILE MARKER 5: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR THE SALE OF BEER AND WINE BY THE DRINK (CONSUMPTION ON PREMISES) AND IN SEALED CONTAINERS FOR PACKAGE SALES WITHIN AN EXISTING BREWERY. THE PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 35, TOWNSHIP 67 SOUTH, RANGE 25 EAST, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00124790-000000. (FILE NO. 2022-222)

(10:04 a.m.) Mr. Matthew Restaino, Senior Planner, presented the staff report. The applicant is Cayo Hueso Brewing, the agent is Mr. Richard McChesney, the property owner is Ms. Margarita Quintana. Mr. Restaino presented the site plan. The land use district is Mixed Use. There are multiple established uses on the site including Cayo Hueso Brewery which is outlined in yellow. The business is currently allowed to manufacture beer but not allowed to sell to customers on site. A building permit was approved to install a tasting room which will allow them to utilize the tasting room to sell their product directly to customers. The site plan was presented and there are no changes proposed to the site. Staff found that the application is in compliance with the five required criteria and recommends approval with the following conditions: The alcoholic beverage use permit shall not be effective and approved until the building permit for the tasting room has been issued, has passed all inspections, and the file is closed out, at which time they will be eligible for the state license.

Commissioner Demes asked whether outdoor seating had been approved. Mr. Restaino responded that had not. Commissioner Demes stated that there is outdoor seating. Mr. Restaino

responded that they were not allowed to have it and it would need to be removed to be in compliance with the conditions of approval. Commissioner Demes stated the track record for enforcing that is zero, referring to an application that was granted at mile marker 104 that was in non-compliance when the permit was issued and is still not in compliance. When the Commission approves something and in good faith expects an applicant to comply and they don't, he questions what the Commission is doing here by continuing to approve things like this.

Ms. Devin Tolpin, Planning and Development Review Manager, interjected that this application is unique from the one mentioned in that the condition of approval is that this alcoholic beverage permit would not be effective until that permit is issued and final planning inspection has been conducted and closed out. Commissioner Demes thanked Ms. Tolpin and stated that he was a very positive person. Commissioner Neugent added that the Commission always approves these requests and when he went down and walked the property, it looks like there is some ongoing business happening and asked if the property had been checked for potential violations. Ms. Tolpin responded that as part of the process, staff would confirm there were no violations on the property. Ms. Emily Schemper, Senior Director of Planning and Environmental Resources added that before this permit becomes effective, if approved today, a site inspection will be conducted to ensure compliance with the most recently approved site plan.

Mr. Peter Morris, Assistant County Attorney, added that it seems the concern is that compliance will be ephemeral and transitory in the sense that the outdoor seating will be removed for purposes of confirmation of the final planning inspection at the building permit stage and once that is over, it's back. He's not saying that is going to happen but reading between the lines, this isn't necessarily a material factor in the code for the Commission to consider but there is a hydrogenous sort of hydraulic pressure exerted by the fact that serving alcohol on premises in an area that is not approved by the local government creates an enormous level of premises liability. That's not a failsafe or complete prophylactic for the concern but as a property owner, he would not think of serving alcohol in an area of the premises for which there was no government approval such that if there is an accident or someone consuming alcohol did something, or someone was injured or killed, the liability would explode the atmosphere. That doesn't solve the concern but that is an extrinsic variable that does sometimes exert some hydraulic pressure.

Commissioner Neugent asked and Mr. Restaino confirmed there had been an application submitted for a building permit. Mr. Restaino also clarified that the brewery itself was already approved, and the current permit is to install a tasting room to serve directly to customers. The status of the application is it's been submitted and reviewed is ready to issue but has not been picked up. Chair Scarpelli then asked if the applicant wished to speak.

Mr. Richard McChesney, agent for the applicant, thanked staff for their hard work. This has been in process for a while. He has not recently been to the site so he is unaware of the mentioned seating but completely agrees with staff that there is no proposed seating as part of this application, and any consumption would need to be in the areas outlined in the application. He asked Commissioner Demes about the seating he had seen, and Commissioner Demes described it as three or four picnic tables with umbrellas, with coffee tables and chairs towards the building, allowing seating for twenty-plus people. Mr. McChesney responded that that is certainly not something that would be part of this application and it shouldn't be there, and

agreed it will need to be brought into compliance. There is no need for tables and chairs for the business proposed and he is not sure what the use of those would be for, but they are not part of what he is proposing.

Commissioner Thomas stated concerns about this turning into a tasting room with lots of people going back and forth, things going on that shouldn't be, but even more importantly it is going to increase traffic and parking. Mr. McChesney responded that the tasting room in total is approximately 500 square feet. A traffic impact statement was prepared and it was determined that due to the size, it would not have an increase affect on traffic. He had just reached out to his client regarding the tables and chairs and was told they are used as a lunch or recreational area for some of the staff of the neighboring auto parts business and there is no problem removing them from the site as relates to this proposed business.

Commissioner Demes added that he may have been born at night, but not last night. If this was put in the permit he would have no problem with the seating, but it speaks to the credibility of whether something should or should not be there. When somebody requests something from the County that requires a permit, time should be spent to research that and understand what is and is not in compliance. Additionally, this is a great example of why you can't look at a site plan and make a decision. He had counted 13 parking spaces including an ADA space which has at least three non-serviceable cars parked at 90 degrees to the parking space, and part of the space has a shade structure. Of the 13 spaces on the site plan, maybe two could be used for parking. He is all for the brewery but even if the ADA space was usable, which it is not, you would have to walk around an entire block to get to the brewery. He knows Stock Island is pressed for parking but of those 13 spaces, the majority of them are not usable. He could not pull into the front because one of the accesses that would be to the parking had a car that was being worked on with the hood up. The site plan doesn't contain any parking that services the proposed area. Commissioner Demes asked how they were going to really use the parking and why some realistic parking wasn't sought after and put in the permit. Mr. McChesney responded that it's a unique situation because this is a large parcel with four contiguous lots. In reality, it creates a scenario where you would provide an ADA space on the front of the parcel even though the business is on the rear, so it's technically allowed but may not be the best if you are someone that needs the spot. Because it is a one large parcel, sufficient parking must be provided for the whole property and all of the uses. Some scooter spaces were added. Parking at the rear could not be added because the distance from the building to the actual property line was not sufficient. In reality, there is a buffer zone between the property line and the actual right-of-way so people do park pulled in, but that type of parking does not meet County Engineering standards to count as actual spaces. Commissioner Demes stated, regarding the ADA space, that no one would be expected to walk a couple thousand feet around the block to use the building. He would appreciate from the standpoint of the intent of this parking and regulations, the decency to allow an ADA space for those in need of it.

Chair Scarpelli noted that it appeared to have changed from being in the back to the front from the original site plan, and he was curious about that change. Mr. Restaino responded that this property was developed a long time ago and is not in compliance with the current code for multiple reasons. The first building permit to establish the brewery use was to change from one light industrial use to another, and had triggered no deviation from that so the parking wasn't

reviewed as part of that permit. With the tasting room building permit it is a change of use from 500 square feet of minor conditional use to as-of-right use so no deviation was required. The code says when there is a change of use parking is to be brought into compliance to the greatest extent practicable, so there's not much that could have been done. It's still not in compliance but is slightly more in compliance than previously. The ADA space was moved to the north side of the property. Commissioner Demes stated that Mr. Restaino would get coal for Christmas.

Mr. McChesney added that the site originally didn't have an ADA space at all. The space had been originally proposed to be put in the rear, but based on engineering standards it sticks out into the right-of-way and is not allowed so it was added to the front. The site has to be looked at as a whole for all businesses that exist there and they had to add a loading zone. As to the storage of cars in the front, that is something the business owner of the auto parts business needs to address.

Commissioner Thomas stated that she does not agree that parking would not be increased with this permit. Ms. Schemper explained that they were in compliance to the maximum extent practicable. The site plan was modified as much as possible in terms of the physical constraints to identify legal parking spaces on the site. There are additional parking spaces that have been there forever that overlap the right-of-way and cannot be added to the plan as legally approved parking spaces. In reality, they exist, but have never been approved. Adding them as an approved parking space opens up a whole new problem, and technically this meets the requirements of the code. Commissioner Demes stated that he appreciates the argument but disagrees. He would be happy to show somebody where the fence could be set back to allow parking. Common sense says parking will increase. Ms. Schemper added that she understands, but that it would require code amendments. A loading zone cannot be put in the setback, and she is bound by the code. In reality, areas that are not marked are being used. Commissioner Neugent noted that Commissioner Demes was trying to get Mr. Restaino's coal for Christmas. He appreciates staff trying to work with businesses and understands what Ms. Schemper is saying, that there are no codes to do what is being discussed unless the Commission just wants to deny this, and he doesn't believe they've ever denied a liquor license.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to approve. Commissioner Neugent seconded the motion. Motion passed 3 to 1, with one abstention.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, No; Commissioner Neugent, Yes; Commissioner Anderson, Yes; Chair Scarpelli, Abstained.

2. ABIT HOLDINGS, LLC, 103965, 103955, 103945, 103935, 103925 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 104: A PUBLIC HEARING CONCERNING A REQUEST FOR FOUR VARIANCES TO: 1) ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII; 2) FRONT YARD NON-SHORELINE SETBACK REQUIREMENTS SET FORTH IN CHAPTER 131; 3) SIDE YARD DISTRICT BOUNDARY BUFFER REQUIREMENTS SET FORTH IN CHAPTER 114, ARTICLE V; AND 4) REAR YARD DISTRICT BOUNDARY BUFFER REQUIREMENTS SET FORTH IN CHAPTER

114, ARTICLE V OF THE MONROE COUNTY LAND DEVELOPMENT CODE TO ALLOW FOR: 1) AN ACCESS DRIVE TO U.S. 1 THAT IS SPACED APPROXIMATELY 68 FEET AND 7 INCHES FROM THE EXISTING CURB CUT TO THE NORTHEAST AND APPROXIMATELY 224 FEET AND 11 INCHES TO THE AVENUE B CURB CUT SOUTHWEST OF THE SUBJECT PROPERTY; 2) A FRONT YARD SETBACK OF TEN FEET; 3) NO BUFFER YARD ALONG THE NORTHEAST SIDE PROPERTY LINE; AND 4) A 10 FOOT DISTRICT BUFFER ALONG THE REAR YARD PROPERTY LINE. THE PROPERTY IS LEGALLY DESCRIBED AS LOTS 9 THROUGH 13, BLOCK 7, LARGO SOUND VILLAGE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 4, AT PAGE 92, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00475240-000000, 00475250-000000, 00475260-000000, 00475270-000000, AND 00475280-000000. (FILE NO. 2024-109)

(10:40 a.m.) Ms. Stephanie Reed, Planner, presented the staff report for the variances to the required access standards, primary non-shoreline front yard setback requirements, side yard district boundary buffer requirement, and rear yard district boundary requirement, and noted that Mr. Mike Roberts, Assistant Director, Environmental Planning, was also available for questions regarding the buffer yard variance request. The property is located in the suburban commercial land use district, abuts U.S. 1 at the front, Avenue B to the southwest, with established residences in the improved subdivision land use district to the rear, and a lawful non-conforming commercial retail use in the approved subdivision land use district to the northeast. The variances are requested in order to construct a mixed use development consisting of ten unattached affordable workforce housing dwelling units, an automated self-storage center, a restaurant, commercial retail space and an office. The community character and uses in the vicinity include residential, commercial retail, marina hotel resort and a restaurant. The property history shows BOCC Ordinances 007-2024 and 006-2024 were approved on March 20, 2024 which changed the land use district map from improved subdivision to suburban commercial and the FLUM from residential medium to mixed use commercial respectively. Ms. Reed presented the site plan. There are four variances in this request.

Variance 1: Pursuant to LDC Section 114-195 U.S. 1/County Road 905 access, no structure or land shall be developed, used or occupied unless direct access to U.S. 1 or County Road 905 is by way of a curb cut that is spaced at least 400 feet from any other curb cut that meets the access standards of the FDOT as contained in Chapter 14-97 or an existing street on the same side of U.S. 1 or County Road 905, and proposed developments with access on U.S. 1 that are defined as Class 5 or Class 6 access control classifications as defined by FDOT where the posted speed limit is 45 miles or less may deviate from the 400-foot standard in accordance with the standards contained in Chapter 14-97 of the Florida Administrative Code. The stretch of U.S. 1 adjacent to the property is designated as a Class 5 roadway with a posted speed limit of 45 mph. The minimum required distance for an access drive to this section of U.S. 1 is 245 feet. Lots that cannot meet this major road access standard shall take access from platted side streets, parallel streets or frontage roads. The applicant is requesting a variance to these access standards for an access drive on U.S. 1 rather than Avenue B that is spaced approximately 68 feet, seven inches from the existing curb cut to the northeast, and approximately 224 feet and 11 inches to the Avenue B curb cut. Per Section 102-187B the Planning Commission is authorized to grant variances to access standards if the applicant demonstrates that all standards are met. Staff

reviewed the eight variance standards, finds the request for Variance 1 to be compliant and recommends approval.

The applicant, Mr. David Thompson, stated that his presentation is based on the four variances, and he would present the first portion of it. Mr. Thompson is a 34-year resident, a 26-year landlord, and a small-time home builder in the Upper Keys. He has seen many residents struggle due to the cost of housing. Over 30 percent of his permit allocations have been affordable housing, as is this project which is primarily residential with over 50 percent floor area devoted to workforce housing. This project sits on U.S. 1 between a longstanding commercially operated business at a main intersection to Largo Sound Village with a conversation easement to the rear. This highway corner has an acute street intersecting it in a way that is dangerous and does not meet FDOT standards. He has elected to develop this site with a low traffic generation profile and has avoided connection to the neighbourhood and the non-standard intersection. The drive is FDOT permitted and he requests this variance. There were no questions for the applicant.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. Commissioner Demes commented on the access, noting that he accepts the 68.7 inches to the curb cut, but the intent is public safety and the curb cut would be indicative of where people would pull on and off of U.S. 1, which that would be Lot 9, and butts against the fence on Lot 8, with the curb cut on Lot 7. When he visited the site it is obvious that Lot 8 is scarified and used as a parking area where people pull in and out with no curb cut required. In practicality, when talking about safety and not codes, it doesn't make sense from a public safety standpoint. The curb cut is actually somewhere between 20 and 25 feet to where people use that lot. Avenue B would be a way not to use U.S. 1 but he has heard that the community doesn't want that. So he acknowledges the fact that it's really not 68.7 feet when it comes to people pulling on and off of U.S. 1 and where this main entrance will be, that it's really more like 20 feet. Ms. Reed explained that the 68.7 feet is the distance from the curb cut to the next property and their access drive. Public comment was requested a second time. There was none. Public comment was closed for a second time.

Motion: Commissioner Demes made a motion to approve Variance 1. Commissioner Neugent seconded the motion. Motion passed unanimously.

Variance 2: Ms. Reed continued. This is a request for a variance of 15 feet to the primary front yard setback requirement of 25 feet as set forth in Chapter 131 of the Land Development Code. Approval would result in a primary front yard setback of 10 feet. Staff reviewed the eight variance standards and this variance was found to be not compliant with standards 1, 2, 4 and 8 of the eight standards set forth in Section 102-187B. Staff does not have evidence to support the applicant's assertion that the location of the access drive necessitates the variance to the front yard setback requirements; staff does not believe the applicant has demonstrated sufficiently how the front yard setback requirements unfairly restrict and render the property impractical for use; staff does not agree that this property has a unique or peculiar circumstance limiting the reasonable location of parking subject to compliance with land development code requirements which apply to this property and not other properties in the same zoning district; staff believes the hardship is due to the proposed maximization of development capacity of the site evidenced

by the 100 percent non-residential intensity utilization and 97 percent net residential density of the proposed uses. Staff finds that the request not in compliance.

Mr. Thompson presented the configuration of the new access drive inverting the front parking spaces with the access aisle to provide safe vehicle staging within his site. This parcel is unique and is the only one in the area affected by this circumstance. This front yard setback does not reduce the community standard. The code permits parking in this location per Section 131.3.4 if this site was only workforce housing, but the economic engine is needed to finance it. The parking across 24 hours attributed to workforce housing is 75 percent of the total so, as a majority residential demand, parking in the front yard is justified. The entire commercial demand peaks at seven spaces. Ten foot of buffers have been provided to screen vehicles. The spaces can be designated for exclusive use of residences. In this case, the spirit of the code and community standard is not being compromised. Not appreciated here is one could build a 220 foot long building, 35 feet high and 15 feet from the highway with no variance to take best advantage of the property. The applicant's desire is to maintain an open character of this section of highway. Using the front yard for parking with paved area at ground level is substantially less impact. Granting the 10-foot highway encroachment is justified by the unsafe intersection, is the minimum necessary, safest configuration, improves the highway corridor, and just makes sense. This proposal has critically needed area for locals to store their belongings safely, with the structure pushed as far away from the highway as possible to improve the visual quality of the area. Intensity of use creates a far greater impact than square footage. Three classes, low, medium and high, exist. For this project size while staying in the low category is 462. Actual calculated for this site is 75, which is 16 percent of the lowest intensity recognized by the code. Commercial intensity for this site is absurdly low. The report mentions the size of the building as the hardship. To maintain reasonable use of this property this mix of uses develops intensity at one-sixth of what is permitted in the lowest category. The design asks for no relief to setbacks for building structures. The open space ratio exceeds code by 40 percent. The Avenue B buffer is 50 percent larger than standard. The commercial square footage setback is miniscule. The 52 feet contains a mere 670 square feet of commercial. This choice is not the basis for variance relief. The same square footage can easily fit on the site without any variances. This brilliant mix of low-intensity uses allows this to be done. The variances are to relieve an exceptional hardship of the intersection, a burden of substantial and different magnitude than what other parcels are faced with. The current code permits a 100 percent density square footage to be built in the first 29 feet of this property, and this project proposes zero for 32, so there is not too much being jammed onto this. This is a unique circumstance which also extends to its adjacent features, topography or conditions to that property and do not apply to the general neighbourhood. Planning staff agrees on this.

Southwest lies an adjacent feature that creates a hardship for this commercial property alone. It is an unsafe intersection and Staff asserts it is a unique exceptional hardship. Southeast lies a unique feature that does not apply to any other SC property in the area; a conservation deed restricted by Monroe County. Any adjacent feature whether a road, intersection or conservation easement creates a basis to acknowledge a unique or peculiar circumstance as long as it only applies to the parcel in question, which is precisely the case here. Staff acknowledges that standard 102-187B (4) is met. Mr. Thompson wants to be part of the solution to Monroe County's number one priority. This project leverages this land effectively to help nurses,

teachers and law enforcement to live affordably locally and helps stem the ugly infiltration of food trucks along the highway by providing working class food service safely.

Mr. Thompson is a one-man show and has worked very hard to design a project that is wholly intended to serve needs of locals. He has done everything in his power to protect Largo Sound Village with larger buffers and no connection to the neighbourhood. This design pushes structure away from the corridor and has miniscule traffic impacts while providing buffer densities and widths on the remaining sides that exceed community standards and is configured in ways to protect area residences, prioritizing safety and compatibility, reducing impacts and exceeding code and community standards in numerous ways. The 10 affordable housing units on this site should be a priority in accordance with the goals of the Comp Plan and Section 139A to stimulate private sector production of affordable housing and encourage opportunities throughout all portions of the community including within new and expanding development. This site plan is essentially the same one the BOCC saw when they approved the SC zoning to build the promised housing. The plan is complete and ready to submit. With the exception of the side yard, every aspect of this variance is critical for this site plan to work. It is a package deal for ten workforce housing units.

Commissioner Neugent asked if he had the allocations to develop this. Mr. Thompson responded that he has a reservation which he extended six additional months from December and expires May 13. He will likely need another 90 days, but will extend for six more months if he gets this approval. The parking spaces in front can be designated for residential only and realistically, the first thing to go would be those spaces demanded by the residential units. Practically, moving residential units is the solution if this variance can't be met. Developers don't maximize affordable housing on their own dime and they use government dollars. He is under no obligation to maximize this component. The endless hurdles he has faced to develop this housing has him ready to give up. Ten affordable housing units is a great opportunity and he thinks this County should want this.

Chair Scarpelli stated that Staff tries to work with applicants but they are also bound by the code, and then asked if it a variance to reduce parking requirements for affordable housing was possible. Ms. Schemper responded that a variance could be requested for the number of parking spaces, but she is not saying that that would be necessarily better or worse than a setback. Mr. Thompson added that parking is almost always an issue even with meeting the standards so he does not believe that that variance is practical. It doesn't make as much sense as this because this meets the community standards. If there was no commercial here, the parking spaces could be there, but the commercial component comes into financing the affordable housing.

Commissioner Demes asked for clarification on two references to the housing between affordable and workforce. Mr. Thompson said workforce housing is affordable housing. Workforce is easier to say and makes sense because it's for the people who work here, but is in the affordable housing category, is deed restricted and income limited. Ms. Schemper clarified that this project is actually required to be employee housing, which is a subcategory of affordable. It meets the affordable income limits and rent maximums, and the tenants have to earn 70 percent of their income within the County. Commissioner Demes stated that that makes it workforce housing. Ms. Schemper explained that it's getting confusing because of all of the

ROGO discussions and there are new categories. The current term is employee housing, very slightly different than the workforce definition.

Mr. Peter Morris, Assistant County Attorney, added that with respect to Variance 2, to know you are honing in on the actual landing lights in the text of the code rather than ephemerally divining what exceptional hardship is, that term is defined in Section 101-1 of the code so the Board knows what it's supposed to be cogitating about. Exceptional hardship is defined as a burden on the property owner that substantially differs in kind or magnitude from the burden imposed on other similarly situated property owners. Financial difficulty/hardship does not qualify as an exceptional hardship. This means exclusively something idiosyncratic regarding the physical characteristics of the property.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. Chair Scarpelli asked about the comment that if this were totally residential that parking would be allowed in those spots. Ms. Devin Tolpin, Planning and Development Review Manager, responded that that was correct for parcels developed exclusively with a residential use. Chair Scarpelli noted that limiting those spots to residential wouldn't matter, although the Board could ask for that. Mr. Thompson reminded the Commission that there is a 15 foot setback to the highway that he could take advantage of so it's five additional feet beyond something he's already permitted to do. Ms. Tolpin stated that because this is a double-frontage parcel, the applicant was able to design the project to comply with both a 25-foot primary front yard setback along one side and a 15-foot secondary front yard setback along the other frontage along the road. The way it's designed the affordable housing units are adjacent to Avenue B. Chair Scarpelli thought that if he the whole parking lot and drive aisle were slid back five feet he would be at the 15 feet. Ms. Schemper stated that he would then have to move the building over from Avenue B as well. Mr. Thompson added that he would choose the 15 foot variance rather than 10. Chair Scarpelli asked what the driving force was behind the two buildings. Mr. Thompson responded that it was to reduce impacts to the neighborhood, which he'd gotten pushback on the zoning change, but today there is nobody against these variances from the neighborhood because he configured it completely with them in mind. Chair Scarpelli added that he appreciated that and the food truck comment. Mr. Thompson explained that this restaurant was basically a food truck with a bathroom and a safe parking space. There is going to be an accident on the Key Largo corridor related to all of the food trucks.

Chair Scarpelli stated that he is conflicted because there are discussions in place to adjust codes to allow for easier setbacks for workforce housing and it is unfortunate that that hasn't been accomplished yet. Commissioner Neugent agreed and wished Staff and the applicant could have figured out a way to make this work because the affordable housing element is critical. Commissioner Demes added that he is generally an advocate of maximum density and intensity of a development but not at the expense of granting variances. Mr. Thompson added that the hardship is the unsafe intersection which causes it to be a necessity. It doesn't change the community standard for what the code allows and he believes it is reasonable. Mr. Thompson added that he is maximizing the affordable housing component on this site as he promised the BOCC he would do. It is at maximum density but it is incredibly small. Chair Scarpelli thought that reductions could be made to make the project work. Once a motion is made there is no more discussion.

Motion: Commissioner Demes made a motion to accept staff's recommendation and deny Variance 2. Commissioner Thomas seconded the motion. Motion passed 4 to 1.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, No; Commissioner Anderson, Yes; Chair Scarpelli, Yes.

Mr. Thompson then requested motion for reconsideration on the decision for Variance 2. Mr. Morris explained the rules regarding that request, that one prevailing Commissioner can make that request. No request by a prevailing Commissioner was made to allow the reconsideration.

Variance 3: Ms. Reed continued. This is a variance to the district boundary buffer that would result in a zero district buffer where a 20-width buffer would be required. The requirements of Section 102-187B were reviewed for this variance and the same requirements 1, 2, 4 and 8 were found not in compliance for the side yard Class D buffer yard variance request. The application listed the presence of the existing lawful nonconforming commercial retail use on the adjacent property as cause for granting the buffer yard elimination variance request. While the adjacent property owner has applied for a FLUM and Land Use District Map amendment and is going through the required processes, Staff cannot base a compliance determination on pending applications and potential future conditions. If the pending FLUM and LUD map amendments are approved then the Class D land use district boundary buffer would not be required. Environmental resource staff does not consider the fact that the parcels under consideration are vacant land without an established use adjacent to developed property as a unique circumstance. Staff finds the request not in compliance of 102-187B.

Mr. Thompson presented a diagram reflecting what is basically an employee parking lot which has the ability to use the FDOT asphalt apron that's just immediately north. Reasonably, there is not a buffer yard required. He does not actually have a need for this variance because he can wait a few months and when the adjacent parcel is commercial, he can apply for his permits then. So, granting the variance or not, there won't be a buffer there, but granting the variance does speed up the process of constructing affordable housing. Ms. Tolpin interjected that when the adjacent property owner changes their zoning, and they are proposing going to suburban commercial, there would be no district boundary buffer requirement. The application did go to the DRC yesterday proposing to amend from IS to SC, and Staff is recommending approval. Chair Scarpelli noted that the district buffer yard won't be necessary at that time. Ms. Schemper stated, assuming it gets approved. Ms. Tolpin added that it will come before the Commission next month.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. Chair Scarpelli noted that a variance runs with the land. When the other side would be granted Mr. Thompson could adjust his front yard setback. Chair Scarpelli spoke about several hypotheticals, concluding with his believe that the hardship was self created based upon what's on the site.

Motion: Commissioner Thomas made a motion to accept staff's recommendation to deny Variance 3. Commissioner Anderson seconded the motion. Motion passed 4 to 1.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, No; Commissioner Anderson, Yes; Chair Scarpelli, Yes.

Variance 4: Ms. Reed continued. This is similar Variance 3, a Class D district boundary buffer being required between the suburban commercial and improved subdivision land use districts at the rear of the property. Approval would result in a 10-foot district boundary buffer instead of the 20 foot required. The requirements of Section 102-187B were reviewed for this variance and the same requirements 1, 2, 4 and 8 were not met. The application listed the presence of a recorded grant of conservation easement along the property lines to the rear as cause for granting the buffer yard reduction request. Staff asserts that off-site areas cannot be required to meet the required buffer yards of a property. Only the vegetation within the first ten feet of the property line on the adjacent property shall count toward the planting density. However, the adjacent 10 feet of the off-site conservation easement does not count towards the required width. Staff's position is that the buffer yard constraint is due to the size of the proposed structures and does not consider the fact that the parcels under consideration are vacant land without an established use adjacent to developed property as a unique circumstance. Staff finds the request not in compliance of 102-187B.

Mr. Thompson pointed out that his responsibility for the side yard buffer is 10 foot, not 20. When the property is vacant, it is split between both parties, but that's not relevant. This fourth aspect is not a reduction of district boundary buffer at all. A minimum 16-foot buffer lies between these districts and is required by Section 114-128, and he exceeds that. A quirk of the LDC recognizes the order of development as a factor of responsibility for buffer yards. Because the adjacent lots were developed first, the commercial use unfairly has the entire burden of the 16-foot buffer. Mr. Thompson went through Scenarios A through C of how that works indicating that the code is inadequate. The order of development cannot be a factor in the justification of buffer size. If the code deems a 16-foot width and a solid fence a conforming buffer, any size greater cannot be considered inadequate. In fairness, he should not need to install any additional buffering, just a fence. Here, the adjacent properties have already provided the buffer yard held in conservation by Monroe County in perpetuity. Code Section 114-125 clearly recognizes the ability to acknowledge buffer yard on both sides of the boundary to satisfy these requirements. This existing buffer is surveyed at 300 percent the density required by the code, 26 foot deep, 64 percent larger than the minimum standard. Mr. Thompson is not asking for a reduction of this buffer, only recognition that a deviation of responsibility is fair when a conservation easement exists as in this case. Michael McCoy, the biologist who surveyed the area, is present to answer any questions regarding the quality of this hammock. This is a unique circumstance requiring a buffer yard larger than required in this community. If the strict application of the code requires a buffer 64 percent larger than the neighbors then he has an exceptional hardship. And when he proposes to exceed the minimum community standard the case cannot be made that he's even receiving relief. He is asking for equal justice and fair application of the standards to be extended to his unique parcel.

Ms. Schemper agreed that the code is very odd when it comes to the order of development and who is responsible for what, and what percentages. When both sides of a property are vacant, there's one requirement. As soon as one side is developed the percentages change and it's very hard to interpret and apply. In this situation, the order of building, zoning amendments, et cetera,

has made it even more quirky. Mr. Morris concurred. Ms. Schemper confirmed that in discussions with Mr. Roberts, Assistant Director, Environmental Resources, it is preferable to not have the solid fence for species habitat because there is the conservation easement. Mr. Thompson added that that is relevant for this situation because he has an option for a 16-foot buffer with a fence, or he can keep the entire hammock intact and add 10 additional feet without the detriment of a fence.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed. Chair Scarpelli asked Mr. Roberts if a chain link fence would be desired to protect the conservation area. Mr. Roberts responded that the applicant was proposing a 10-foot buffer so the application of the fence would have to go on the property line, which would bifurcate the conservation area. Chair Scarpelli added that he understands what the Staff had to do but it seems like the 10 feet would give the conservation area a buffer on the property line side. Mr. Roberts responded that the 10-foot buffer goes right up to the buildings so a fence would be of limited value. Mr. Thompson presented a photo showing the very dense and high buffer area, noting that this would add to it. This Class D buffer will stay larger and dense.

Motion: Commissioner Thomas made a motion to approve Variance 4. Commissioner Anderson seconded the motion. Motion passed unanimously.

Roll Call: Commissioner Demes, Yes; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Anderson, Yes; Chair Scarpelli, Yes.

Variance 3 Reconsidered:

Motion: Commissioner Anderson made a motion to reconsider Variance 3. Commissioner Neugent seconded the motion. Motion passed 3 to 2.

Roll Call: Commissioner Demes, No; Commissioner Thomas, No; Commissioner Neugent, Yes; Commissioner Anderson Yes; Chair Scarpelli, Yes.

Mr. Morris stated that the Commission is reconsidering the vote, not revisiting the full panoply of the item, so the Commission is in the bubble to hash out if they want to change their vote. Chair Scarpelli explained that Variance 3 was the buffer yard requirements to the side yard and the buffer yard needed to be 20 feet. Ms. Schemper stated that if a solid fence were installed then a 16-foot buffer would be required and read the code. Where one side of the boundary is developed the new use shall be responsible for all of the required buffer where no solid fence exists. Existing canopy trees, shrubs and understory within ten feet of the property line can be counted, up to 50 percent of the required plant material. The new use shall be responsible for 80 percent, so 16 feet, of the required buffer where a solid fence exists, and they count all existing canopy trees, shrubs and understory within ten feet of the property line, up to 40 percent of the plant material. Chair Scarpelli confirmed that the lot next door had been considered developed. Mr. Thompson stated they were asking for both sides of the argument. Either it's vacant or it's developed. Ms. Schemper responded that if the adjacent lot were considered vacant, then where commercial districts abut residential districts, and an E or F buffer is required and the commercial shall provide two-thirds. That is not relevant because it's not an E or F buffer that's

required, only a D buffer. If the other side of the property line is vacant, then in all other cases each side shall be responsible for half, in which case the applicant would be responsible for ten feet. But, the staff report states the other side of the property is already developed as part of Gus's Toy Box property.

Commissioner Demes asked for edification on Lot 8, when the business beside it went forward, if Lot 8 was considered part of the review for permitting development and planning purposes. Ms. Schemper responded that that property had been developed since the fifties and has a very complicated history. Commissioner Demes asked if she considered Lot 8 to be developed. Ms. Schemper hesitated to say that as an actual letter of development rights had never been done on that property. The staff report considers it developed and that would mean the requirement would be a 16 foot buffer with a solid fence while the zoning is IS. The request is to reduce that buffer requirement to zero feet with a five-foot setback and there will be vegetation per the landscaping requirements. Chair Scarpelli added that that would be compliant once the zoning was changed. Ms. Schemper confirmed that to be correct providing that was approved.

Motion: Commissioner Neugent made a motion to approve Variance 3. Commissioner Anderson seconded the motion. Motion passed 3 to 2.

Roll Call: Commissioner Demes, No; Commissioner Thomas, No; Commissioner Neugent, Yes; Commissioner Anderson, Yes; Chair Scarpelli, Yes.

Ms. Schemper clarified that Variance 1, 3 and 4 were approved and Variance 2 was denied.

(Meeting recessed from 12:15 p.m. to 12:23 p.m.)

3. **SCOTT SMITH REALTY LLC, 29410 RANGER AVENUE, BIG PINE KEY, MILE MARKER 29.5:** A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE OF 20 FEET TO THE REQUIRED 25 FOOT PRIMARY FRONT NON-SHORELINE SETBACK AS SET FORTH IN SECTION 131-1 OF THE LAND DEVELOPMENT CODE (LDC). APPROVAL WOULD RESULT IN A PRIMARY FRONT YARD SETBACK OF FIVE (5) FEET ADJACENT TO THE RANGER AVENUE RIGHT OF WAY. THE VARIANCE IS REQUESTED IN ORDER TO CONSTRUCT A POOL ON THE SUBJECT PROPERTY. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 22, BLOCK 4, PINE CHANNEL ESTATES, SECTION TWO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 6, PAGE 2, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00248610-000000. (FILE NO. 2024-165)

(12:23 p.m.) Mr. Matthew Restaino, Senior Planner, presented the staff report. The subject property is approximately 7,900 square feet, land use district is improved subdivision, land use map is residential medium, and is currently developed with a single-family residence, as is the surrounding character of the neighbourhood. Mr. Restaino presented a plat of Pine Channel Estates with the property highlighted in red. The applicant is requesting a variance of 20 feet to construct a pool on the property. Pursuant to Land Development Code Section 131-1, the required non-shoreline setback in the IS district relevant to this application is a primary front yard setback of 25 feet. Mr. Restaino presented a site plan with the proposed pool, noting that

the primary front setback was incorrectly labelled as a secondary front setback. Staff is recommending denial of this variance but if the Commission disagrees, the applicant would need to correct the site plan prior to approval.

Mr. Restaino presented the standards for variances pursuant to LDC Section 102-187. The review failed for criteria 2 and 8. Criteria 2 is failure to grant a variance would result in exceptional hardship to the applicant. Mr. Restaino reviewed the definition of exceptional hardship in LDC Section 101-1. The applicant stated they would not have purchased the property if they had known the setback would prevent a pool of desirable size and location. Staff found that the applicant's statement does not demonstrate an exceptional hardship. The property currently has a single-family residence and multiple accessory structures. The property is being used for its intended purpose. The entirety of the surrounding neighbourhood is in the IS district and subject to the same setback requirements. Criteria 8 is the variance is the minimum necessary to provide relief to the applicant. The applicant states the variance is needed to achieve a reasonable pool size. Staff notes pools are allowed within a shoreline setback up to 10 feet from the mean high water line in accordance with LDC Section 118-12. There is additional space for a pool on the property that is not being utilized in the current proposal. Staff does not agree that the request is the minimum necessary to provide relief. Staff recommends denial.

Commissioner Demes asked to see the site plan and asked where the primary front yard, primary side yard and secondary side yard were. Mr. Restaino responded that there is no secondary side yard on this property as there is only one street, this is at the end of the street and ends in a "T." The entire property line along Ranger Avenue is the primary front yard, so there is a 25-foot setback to the entire length of that property line. There is one side yard setback and two shoreline setbacks. The setback on the canal is 20 feet. Ms. Tolpin confirmed that on the open water side it is 10 feet to an accessory structure. Commissioner Anderson asked what was between the yellow line and the road on the diagram. Mr. Restaino responded that it is part of the right-of-way. Currently there is landscaping there predating the current ownership of the property. There is no right-of-way abandonment on this property so the landscaping is not approved to be there. There are other properties in this neighbourhood with a similar situation and he is unaware of any instance where the landscaping is actually allowed to be in the right-of-way. Chair Scarpelli asked if he was aware of any intended uses by the County for these right-of-ways in this neighborhood as this seemed to be the only neighborhood he could find with these hammerheads. Mr. Restaino was unaware of any intended use by the County. Chair Scarpelli asked if the applicant wished to speak.

Mr. Scott Smith, applicant, stated he is from Wisconsin and had a video presentation, including a video of his daughter at a swim meet. He selected this property because it had room for a pool. Prior to purchasing the property they had consulted with two local pool contractors and two local realtors, and an inspector who said, yes, absolutely, that a pool could be put in where they wanted it. This wasn't the first choice location but they had been trying to work with everyone. His daughter has aspirations to be a competitive swimmer and they need a long enough pool for lap swimming. His intention is to move down here in a couple of years. Mr. Smith presented slides and history of the neighborhood. Every lot in Pine Channel Estates is 75 by 100 except for those on the end of the road. There are 250 uniform lots, with 14 end lots that are unique to the Keys. The lots were constructed with fire truck turnarounds in mind, but with installed fire

hydrants, water and sewer the turnarounds are irrelevant and haven't been developed in 60 years. People have landscaped and put up fences and other things in the right-of-ways. At least half of the end properties have some sort of end wall or permanent structure which would be on the County right-of-way. Mr. Smith's property is multifaceted dealing with regular lot lines and the 25 foot front yard setback. Staff has proposed an alternative pool location and he has concerns that what is being asked for has never been done before, which is because there are no similar situations. The lots on the left side have a very big scallop, the right side is not as pronounced, but it's similar in the whole subdivision. With this particular lot and why it is so unique is it's the smallest lot in the entire subdivision. Mr. Morris clarified that this presentation was a demonstrative tool and not being submitted into the record. Mr. Smith pointed out on the site plan, that if he went 25 feet from the County's property, it would give him about a 15-foot pool. He has 42 feet, so if this went on the Ranger right-of-way it would be 42 feet from what the normal right-of-way would be, actually 50 feet from the edge of the pool to the road, so it is a substantial distance. Mr. Smith stated he appreciates Staff's help with everything, but he respectfully disagrees with the proposed alternative location as that location is already finished with approximately $100,000 worth of cement work, pavers and landscaping. He has chosen the obvious good spot for a pool. This request does not put any structure on County land, but would have a five-foot setback and the pool would remain 50 feet away from the road.

There were no questions from the Commissioners. Chair Scarpelli asked where the pool fence was intended to go, and Mrs. Smith responded that the contractor had recommended a pool cover. Chair Scarpelli then asked for public comment.

Mr. John Clemente, one of the abutting property owners, stated that he was also speaking for the three owners on the other side of the street, Mr. Jeff Haven, Mr. Bobby Deroso (phonetic), who believes this improves the neighborhood, and Todd from three houses opposite, and that they had all authorized him to say they support this project. Mr. Clemente supports the pool because he lived in this house for a period of time while building on the vacant lot next door and had vacationed in the house prior to that. There has only been four owners, three of which he's known. This is a family that wants to be in the Keys, had looked for a long time, respects the property, and everyone is in agreement that they will be good neighbors and they would like them to be able to proceed. The purpose for these turnarounds in 1967 can be considered past their time. It makes no sense. Common sense would have them agreeing to this de minimis and almost meaningless modification.

There was no further public comment. Public comment was closed.

Commissioner Demes stated that some of what the applicant put forward, to him, would be justification for an action that he would think if he lived there, realizing it is atypical as was said in the staff report, and taking for granted that this property was addressed about the fire trucks and how it used to be used, and he was out there looking at it and couldn't understand the configuration of this lot the way it was, and even if it were for truck turnarounds, looking at the extent of the pavement that is still away from the property line, so why didn't the applicant apply for an abandonment of part of that property. He wouldn't have an objection to abandoning it, even if they applied for 20 feet of it if not all of it, this would be doable without a variance and that would be his course of action rather than a variance because he does not like variances.

Mr. Morris responded that a road abandonment application would be a no-fly zone because the right-of-way terminates at open water, so the recourse would be a re-plat which is practically very challenging. Ms. Schemper added that the code for abandonment specifies it cannot be a right-of-way that terminates on open water. Commissioner Demes stated that he remembers that from Navy property but there's always an exception. Commissioner Neugent asked if there had been an exception at the end of one of the roads in Key Largo. Ms. Schemper responded that she believes that was where there was a question as to whether it ended on open water, where for this one there is no room for error. Chair Scarpelli agreed that it wouldn't apply here. Commissioner Neugent asked if this was something the BOCC could weigh in on in deciding for a road abandonment. Ms. Schemper responded that the BOCC could change the code and requirements for abandonment. Mr. Morris added that it has been a fairly sacrosanct provision of the code which is why there has not been any desire to revisit it. It's technically possible but historically has been a jealously guarded part of the code of ordinances. Commissioner Neugent agreed that the waterway was clearly at the end of the road. Ms. Schemper clarified that there is no provision in the code where if the BOCC votes four-fifths they could make an exception to the code.

Mr. Smith stated that the last road, Forrestal, somehow had gotten the road abandonment. Commissioner Neugent stated that had been long ago. Chair Scarpelli added that it was before the current land development code was written. Chair Scarpelli stated that he understands the unique situation, and something he could get behind is instead of a reduction of five foot, he would prefer to see a ten foot setback for safety reasons in case the County were to ever do anything to this right-of-way. Mr. Smith stated that the County was never going to do anything with this. Chair Scarpelli responded that that was not for him to determine, adding that the further away the pool is from County property, the better, which is why he suggests ten feet. He's not here to make a deal but that's where he's at on it. Mr. Morris stated that as a matter of law it is within the Commission's remit to adjust the dimmer switch to whatever number of feet they deem appropriate for approval. Ms. Schemper stated that she could not say on the fly whether that would change the Staff recommendation. Ms. Tolpin added that typically when a variance is granted it comes with specific conditions of approval, one of those being that the condition is based on the specific site plan presented. So she would request that if such a motion were made that it be very specific what the Commission would like to see. Ms. Schemper added that the site plan can be tweaked, but know that the Commission is not seeing the final site plan. Commissioner Thomas agreed that five feet is too tight. Mr. Morris clarified that the County Engineer, Judy Clarke, has not made any renunciation that the County will or will not be utilizing the right-of-way in the future.

Motion: Commissioner Neugent made a motion to approve with a 10 foot setback. Commissioner Thomas seconded the motion. Motion passed 4 to 1.

Roll Call: Commissioner Demes, No; Commissioner Thomas, Yes; Commissioner Neugent, Yes; Commissioner Anderson, Yes; Chair Scarpelli, Yes.

4. **95431 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 95:** A PUBLIC HEARING CONCERNING A REQUEST FOR A VARIANCE TO ACCESS STANDARDS SET FORTH IN CHAPTER 114, ARTICLE VII OF THE LAND DEVELOPMENT CODE

(LDC). APPROVAL WOULD RESULT IN AN ACCESS DRIVE TO U.S. 1 THAT IS SPACED APPROXIMATELY 100 FEET TO THE CURB CUT OF HERON ROAD AND APPROXIMATELY 237 FEET TO THE CURB CUT OF DOVE ROAD. THE VARIANCE IS REQUESTED FOR THE DEVELOPMENT OF A SINGLE-FAMILY RESIDENCE. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOT 2, BLOCK 2, LIME GROVE ESTATES SECTION ONE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 5 AT PAGE 54, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00485240-000000. (FILE NO. 2024-197)

(1:10 p.m.) Ms. Stephanie Reed, Planner, presented the staff report. This is a request for a variance to the access standards. The applicant and property owner is John Gibus. The applicant is requesting approval of a variance from LDC Section 114-195 which requires the curb cut on U.S. 1 to be spaced 400 feet from any other curb cut. The access variance is requested in order to construct a single access drive for a single-family residence located in improved subdivision in Tier III. The surrounding area is characterized by single-family residences, hammock and non-residential uses such as office use. In 1992, the plat of Lime Grove Estates Section 1 was approved by the BOCC on April 24, 1992. In 2020, application for building permit 20300105 was submitted to construct a single-family home on the property. The application is currently open. In 2024, the FDOT issued a proposed state highway access connection notice of intent to issue permit for the subject access drive with conditions. The access drive is spaced approximately 100 feet to the Heron Road right-of-way to the northeast, and approximately 237 feet to the Dove Road right-of-way to the southwest. Pursuant to LDC Section 102-187 the Planning Commission is authorized to grant variances to the access standards in LDC Chapter 114, Article VII, in accordance with the standards in LDC Section 102-187(d). Staff has reviewed this application for compliance and determined the applicant has demonstrated a showing of good and sufficient cause as the property abuts U.S. 1, the only possible road access unless access was granted through the neighboring private properties.

Staff does not disagree that failure to grant the variance would result in exceptional hardship to the applicant, and has determined that the property does have unique or peculiar circumstances as most properties within the IS zoning district are located in private subdivisions that are located adjacent to a County road. For example, all but four parcels within the Lime Grove Estates are adjacent a County road. Additionally, most homes within the subdivision and the IS zoning district in general are not adjacent to U.S. 1 and therefore would not be subject to LDC Section 114-195. Staff has determined that the applicant has demonstrated compliance with all requirements of Section 102-187(d). Therefore, Staff recommends approval with conditions to the requested variance.

Commissioner Demes stated that his concern was when he walked up and down the road to see the other lots, and he understands this one has no alternative, but the one to the south of it has an access through the back of the yard so he doesn't know if that one will come up later for an access, and further up there is a very large six acres and they have a very interesting pull-in setback to a gated property. He sees no alternative to this for the applicant to use the property and it is being used now. His concern is he's seen, as it relates to other properties, when you pull onto U.S. 1 you want good traction and it's paved. The site plan says proposed pavement for inside the bike path between the bike path and U.S. 1. He wants to make sure that it will actually

be paved as the site plan says. He does not want to see it gravelled. Ms. Reed confirmed that he wanted that added as a condition. Chair Scarpelli suggested using the term traction-able surface. Ms. Reed indicated she could add that language.

Applicant Mr. John J. Gibus began speaking from the audience. Ms. Schemper reiterated that the applicant was saying that the FDOT-approved plan shows it paved, so that is already required. However, Ms. Schemper recommended including it in the Commission's approval as well. Commissioner Demes agreed because there were other lots in that vicinity that were not paved. Chair Scarpelli then asked if the applicant wished to speak.

Mr. John J. Gibus, 95431 Overseas Highway, Key Largo, applicant, thanked the Commission, adding that this was the minimum he needed to get something done here.

Chair Scarpelli then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to approve with paved surface per the FDOT site plan. Commissioner Neugent seconded the motion. Motion passed unanimously.

BOARD DISCUSSION

Chair Scarpelli stated that he agrees with Commissioner Demes on the topic of people falling out of compliance with their approvals. This is frustrating, especially the Brazilian restaurant up in Key Largo. There has got to be something better than bringing a code case. Ms. Schemper stated that there is no other option than a code case. Mr. Morris stated that this Commission is limited to reviewing development applications and acting as an appellate body in appeals. This board does not have enforcement authority. The code case is the default mechanism to enforce. People are more reluctant to report code cases because the legislature has required you identify yourself and give your information, with the notable exception that if there is an asserted life safety issue you do not have to identify yourself. There is no private right of action for other than vacation rentals. Chair Scarpelli asked regarding the Cayo Hueso matter that he had abstained from if there's a way to lose a development agreement if you are found in violation of something just recently approved, and then within five years of approval you lose that approval, rather than just paying a fine or coming into compliance. Something needs to be done so people are afraid to do it from the get-go and alleviate code compliance, because they are repeat offenders. Commissioner Neugent stated that vacation rental violations were the biggest one and that it has become a profit center for the County. Mr. Morris respectfully disagreed that it's a profit center for the County, but thought it may be possible to include a proviso to certain approvals that in the event there is a found violation it would result in automatic entitlement of the County to obtain an ex parte injunction against the property owner until it's cured. Commissioner Demes stated that he had an issue on this going in because they weren't in compliance prior. If they are not currently in compliance, don't even come here or it's going to be a "no" for him because the applicant has indicated they are not responsible enough to be compliant and don't care.

Chair Scarpelli stated the other side of that would be an abandoned building coming to ask for certain things in order to get it somewhat into compliance. But, violations as far as seating, you

know what that's going to be end up being. Referring to Item 1, the handicap spot hasn't been established yet so having junk in that spot doesn't mean anything until the permit is being closed out. Commissioner Neugent noted there are private attorneys that go out looking for ADA violations. Commissioner Demes added that to sit here and approve things when there is no hope for enforcement, the Commission is teaching the citizenry that they can say anything but don't have to do it after they get the approval. Commissioner Thomas added that it is rewarding bad behavior. Commissioner Neugent stated he has never seen anybody apply for a liquor license prior to having a building to function out of. Ms. Schemper interjected that it is done all the time, with a condition of approval after the permit is completed and closed out. Ms. Schemper believes this is a legal question, noting that it is faced in permitting because you can always think of ways where people may intend to abuse or violate the approval that they get, but you can't deny something based on what you think they will do, only whether it is allowed per the code. The Commission is allowed to put some conditions on things, but it starts to mix approval with code enforcement. Mr. Smits added that what is presented is decided on the code and you can't prejudge people on whether they will comply. On a development agreement there is more flexibility in terms of if you don't do this, you don't get to the next stage, and they can agree to punishment before they start doing things. Commissioner Neugent mentioned how far downstairs enclosures had gone in the past and the grief that had caused over the years, which has been a nightmare since the sixties.

Commissioner Demes also stated that he'd spoken to Ms. Schemper and had conversations with people about these food trucks. There are food trucks all over Stock Island, and in the County there is a permitting process for permanent and temporary food trucks. He's also heard that only one of them in Stock Island has an actual permit from the County. He has spoken to the Public Health Director about her scope and authority and they really don't get involved unless certain conditions exist. FDOT has certain jurisdiction over food trucks in their rights-of-way but don't have anyone to enforce it. He believes people believe they can do anything they want with food trucks. They're not inspected and they don't have a permit. Commissioner Neugent responded that FDBPR regulates them. Commissioner Demes asked if there is or isn't a county permit required to operate a food truck. Ms. Tolpin explained that this is being looked into. The code does allow for temporary uses. There are specific criteria for temporary uses, one of them being a temporary permit. A use on a property for more than six months would require, like any other change of use, expansion of use or establishment of a use, would require an actual building permit. A food truck typically is associated with a restaurant use, the sale of food and/or beverages, which is when that property should be reviewed for compliance with whatever requirements are triggered when establishing, expanding or changing that restaurant use on that property. It is currently being discussed and looked into between multiple County departments. Commissioner Demes asked if there isn't a restaurant use on the property if it would need a minor conditional use permit. Ms. Tolpin responded that it would depend on the zoning of the property and what is currently established or in existence on the property. She has seen situations where it does and it doesn't. Commissioner Demes added that when you have such a double standard for food service in this County as far as even sanitary facilities, some of these have no restrooms, no place to wash your hands, for ADA compliance no parking. As far as a temporary use, there have been food trucks that haven't moved off a spot in two or three years, and he sees permanent improvements going up under them, concrete slabs, canopies built over them. He hopes that the County does something in the near future because it is starting to go

from geometric to exponential. Commissioner Neugent stated that for the most part it is in the municipalities so the County can't be blamed there. Commissioner Demes clarified that he was discussing the County. Commissioner Neugent pointed out that they are mostly in Islamorada and Marathon. Chair Scarpelli added that there are four on Rockland right now, all parked in the same area.

Chair Scarpelli then discussed approving the schedule for the year. Though it's not required, it's the way it's been done in the past. Chair Scarpelli moved to approve it, knowing Commissioner Anderson would be unable to attend in February and March. Commissioner Demes made a point of order. If the Chair makes a motion he must pass the gavel. Chair Scarpelli asked for someone else to make a motion.

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

GROWTH MANAGEMENT COMMENTS
None.

RESOLUTIONS FOR SIGNATURE
None.

ADJOURNMENT
The Monroe County Planning Commission meeting was adjourned at 1:37 p.m.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Scarpell Joseph Francis	Planning Commission
MAILING ADDRESS 31024 Avenue D	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☐ CITY ☒ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Big Pine Key COUNTY: Monroe	NAME OF POLITICAL SUBDIVISION: Monroe County
DATE ON WHICH VOTE OCCURRED 1/22/25	MY POSITION IS: ☐ ELECTIVE ☒ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

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APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Joseph Scarpelli, hereby disclose that on January 22nd, 2025:

(a) A measure came or will come before my agency which (check one or more)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

On or around November 1st, 2024 I recieved a gift card in the amount of $25 from Jorge Quintana for coaching his son during the 2024 Big Pine Atheletic Association Soccer Season. Jorge Quintana happened to be the owner of the Cayo Hueso Brewing Company, So out of an abundance of caution I am recusing myself from voting on Item #1 at today's planning Commission hearing. At the time I recieved the gift Card I did not know Jorge Quintana was the owner of the Brewery nor did I know of any proceedings coming to me at the planning Commission.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

1/22/2025
Date Filed

Joseph Scarpelli
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.