



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

Through: Emily Schemper, AICP, CFM, Senior Director of Planning & Environmental Resources

From: Liz Lustberg, AICP, CFM, Senior Planner

Date: August 26, 2022

Subject: *457 Drost Dr. Cudjoe Key, Mile Marker 21, Ocean Side: a public hearing concerning the request for a 5 COP SFS Alcoholic Beverage Use Permit, which would allow restaurant sales of beer, wine, and liquor by the drink (consumption on premises) and no package sales. The subject property is described as Lot 6 and 7 Block 14 CUDJOE GARDENS THIRD ADDITION, according to the Plat thereof, recorded in Plat Book 5, Page 7, all of the Public Records of Monroe County, Florida, having Parcel ID number 00174590-000000 (File 2021-221).*

Meeting: **October 26, 2022**

1 **I REQUEST:**

2 The applicant, Carolyn Butler - agent for the property owner, Charles G Miller Sr. - requests
3 approval of a 5 COP SFS alcoholic beverage special use permit, which would allow for restaurant
4 sales of beer, wine, and liquor by the drink (consumption on premises) and no package sales, at
5 the restaurant located at 457 Drost Dr. Cudjoe Key.



6
7 *Subject Property outlined in blue, with Land Use Districts Overlaid (Aerial dated 2022)*

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2 **II BACKGROUND INFORMATION:**

3 **Location / Address:** 457 Drost Dr. Cudjoe Key, Mile Marker 21, Ocean Side

4 **Legal Description:** Lot 6 and 7 Block 14 CUDJOE GARDENS THIRD ADDITION, according
5 to the Plat thereof, recorded in Plat Book 5, Page 7, all of the Public Records of Monroe County,
6 Florida

7 **Parcel ID Number:** 00174590-000000

8 **Applicant/Agent:** Carolyn Butler

9 **Property Owner:** Charles G. Miller Sr.

10 **Size of Site:** 10,000 sq ft according to the property record card

11 **Land Use District:** Suburban Commercial (SC)

12 **Future Land Use Map (FLUM) Designation:** Mixed Use/Commercial (MC)

13 **Tier Designation:** III (infill area)

14 **Existing Use:** Restaurant

15 **Existing Vegetation / Habitat:** Developed land

16 **Community Character of Immediate Vicinity:** Residences to the east, west, and north, with a
17 marina use to the south

18 **Flood Zone:** AE 9

19
20 **III RELEVANT PRIOR COUNTY ACTIONS:**

21 Original building permit 29950 for a residence received a certificate of occupancy on June 15,
22 1976. The permit application date was May 29, 1973. On August 14, 1973, permit 30300, a
23 plumbing permit was applied for, for this building referring to the building as a recreational
24 building.

25
26 Permit 3044, application date September 1974, approved capping and seawall.

27 Permit A15140, application date April 1986, approved a deck.

28
29 Permit 95101164 to install burglary alarm system to an existing restaurant received planning
30 approval 8/14/1995, indicating that a restaurant was established by that time. The property record
31 card included in the permit application specifies one building with a restaurant and an apartment
32 on the property.

33
34 Letter of Understanding for multiple parcels, including this one, dated March 12, 2003 and
35 addendum dated November 17, 2004 are not relevant to this application.

36
37 ROGO exemption letter dated July 10, 2012, recognized one dwelling unit as ROGO exempt.

38
39 A restaurant on this property previously had a 2COP license, which is currently expired

40
41 Permit 21103378, not yet issued, approved by planning on 8/8/22, is for an interior remodel of an
42 existing restaurant. (Permit is in pending as of the date of this staff report)

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45 **IV PLANS SUBMITTED:**

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2 **V REVIEW OF APPLICATION:**

3 Pursuant to Section 3-6(e) of the Monroe County, Florida, Code of Ordinances (the “Code”), the
4 Planning Commission shall give due consideration to the following factors as they may apply to
5 the particular application prior to rendering its decision to grant or deny the requested permit:
6

7 *(1) The effect of such use upon surrounding properties and the immediate neighborhood as*
8 *represented by property owners within 500 feet of the premises.*
9

10 The restaurant building is located on a parcel of land with an approved restaurant use.
11 Surrounding properties within 500 feet of the restaurant premises include residences and a
12 marina.
13

14 Staff does not anticipate that approval of the requested 5COP SFS Alcoholic Beverage Use
15 Permit would have an adverse effect on surrounding properties or the immediate
16 neighborhood.
17

18 Please note that no members of the community, either in support or opposition to the
19 application, contacted the Planning and Environmental Resources Department as of the date
20 of this report.
21

22 IN COMPLIANCE
23

24 *(2) The suitability of the premises in regard to its location, site characteristics and intended*
25 *purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding*
26 *properties, and construction of such permitted properties shall be soundproofed. In the event*
27 *music and entertainment are permitted, the premises shall be air conditioned:*
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29 The property’s location is within the Suburban Commercial (SC) Land Use District, which
30 permits restaurant uses and the property has formerly operated as a restaurant, the subject
31 premises would be suitable.
32

33 Lighting on the premises is subject to the County Land Development Code. If necessitated by
34 a future substantial improvement or a change of use or expansion of use, any nonconforming
35 lighting would have to be brought into compliance to the greatest extent practical pursuant to
36 LDC Section 114-164. Any new outdoor lighting installed in the future would be subject to
37 LDC Chapter 114, Article VI.
38

39 Live music/entertainment are not proposed, per email in file from property owner.
40

41 IN COMPLIANCE
42

43 *(3) Access, traffic generation, road capacities, and parking requirements:*
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45 This property is on the corner of Drost Dr. and Hamilton Ave. The restaurant floor and seating
46 plan submitted for this application matches the floor plan in permit application 21103378.
47

1 While the restaurant use has been established via permit approval. There are no permit
2 approvals for site work depicting access and parking. The site plan submitted with this
3 application is a preliminary sketch of how parking and access would be configured. Staff
4 recommends conditioning approval of this application to require permit approval and
5 completion of the parking prior to staff signing Florida Department of Business and
6 Professional Regulation (DBPR) Form 6001 for the State of Florida alcohol license.

7
8 Per the 2021 Level of Service from the 2021 Arterial Travel time and Delay Study, this
9 segment (segment #6) of US 1 has a Level of Service A with 3,064 reserve trips. The
10 restaurant use is already approved. Adding an alcohol beverage permit is not anticipated to
11 have a significant impact on traffic generation or road capacities.

12
13 IN COMPLIANCE, with permit approval of parking and access for the property

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15 *(4) Demands upon utilities, community facilities and public services:*

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17 It is not anticipated that the approval of the requested 5COP SFS alcohol beverage use permit
18 would increase demands upon any utilities, community facilities or public services.

19
20 IN COMPLIANCE

21
22 *(5) Compliance with the county's restrictions or requirements and any valid regulations:*

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24 As of the date of this report, there is one open code compliance cases related to the property
25 for failure to connect to central sewer. The property owner has applied for permit 22102150
26 to connect to the sewer. This permit was not issued as of August 23, 2022.

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28 IN COMPLIANCE

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31 **VI RECOMMENDATION:**

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33 Staff recommends APPROVAL to the Planning Commission of the requested 5COP SFS
34 Alcoholic Beverage Use Permit, which would allow for restaurant sales of beer, wine, and liquor
35 by the drink (consumption on premises) and no package sales, with the following conditions
36 (however, valid objections from surrounding property owners at the public hearing may lead the
37 Planning and Environmental Resources Department to reevaluate the recommendation or
38 suggested conditions):

- 39
40 1. Alcoholic Beverage Use Permits issued by virtue of Section 3-6 of the Monroe County Code
41 shall be deemed to be a privilege running with the land. The sale of the real property that has
42 been granted an Alcoholic Beverage Use Permit shall automatically vest the purchaser thereof
43 with all rights and obligations originally granted or imposed to or on the applicant. Such
44 privilege may not be separated from the fee simple interest in the realty.
45
46 2. Alcohol service sales and consumption shall occur only within areas approved for restaurant
47 seating by the Monroe County Planning & Environmental Resources Department.
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- 1 3. In the event that the holder's license by the Florida Department of Business and Professional
2 Regulation (DBPR) expires and lapses, this Alcoholic Beverage Use Permit approval shall be
3 null and void as of the date of the DBPR license expiration. Additional approval by the
4 Planning Commission shall be required to renew the Alcoholic Beverage Use Permit.
5
- 6 4. Certificate stating that the place of business meets all sanitary requirements must be obtained
7 prior to planning staff's signature on the required state application form.
8
- 9 5. Permit approval for parking must be issued, the work must be completed, and the permit
10 must be closed prior to Planning Staff's signature on the required Florida Department of
11 Business and Professional Regulation (DBPR) Form 6001.
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13 **VII ATTACHMENTS:**

14 Attachment 1: Monroe County Code Section 3-6, Regulation and control over sale
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Sec. 3-6. - Regulation and control over sale.

- (a) *Establishment of use permit procedure.* This section is designed and intended to provide for reasonable regulation and control over the sale of alcoholic beverages within the unincorporated areas of the county by establishing an alcoholic beverage use permit procedure and providing criteria to be used to ensure that all future proliferation of alcoholic beverage use enterprises within the unincorporated areas of the county be compatible with adjoining and surrounding land uses and the county's comprehensive plan, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact upon the health, safety and welfare of the citizens and residents of the county. All persons, firms, partnerships or corporations who have received approval from the zoning board or board of county commissioners under the former provisions of section 19-218 of the Monroe County Code, as same heretofore existed, shall retain all rights and privileges heretofore granted under such section.
- (b) *New applicants for permit.* All persons desiring to sell alcoholic beverages upon any premises located within the unincorporated areas of the county and who desire to do so upon a premises not heretofore approved by the zoning board or board of county commissioners under the former section 19-218, shall obtain an alcoholic beverage use permit using the procedure outlined in subsection (d) of this section.
- (c) *Classifications.* Corresponding to those alcoholic beverage license classifications as heretofore and hereafter adopted by the state, alcoholic beverage use permits hereafter issued pursuant to this chapter shall be classified as follows:
- (1) 1APS: Beer, package only;
 - (2) 1COP: Beer, on-premises and package;
 - (3) 2APS: Beer and wine, package only;
 - (4) 2COP: Beer and wine, on-premises and package;
 - (5) 6COP: Beer, wine and liquor, on-premises and package;
 - (6) 6COP SRX: Restaurant, no package sales;
 - (7) 6COP SR: Restaurant, package sale;
 - (8) 6COP S: Motel, package sales;
 - (9) 6COP SBX: Bowling, no package sales;
 - (10) 6COP SPX: Boat, no package sales;
 - (11) 3BPS: Beer, wine and liquor, package sales only;
 - (12) 3M: Additional license for 6COP, over three bars; and
 - (13) 12RT: Racetrack, liquor, no package sales.
- (d) *Procedure.* The following procedure shall be followed on any application for an alcoholic beverage use permit hereafter made:
- (1) Applications for alcoholic beverage use permits shall be submitted to the director of planning in writing on forms provided by the director. Such applications must be signed by the owner of the real property for which the permit is requested. Lessees of the premises may apply for such permits, provided that proper authorization from the owner of the premises is given and the application for permit is cosigned by such owner.
 - (2) Upon receipt of a properly completed and executed application for an alcoholic beverage use permit stating the exact classification requested along with the necessary fee, the director of planning shall schedule a public hearing before the planning commission and shall advise the applicant of the date and place of the public hearing.

- (3) Notice of the application and of the public hearing thereon shall be mailed by the director of planning to all owners of real property within a radius of 500 feet of the affected premises. In the case of a shopping center, the 500 feet shall be measured from the perimeter of the entire shopping center itself rather than from the individual unit for which approval is sought. Notice shall also be provided in a newspaper of general circulation in the manner prescribed in section 110-5. For the purposes of this section, the term "shopping center" means a contiguous group of individual units, in any combination, devoted to commercial retail low-intensity uses, commercial retail medium-intensity uses, commercial retail high-intensity uses, and office uses, as those phrases are defined in section 101-1, with immediate off-street parking facilities, and originally planned and developed as a single project. The shopping center's single project status shall not be affected by the nature of the ownership of any of the individual office or commercial retail units, within the shopping center.
- (4) At the hearing before the planning commission, all persons wishing to speak for or against the application shall be heard. Recommendations or other input from the director of planning may also be heard prior to any decision by the planning commission.
- (e) *Criteria.* The planning commission shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit:
 - (1) The effect of such use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises. For the purposes of this section, the term "premises" means the entire project site of a shopping center;
 - (2) The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties shall be soundproofed. In the event music and entertainment are permitted, the premises shall be air conditioned;
 - (3) Access, traffic generation, road capacities, and parking requirements;
 - (4) Demands upon utilities, community facilities and public services; and
 - (5) Compliance with the county's restrictions or requirements and any valid regulations.
- (f) *Approval by planning commission.* The planning commission may grant approval based on reasonable conditions considering the criteria outlined herein.
- (g) *Where permitted.* Alcoholic beverage use permits may be granted in the following land use districts: urban commercial; suburban commercial; suburban residential where the site abuts U.S. 1; destination resort; mixed use; industrial and maritime industries. Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located. Nothing contained herein shall exempt an applicant from obtaining a major or minor conditional use approval when such is otherwise required by the county development regulations in part II of this Code.
- (h) *Transferability.* Alcoholic beverage use permits issued by virtue of this section shall be deemed to be a privilege running with the land. The sale of the real property that has been granted an alcoholic beverage use permit shall automatically vest the purchaser thereof with all rights and obligations originally granted or imposed to or on the applicant. Such privilege may not be separated from the fee simple interest in the realty.
- (i) *Appeals.* All persons aggrieved by the actions of the planning commission in granting or denying requested alcoholic beverage permits may request an appeal hearing before a hearing officer under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days after the date of the written decision of the planning commission.
- (j) *Successive applications.* Whenever any application for alcoholic beverage approval is denied for failure to meet the substantive requirements of these regulations, an application for alcoholic beverage approval for all or a portion of the same property shall not be considered for a period of two years unless a super-majority of the planning commission decides that the original decision was

based on a material mistake of fact or that there exists changed conditions and new facts, not existing at the time of the original decision, that would justify entertaining a new application before the expiration of the two-year period. However, in the case of a shopping center, as defined in subsection (d)(3) of this section, this subsection shall only apply to the commercial retail unit within the shopping center for which approval was sought and not the entire shopping center site itself.

(Code 1979, § 19-218; Ord. No. 1-1973, § 1(art. XI, § 5); Ord. No. 5-1974, § 27; Ord. No. 20-1975, § 67; Ord. No. 29-1978, § 1; Ord. No. 5-1979, § 1; Ord. No. 17-1980, § 12; Ord. No. 4-1985, §§ 1, 2; Ord. No. 39-1986, § 2; Ord. No. 55-1987, §§ 1—3; Ord. No. 19-1993, § 14)