

DEVELOPMENT REVIEW COMMITTEE

Tuesday, April 25, 2023

MEETING MINUTES

The Monroe County Development Review Committee conducted a virtual meeting on **Tuesday, April 25, 2023**, beginning at 1:00 p.m. via Communications Media Technology (CMT).

CALL TO ORDER by Emily Schemper at 1:00 p.m.

ROLL CALL by Debra Roberts

DRC MEMBERS PRESENT

Emily Schemper, Senior Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Mike Roberts, Assistant Director, Environmental Resources
Bradley Stein, Development Review Manager
Rey Ortiz, Assistant Building Official
Craig Marston, Fire Marshal
Brian Oppenheimer, Deputy Fire Marshal
Judy Clarke, Engineering
Christina Gardner, Naval Air Station Key West

STAFF MEMBERS PRESENT

Peter Morris, Assistant County Attorney
Matthew Restaino, Senior Planner
Karl Bursa, Senior Floodplain Administrator
Debra Roberts, Senior Planning Commission Coordinator

APPLICANTS & PUBLIC SPEAKERS PRESENT

Items 1 & 2: Dottie Moses
Item 3: Nancy Garrity & Jonathan Tremblay

CHANGES TO THE AGENDA

No changes. Items 1 and 2 read together.

MINUTES FOR APPROVAL

Approval of the meeting minutes for Tuesday, March 28, 2023, by Emily Schemper.

MEETING

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE INTRODUCTION AND BACKGROUND, GOALS, OBJECTIVES, AND POLICIES, AND GLOSSARY OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO CLARIFY THE CONTINUING APPLICATION OF THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO DEVELOPMENT, TO CLARIFY THE GENERAL AND DEFINED TERMS SECTIONS, TO CLARIFY CONSTRUCTION OF CONFLICTS WITH THE MONROE COUNTY CODE(S), AND MODIFY ACCESSORY USES AND STRUCTURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-093)

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE CHAPTER 101, SECTION 101-1 DEFINITIONS, AND CHAPTER 130 LAND USE DISTRICTS, ARTICLE III. PERMITTED AND CONDITIONAL USES, SECTION 130-83(A) IMPROVED SUBDIVISION DISTRICT (IS) AND SECTION 130-99(A) URBAN RESIDENTIAL-MOBILE HOME DISTRICT (URM), AND CHAPTER 118 ENVIRONMENTAL PROTECTION, ARTICLE I. IN GENERAL, SECTION 118-12 SHORELINE SETBACK, TO MODIFY AND CREATE CRITERIA APPLIED TO SPECIFIC ACCESSORY USES AND STRUCTURES TO ALLOW FOR LIMITED ADDITIONAL USES AND STRUCTURES WITHIN THE IMPROVED SUBDIVISION (IS) AND URBAN RESIDENTIAL MOBILE HOME (URM) LAND USE (ZONING) DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2022-094)

(1:04 p.m.) Ms. Cheryl Cioffari, Assistant Director of Planning, presented the staff report. These items from the BOCC in April of 2022 directed staff to amend the code and comp plan to allow for accessory uses and structures on vacant lots. These items are proposed text amendments to the comp plan and land development code to provide such opportunities. The main focus is related directly to accessory uses on vacant platted lots. There are changes to the definition of accessory uses and structures to authorize this within Improved Subdivision and Urban Residential Mobile Home zoning districts on vacant platted lots. Additionally, there are adjustments to other definitions within the Comp Plan glossary to clarify how regulations work within the code and to keep the comp plan consistent with Florida Statutes.

Ms. Cioffari then focused on the details within the amendment to the land development code. The ordinance limits the number of lots to one that can be associated with a lawfully established principal residential structure or single-family dwelling unit. The associated platted lot must be within the same Key or island and within the IS or URM zoning districts. Within those zoning

districts under accessory uses and structures for associated platted lots, certain uses are already allowed for an adjacent lot which provides an alternative option for property owners that are developing vacant platted lots. The platted lot cannot be designated as Tier I, and clearing is limited except for authorized removal of invasive exotic vegetation or removals of exotics pursuant to 118-7(e). A building permit would be required to establish the accessory use or structure and must be posted in a visible location from a property line.

The types of accessory uses and structures were limited based on feedback from the BOCC and started out with docks and docking facilities and expanded from there, so the limitation is parking for boat trailers for boats only when using those docks or docking facilities, play structures, seating areas with permanent structures such as benches or pavers. Pools are included provided they are with a lawfully established homeowners' park and gardens. There was discussion for allowing limited storage deemed non-habitable space such as sheds and garages, so language has been provided for that. Staff is not recommending that specific language be included. Staff also recommends there be a definition of restrictive covenants placed on the property approved by the county attorney or their designee limiting the property so it is not used for commercial purposes, cannot be rented to a third party, that all development rights are retired from the platted lot, and that said platted lot is clearly associated with the lawfully established residential principal use. The final two pieces are that the accessory structures must comply with all bulk regulations and the maximum height is 16 feet. The reason staff is not recommending the non-habitable structures such as garages and sheds is that this could lead to the development of structures inconsistent with design and character of an established platted subdivision, along with the potential for expansion of undesirable uses or increased code enforcement activity. Staff also recommends that docks and docking facilities are limited to platted lots containing lawfully altered shorelines adjacent to manmade canals, channels and basins to further protect near shore waters and benthic resources. Staff is recommending approval of these amendments.

Ms. Schemper had no questions but noted that she had been receiving a lot of public comment outside of the meetings which has been looked at and some has also been incorporated into the proposed amendments. Ms. Schemper then asked for questions or comments from committee members or staff.

Mr. Mike Roberts, Assistant Director, Environmental Resources, referenced page seven of 19 of the staff report under the adjacent parcel section, paragraph five, and thought some language may need to be inserted regarding no impacts to wetlands or native habitat, similar to the language in Chapter 130, just so it appears in both 118 and 130. Ms. Schemper agreed that could be done, adding that it had been left out because they were trying to not make changes to the existing allowance for the docks on adjacent parcels, but thought this made sense and could be worked in. Mr. Roberts also suggested on page 19 where it says no clearing of habitat, he thought that should be clarified as wetlands or native upland habitat which is defined in the code. Habitat is not necessarily defined in the code. Ms. Schemper added that no clearing of native upland habitat would mean that native vegetation could not be removed if it's part of actual habitat. Clearing really applies when it's designated as actual habitat. Mr. Roberts responded that native upland habitat is presently defined as native upland vegetation communities. Ideally, that would apply only to aggregates of plants, not just a single plant. Ms. Schemper clarified that a parcel with several native trees on it would not be considered habitat and is then not subject to the 40 percent clearing limit. Ms. Cioffari confirmed that Mr. Roberts wanted to include wetlands. Mr.

Roberts added that in the Lower Keys there are a lot of scarified wetland lots that people have a habit of storing stuff on. Ms. Schemper asked if Mr. Roberts would word it as the proposed parcel cannot contain wetlands or cannot impact wetlands. Mr. Roberts stated the word should be “impact.” Mr. Roberts then commented on the maximum height of any accessory structure, indicating that the maximum height within the shoreline setback is 12 feet and should be clarified. Ms. Schemper added that the maximum height within a rear yard setback on a dry lot is also 12 feet.

Mr. Roberts then referenced page 15, line 26 in the staff report regarding permanent parking of boat trailers with a boat attached being expressly prohibited, and asked how permanently parked was being defined and how that determination would be made. Ms. Schemper asked if parking of a boat on a trailer was allowed at any time, noting that the BOCC was not in favor of vacant lots having boats on trailers being parked there because it doesn’t fit in the driveway. Mr. Roberts suggested permanent parking be termed storage. Ms. Schemper thought the BOCC was okay with people storing an empty boat trailer on a vacant lot if the boat was on a lift, but did not want people storing empty boat trailers if there was no dockage, so she therefore did not believe they wanted to approve parking of boats on trailers on vacant lots. Ms. Schemper and Ms. Cioffari agreed that taking out the word “permanent” would work. Mr. Peter Morris, Assistant County Attorney, commented that this concept endears for consideration the definition of “permanent” which is lasting or intended to last or remain unchanged indefinitely. With a concept such as permanent or impermanent there would be a line-drawing exercise but only at the margins of the most extreme hypothetical that the most creatively litigious respondents would quibble with this. Ms. Schemper added that the County Code has some specifics of when something is parking and when it is storage and there are time frames. This may be solved by having a prohibition of parking a boat on a trailer on one of these vacant lots. Mr. Morris thought that was cleaner language from a litigation standpoint. Ms. Cioffari noted that she may reorder the accessory uses and structures alphabetically to make it easier to read.

Ms. Schemper then asked for public comment. There was none. Public comment was closed. Ms. Schemper stated that work on the language would continue, and this will go before the Planning Commission in May.

Items 1 and 2 were reopened at the end of a meeting for Ms. Dottie Moses to make public comment as follows: Ms. Moses asked if a condo association located in Key Largo could buy a vacant lot anywhere in Key Largo and turn it into an HOA condo park. Ms. Cioffari thought there would be no limitation on that unless the zoning district where the parcel was located wouldn’t allow such a park. Ms. Moses stated that this is a problem and would cause all kinds of conflicts. Ms. Schemper thought it should be added into the definition regarding homeowners’ parks indicating that the homeowners’ park needs to be in the same subdivision, agreeing with Ms. Moses. Ms. Moses stated that she is not particularly supportive of any of this ordinance as there are huge opportunities for abuse, and asked how the County would know when somebody sells their house and doesn’t do away with their associated parcel structures. Ms. Schemper responded that she did not know how that would be figured out. Ms. Moses added that there are existing situations like this today where people had an adjacent property, sold the house, but kept the second lot and are using it. Ms. Schemper stated that at the very least, if neighbors are concerned about activities on a property, they could call it in, but there is no automatic way of knowing. This proposed ordinance states that the permit must be posted for the use on that

vacant lot so a permit could be pulled up to see which home it's associated with, but there is no great way of automatically knowing if someone sold the house associated with the vacant parcel being used. This would be more complaint driven. Ms. Schemper also has enforcement concerns about this ordinance. Ms. Moses asked if this went on for four years before people noticed it happening, if the statute of limitations would kick in and now it could be used that way forever, even after the house was sold. Ms. Schemper believed the answer to that would be no but did not know for sure. Mr. Peter Morris interjected that the four-year rule is currently teed up for amendment for clarification purposes before the BOCC this forthcoming month and if approved as currently edited, it should preclude that rule from being leveraged and exploited in situations like this. This would not cut any ice against the other enforcement concerns articulated inasmuch as that ordinance is going to be subject to misuse and abuse by an enterprising property owner. The clarification in the code, if the Board approves the draft on the agenda for the May meeting, and the amendment should short-circuit its misuse. Ms. Moses added that already, there are quite a few kitchens, bedrooms and apartments that have been put inside of sheds, some smaller than 700 square feet. She appreciates sheds and garages are not being recommended for storage, and that natural shorelines are not included to prevent a pier from being put in. Ms. Moses knows of areas where there is a commercial use being used on IS and URM lots, some quite obvious along U.S. 1, and there is no enforcement there, so she does not know how the County would enforce this when it starts showing up in residential areas. She likes the height limits on accessory structures as there are presently structures that are bigger than homes on adjacent lots. Ms. Moses then asked if an RV could be stored on a vacant lot or if it needed to be in a shed under this amendment. Ms. Schemper responded that it says no parking other than limited boat trailer parking on parcels that have docking facilities. Ms. Moses thought there had been comment that the size of a shed could be changed for an RV to fit into it. Ms. Cioffari responded that if the Board wants to allow for garages or sheds, and they want people to be able to park a vehicle, then the size and height was based on a standard RV so that an RV could be fit within the confines of that structure, but staff is not recommending sheds and garages. Ms. Moses then asked about the total amount of accessory structures that can be built on a vacant lot must be subordinated to the principal use, and asked what that means. Ms. Schemper stated that is the normal code for accessory uses and structures which specifies through its definition in Chapter 101 that it is subordinate to and serves an existing principal use or structure. Ms. Moses confirmed that a guesthouse would not be a possible use. Ms. Schemper added that if the Board agrees with staff and does not allow a shed or a garage, then the allowable uses are still pretty limited. And, Ms. Schemper believed the definition should be tweaked on the homeowners' park to be in the same subdivision or neighborhood as the actual homeowners' association. Ms. Moses expressed that she is very worried about the abuse that will take place if this ordinance passes and she wants to make that well known to the Commissioners. She would like to see it kept as tight as possible. Ms. Schemper noted that the Board did want to hear public comment on this, so a bullet-point list of public comments may be included for the Board.

3. JONATHAN TREMBLAY OUTDOOR STORAGE, 413 BARRY AVENUE, LITTLE TORCH KEY, MILE MARKER 29: A PUBLIC MEETING CONCERNING A REQUEST FOR A MINOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED TO ESTABLISH AN OUTDOOR STORAGE AND MAINTENANCE AREA FOR BOATS OF AN OFFSITE BOAT RENTAL BUSINESS. THE SUBJECT PROPERTY IS DESCRIBED AS A PARCEL OF LAND WITHIN SECTION 28, TOWNSHIP 66 SOUTH,

RANGE 29 EAST, LITTLE TORCH KEY, MONROE COUNTY FLORIDA, HAVING PARCEL ID NUMBER 00119620-000000. (FILE 2022-116)

(1:26 p.m.) Mr. Matthew Restaino, Senior Planner, presented the staff report. This request for a minor conditional use is to designate 662 square feet as storage and maintenance of boats for a boat rental business. This constitutes a light industrial use. Mr. Jonathan Tremblay is the property owner. Mr. Restaino presented a site plan of the property with the proposed storage area circled in red. This site is within the Mixed Use land use district in which light industrial use is permitted as a minor conditional use. According to a description of the proposed business submitted by the applicant, the boat rental business will cater to vacation rentals. Existing uses along Barry Avenue include 20 active vacation rental properties, a resort and a bar/restaurant. The proposed business seems to be consistent with the surrounding neighborhood. No customers will visit the site and this is not a marina. Boats that are rented will be delivered by the property owner to the properties renting the boats. Maintenance is for the boats owned by the applicant and no repairs will be done to boats that are not part of the rental business. The site plan also demonstrates compliance with the Land Development Code. Staff recommends approval with conditions: On the current site plan the clear-sight triangle was incorrectly drawn. Should approval be granted, the site plan should be corrected prior to issuance of the minor conditional use permit.

Ms. Schemper asked for questions or comments from committee members. Mr. Rey Ortiz asked if this was a use open to the public, and Mr. Restaino responded that it was not, and is a use for the homeowner who lives in the new existing house at the property. Ms. Schemper added that this is not technically a home occupation because it is a mixed use district, that this use is allowed in the district and the residence is not being used for the business. Mr. Ortiz was satisfied this would not affect the CO or ADA. Ms. Schemper then asked if the applicant wished to speak. Mr. Tremblay asked for clarification on the question of a CO. Ms. Schemper explained that since the structure and its use is not changing and is remaining a residence, this addition of a commercial operation does not trigger any new requirements. Mr. Ortiz confirmed this was correct. Ms. Schemper then asked for public comment.

Ms. Dottie Moses stated that she had wanted to speak on Items 1 and 2 but had not been acknowledged. Ms. Schemper indicated they would return to those items at the conclusion.

Ms. Nancy Garrity wanted to clarify that there would be no renters on the property and that the owner would only be working on his own boats. Ms. Garrity then asked if there was a limit on the number of boats allowed on the property at any given time. Mr. Restaino responded that the owner is limited by the square footage proposed on the site plan, which specifies there are four parking spaces for boats. Ms. Garrity then asked about the adjacent property which the owner is presently using for storage. Mr. Restaino noted that this application was reviewed based on the site plan submitted, so any deviation to this site plan would first need to be approved by Planning as a deviation to the use. Ms. Garrity added that this business has been operating for over two years, there has been a lot of traffic in and out of this property and there have been a lot of safety concerns, so she is happy with this proposal. Mr. Restaino added that he was aware this application had been submitted as a means of satisfying an existing code compliance case.

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

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 101-1 DEFINITIONS AND CHAPTER 122, FLOODPLAIN MANAGEMENT; ARTICLE I. – IN GENERAL, SECTION 122-3 – DEFINITIONS, TO UPDATE THE DEFINITION OF MARKET VALUE TO BE CONSISTENT WITH THE FLORIDA DIVISION OF EMERGENCY MANAGEMENT - BUREAU OF MITIGATION - STATE OFFICE OF FLOODPLAIN MANAGEMENT’S DECEMBER 2022 GUIDANCE ON MARKET VALUE AND MODEL FLOODPLAIN MANAGEMENT ORDINANCE WHICH IS WRITTEN TO EXPLICITLY RELY ON AND BE COORDINATED WITH THE FLOOD PROVISIONS IN THE FLORIDA BUILDING CODE, MEETING THE NATIONAL FLOOD INSURANCE PROGRAM REQUIREMENTS AND APPROVED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY IN 2013; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2023-024)

(1:49 p.m.) Mr. Karl Bursa, Senior Floodplain Administrator presented the staff report providing a brief overview of the changes to the flood ordinance. Last year during the flood ordinance update period, communication was received from Florida Department of Emergency Management and the State Floodplain Management Office that the ordinance as written needed to be amended for them to approve it. The subject of today’s change is the codified section where it says how much allowance would be given to people in terms of the market value bonus of 20 percent which is not something that was allowed to be continued with. Any sort of additional value added is being removed. The substantial approval determinations will now rely on the property appraiser’s market improvement value. This is the only section being changed as a result of this and it is mandatory for approval.

Ms. Schemper then asked for questions or comments from staff or committee members. There were none. Ms. Schemper then asked for public comment. There was none. Public comment was closed. Ms. Schemper noted that this is a condition for the state’s approval to consider the County compliant with the floodplain program. This should go before Planning Commission in May.

Items 1 and 2 above were then reopened for Ms. Dottie Moses to make public comments.

ADJOURNMENT:

The Development Review Committee meeting was adjourned at 1:59 p.m.