

PLANNING COMMISSION
September 23, 2020

Meeting Minutes

The Planning Commission of Monroe County conducted a virtual meeting on **Wednesday, September 23, 2020**, beginning at 10:00 a.m.

CALL TO ORDER by Chair Coward

PLEDGE OF ALLEGIANCE

ROLL CALL by Ilze Aguila

PLANNING COMMISSION MEMBERS

Tom Coward, Chair	Present
Bill Wiatt, Vice Chair	Present
Ron Miller	Present
Joe Scarpelli	Present
Ron Demes	Present

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Derek Howard, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Mayte Santamaria, Senior Planning Policy Advisor
Bradley Stein, Development Review Manager
Liz Lustberg, Senior Planner
Ilze Aguila, Senior Coordinator Planning Commission

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. John Wolfe.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Ilze Aguila stated that staff was requesting Items 2 and 3 be read together.

DISCLOSURE OF EX PARTE COMMUNICATIONS

There were no disclosures of ex parte communications.

APPROVAL OF MINUTES

Commissioner Demes noted a correction for the spelling of the word “hangar” in reference to the airport item.

Motion: Commissioner Demes made a motion to approve the August 26, 2020, meeting minutes with noted correction. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Chair Coward asked if any discussion was needed on the Safe Harbor overlay item originally scheduled to be heard today. Ms. Schemper stated that the applicant had placed that item on hold, so although it had been continued today’s meeting as a date-certain item it will not be heard today. It will be re-noticed and re-advertised once the applicant elects to move forward.

MEETING

NEW ITEM:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS EXTENDING AN INTERIM DEVELOPMENT ORDINANCE AS INITIALLY ESTABLISHED ON JULY 19, 2017 THROUGH ORDINANCE 012-2017, AND EXTENDED THROUGH ORDINANCE 027-2019, FOR AN ADDITIONAL 365 DAYS TO DEFER THE APPROVAL OF NEW APPLICATIONS OR RECEIVED APPLICATIONS THAT HAVE NOT BEEN FULLY APPROVED FOR COMPREHENSIVE PLAN OR LAND DEVELOPMENT CODE AMENDMENTS, DEVELOPMENT AGREEMENTS (INCLUDING 380 DEVELOPMENT AGREEMENTS), AND MINOR AND MAJOR CONDITIONAL USE PERMITS (EXCLUDING APPLICATIONS PROPOSING ONLY AFFORDABLE HOUSING DWELLING UNITS), WITH PROPOSED OCCUPANCY BY "THREE UNRELATED PEOPLE" OR "TWO UNRELATED PEOPLE AND ANY CHILDREN RELATED TO EITHER OF THEM" OF A DWELLING UNIT, AND APPLICATIONS UTILIZING THE TERM “LOCK-OUT,” COMMENCING NOVEMBER 8, 2020, UNTIL THE BOCC CAN REVIEW AND POSSIBLY AMEND THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE REGARDING THE DEFINITIONS OF DWELLING UNIT; HOUSEHOLD; FAMILY AND THE UNDEFINED TERM "LOCK-OUT" OF A DWELLING UNIT; PROVIDING FOR EXPIRATION WITHIN 365 DAYS OF THE EFFECTIVE DATE OF THIS INTERIM DEVELOPMENT ORDINANCE OR WHEN THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2020-066)

(10:04 a.m.) Ms. Mayte Santamaria, Senior Planning Policy Advisor, presented the staff report. This is for an extension to an existing interim development ordinance or a temporary moratorium established in July of 2017, and having been extended for two prior periods. This will be the third extension so that it does not expire while Agenda Items 2 and 3 are being processed. This will defer the approval of new or received and not fully-processed applications for amendments, agreements and conditional uses for projects using the terms “family” or “lock-out” since they are undefined within the Comp Plan and Code. This would run for 365 days or when the Comp

Plan and Code become effective, whichever occurs first. It is believed that with the amendments processing now, it will end prior to 365 days, and Staff is recommending approval.

Commissioner Miller asked if the State has the authority to override a County moratorium such as the moratorium on transient allocations. Ms. Santamaria responded that she did not believe so as those are amendments adopted directly into the Comp Plan and Code. The State, as an Area of Critical State Concern, does have the ability to amend the Comp Plan through a rule amendment, but that is a long process requiring approval from the Administrative Commission which needs to be noticed and have hearings. While the State can amend the Comp Plan, it is not automatic or quick.

Chair Coward asked for any further questions or comments from the Commissioners. There were none. Chair Coward asked for public comment, noting that Mr. Bill Hunter had submitted a letter referring to Items 1, 2 and 3.

Ms. Dottie Moses, representing Last Stand, added that Mr. Hunter's letter had also been submitted on behalf of Last Stand. Last Stand supports Item 1 extending the interim development ordinance deferring approval of new and received applications dealing with lock-outs and potential lock-outs until the BOCC-directed corrections are adopted into the Comp Plan and Land Development Codes.

There was no further public comment. Public comment was closed. Chair Coward asked for further questions, comments or a motion.

Motion: Commissioner Scarpelli made a motion to approve. Commissioner Demes seconded the motion. There was no opposition. The motion passed unanimously.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY 2030 COMPREHENSIVE PLAN AMENDING THE GLOSSARY TO MODIFY THE DEFINITION OF ACCESSORY USE OR ACCESSORY STRUCTURE, MODIFY THE DEFINITION OF DWELLING UNIT, DELETE THE DEFINITION OF FAMILY, MODIFY THE DEFINITION OF HOUSEHOLD, CREATE A DEFINITION FOR KITCHEN, CREATE A DEFINITION FOR LOCK-OUT UNIT, MODIFY THE DEFINITION OF TRANSIENT UNIT; CREATE A DEFINITION FOR WET BAR; AND AMENDING POLICY 101.3.5 TO ADDRESS THE TERM LOCK-OUT UNIT; 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 2019-098)

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE AMENDING SECTION 101-1 TO MODIFY THE DEFINITION OF ACCESSORY USE OR ACCESSORY STRUCTURE, MODIFY THE DEFINITION OF DWELLING UNIT, DELETE THE DEFINITION OF FAMILY, MODIFY THE DEFINITION OF HOUSEHOLD, CREATE A DEFINITION FOR KITCHEN, CREATE A DEFINITION

FOR LOCK-OUT UNIT, MODIFY THE DEFINITION OF TRANSIENT UNIT, CREATE A DEFINITION FOR WET BAR; AND AMENDING SECTION 138-23 TO ADDRESS THE TERM LOCK-OUT UNIT; 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 AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-099)

(10:10 a.m.) Ms. Mayte Santamaria, Senior Planning Policy Advisor presented the staff report, pointing out that Agenda Item 2 is for the Comprehensive Plan and Agenda Item 3 is for the Land Development Code. Both amendments are almost identical in what they are proposing to amend within each document. The main changes within both are to the definition sections as well as the policies or sections dealing with the transient moratorium. Ms. Santamaria explained that these text amendments are associated with Item 1, and as those items are processed, adopted and become effective, the temporary moratorium would go away. The main change creates a definition for a lock-out unit for both the Comp Plan and the Code. The definition proposed is: “A lock-out unit means any structure or room or groups of rooms, or portion of a single-family or multi-family dwelling or transient unit, which creates a separate independent living area which can be accessed and locked or keyed separately from the principle entry to a residential dwelling unit or transient unit. Lock-out units create a separate, independent living area/habitable space which can be considered a unit which requires an additional ROGO allocation or ROGO exemption, and will be counted as a full unit when computing the allowable density on the site.” This stems from a project back in 2015-2016 that used dwelling units and created lock-outs within them to rent two different spaces within one dwelling unit. The Board had concerns with that happening as it was an undefined term, was developing without ROGO allocations or exemptions, and was circumventing the density limitations in terms of being counted as one unit and operating as two. The proposed definition is intended to address the allocation as well as the density and limit the potential impacts of these types of uses of additional units, vehicles, people and disturbances between units and keep things contained within the ROGO process and hurricane evacuation clearance time issues.

The other main change within both documents is amending the definition of dwelling unit. Ms. Santamaria referenced a table, which is a matrix from an existing MOU with the Department of Economic Opportunity and which has been in effect since 1998, and establishes the types of improvements that can and cannot occur within a dwelling unit where an additional separate living space is not being created. This is the same table as the MOU other than adding in requirements for restrictive covenants. If you get to a development proposal where the outcome is a “yes,” it would still require a restrictive covenant that it can only be used for occupancy of a single household. Added in the definition of dwelling unit specifically: “Dwelling units shall not include additional units, secondary dwelling units, lock-out units or any other habitable structure that creates a separate independent living area that are operated by a separate and independent household without an additional ROGO allocation or ROGO exemption.” Ms. Santamaria presented the table and an example of a lock-out configuration. If it has a separate

entrance, a lockable internal connection, a kitchen or wet bar and a bathroom, that configuration would not be allowed within a dwelling unit.

Chair Coward asked if the separate entrance was considered the lock-off connection and not the front door, where you don't have a separate entrance but you have to get into the house, if that would be considered a lock-out as well. Ms. Santamaria stated that was not within the table but could be added, such as a lockable internal connection, no separate entrance, either a kitchen or wet bar and a bathroom, and then adding in that it needs a restrictive covenant. Ms. Santamaria believed it would be wise to address and add that, and if that was being directed by the Commission, she would add it in for the next iteration.

Commissioner Demes pointed out the conjunction "and" in kitchenette and bathroom, noting that people could rent something that looks just like that to circumvent this without a defined kitchenette and just having a microwave as the two components that make it livable are really a bedroom and a bathroom, and asked if that was a concern. Ms. Santamaria responded that just a bedroom and a bathroom would be allowable as an addition or accessory structure to a house as long as it did not include the wet bar, kitchen or kitchenette. Even if they don't build it but there's plumbing stub-outs that are caught, that would be considered a kitchen and could not be built. Ms. Schemper added that a bedroom and bathroom cannot be disallowed because that would disallow things like having a bathroom outside by a pool or downstairs under a house. This matrix is already in existence and agreed on with DEO, and the key is adding the restrictive covenant to the bedroom/bathroom combinations saying this cannot be rented out. It is not perfect and never will be because the vacation rental ordinance can't be changed, but the intent is to add a little more oomph to how the units are used. It could be made stricter but this is an area where there will be push back. Ms. Santamaria added that the existing MOUs were used so rights weren't being taken away that people have anticipated and used over time. The restrictive covenant has been added so people use it more appropriately.

Ms. Santamaria continued, the other portion of this amendment and the BOCC direction was for applications that propose occupancy by three unrelated people, or two unrelated people and any children related to either of them or the dwelling unit, and that is excerpted from the existing definition of family. With the proposed definition of lock-out and the amended definition of dwelling unit, as well as looking at the Comp Plan, Code and Code of Ordinances in terms of where the term family gets used within the Code, it really does not come up at all in the Code, but rather is in the definition of household. Even the definition of household used to say a household includes the related family members and all unrelated people, so it wasn't very limiting in terms of what it was stating. Based on the amendments being proposed for lock-out and the lack of the use of family, as well as the diverse composition of what a family can be today, staff is proposing that term be deleted. It is not necessary in terms of how the Code is applied or enforced. Staff is also proposing to simplify the definition of household to simply say it means all the people who occupy the dwelling unit.

Chair Coward asked if that means that every reference in the Code that says multi-family dwelling unit would change to multi-household. Ms. Santamaria responded that it would not

change. It is just when the standalone term of family is used. Staff is recommending approval of the proposed amendments to the Comp Plan and the Land Development Code.

Commissioner Miller asked if there is a count of the units created using the scenario that is being corrected. Ms. Santamaria responded that the only project she knows of is the Oceanside project which occurred in 2016, which had seventy-some lock-outs. Ms. Santamaria does not know of any other projects using the term lock-out, unless there was something that happened prior to her joining the County. The temporary moratorium has been in place since the Oceanside project.

Chair Coward asked if the Affordable Housing Committee had recommended accessory units as a possible outlet for affordable housing. Commissioner Wiatt indicated that they had not. Ms. Santamaria agreed that she did not recall any accessory or tiny units. There was a point in time where a discussion item had been taken to the Board related to granny flats and the Board did not direct staff to make changes related to that, either.

Commissioner Scarpelli stated that if a homeowner wanted to do a guesthouse on their property for family guests or friends, which would be a separate structure from the principle structure, a restrictive covenant on the property could potentially affect the property's value. Ms. Santamaria agreed that it could affect the value in terms of it not being a free-for-all rental, but in reality, it never was a free-for-all rental. The County does not allow guesthouses but does allow accessory bedrooms and bathrooms, and it was never intended as an extra guest unit or vacation rental. The restrictive covenant would run with the property and would convey. Ms. Santamaria does not know what the value implications would be but in reality, that use should have never occurred. Commissioner Scarpelli stated that with the higher-end properties, there are people that have guest suites where they do have a wet bar and a bedroom with a full bathroom and even a living room included in the guest addition. There are also issues with FEMA when dealing with below-flood structures, where the new attached structure must be completely separate from the below-flood structure or you are forced to bring the below-flood structure into compliance or only be allowed to spend 50 percent of the value of the home, and there has to be a lockable connection between those two things. Ms. Santamaria stated that this does not modify any FEMA provisions and would not allow structures below base flood elevation. This MOU has been in effect since 1998 and should have been complied with after that date. Commissioner Scarpelli asked whether the newer portions being added would prevent it from being allowed. Ms. Santamaria stated that it would still be allowed. A separate entrance with a lockable or un-lockable internal, with a full or half bath, is a yes, but has the restrictive covenant. Commissioner Scarpelli asked why a wet bar and a full bath would not be allowed in the addition. Ms. Santamaria responded that it is to eliminate the potential of it being used as a second full dwelling unit. Commissioner Scarpelli stated that his point is that the intent is not to make it a second dwelling unit, but as a designer he does this quite often as people who build master suites like having a wet bar in their bedroom and a bathroom. Ms. Santamaria asked if that would be inside the home and not a separate lockable area with a separate door to the outside. Commissioner Scarpelli responded that it would have a back door going out to a shared back patio, and this will create restrictions for people who do a simple master suite addition.

Ms. Schemper interjected that the only thing that was added was the restrictive covenant. All the yeses and nos in the table are existing agreements with DEO, and a locking bedroom door is considered a lockable internal connection. Commissioner Scarpelli stated that there are multiple projects that go through with that design criteria. Ms. Schemper responded that they should not be getting through.

Chair Coward asked for further questions or comments. Commissioner Wiatt stated that he was glad to see this moving forward. There had been a lot of work put into this and for those on the Commission during the Oceanside project, it was nice to see the appropriate steps being taken to at least discourage this. Chair Coward then asked for public comment.

Ms. Dottie Moses, again speaking on behalf of Last Stand, stated that Last Stand supports the Comp Plan and Land Development Code changes to Agenda Items 2 and 3. These changes have been under development for a long time and are quite complex. As a volunteer organization, Last Stand does not have the expertise to ensure the new wording closes all loopholes that allow a Stock Island developer to build a 175-room hotel while the moratorium against new transient units remains in place. However, Last Stand has faith in staff's work and their comprehensive recommendations. Please be cautious about any last-minute requests to alter staff's wording that would allow a loophole to continue. There was no further public comment. Public comment was closed. Chair Coward asked for further questions, comments or a motion.

Motion: Commissioner Wiatt made a motion to approve Item 2 with the Ms. Santamaria's additional language. Commissioner Demes seconded the motion.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Demes, Yes; Commissioner Miller, Yes; Chair Coward, Yes. The motion passed unanimously.

Motion: Commissioner Wiatt made a motion to approve Item 3 with the Ms. Santamaria's additional language. Commissioner Demes seconded the motion.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Demes, Yes; Commissioner Miller, Yes; Chair Coward, Yes. The motion passed unanimously.

4. BROIL INC., 21611 OLD STATE ROAD 4A, CUDJOE KEY, MILE MARKER 21: A PUBLIC HEARING CONCERNING A REQUEST FOR A 2COP ALCOHOLIC BEVERAGE SPECIAL USE PERMIT, WHICH WOULD ALLOW BEER AND WINE FOR SALE BY THE DRINK (CONSUMPTION ON PREMISES) OR IN SEALED CONTAINERS FOR PACKAGE SALES. THE PROPERTY IS DESCRIBED AS A PARCEL OF LAND IN SECTION 29, TOWNSHIP 66 AND RANGE 28, CUDJOE KEY, MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00174970-000000. (FILE 2020-044)

(10:39 a.m.) Ms. Liz Lustberg, Senior Planner, presented the staff report. The new restaurant Broil would like a 2COP Alcoholic Beverage Special Use Permit for beer or wine on premise and package sales. Ms. Lustberg presented the site plan with the property highlighted in blue, noting the permit would be for the restaurant building only and not the rest of the property. The applicant meets the five criteria and Staff is recommending approval with conditions. Conditions

one, two and three are regular conditions that go with all of these permits. Condition four is to clarify that this would be for the restaurant building only. Condition five is to ensure the certificate of sanitary requirements has been received prior to sending this on to the State. The restaurant is not currently open so they do not have that certification yet.

Commissioner Demes asked about the language being specific to the building and whether tables that were set up outside of the building footprint would be allowed to have alcohol service. Ms. Lustberg responded that if there were any restaurant events, it would be in the restaurant section of the property. There are also options for doing special event alcohol permitting. This permit approval is for somebody to be able to have a glass of wine with dinner in the restaurant, or pick up a bottle of wine from the restaurant to take home with them. Commissioner Demes clarified that he was thinking in terms of social distancing and whether allowances would be made to extend to outdoor dining outside of the building footprint. Ms. Lustberg responded that doing the outdoor dining would be a separate application that would be reviewed at that time.

Commissioner Miller asked how much of a deficit in parking there would be with this business. Ms. Lustberg responded that there is no deficit, and the applicant exceeds the number of required parking spaces based on the number of seats. Commissioner Miller asked why the report states that parking does not comply with current Code. Ms. Lustberg clarified that that had to do with the location of the parking. The building itself is outside of the property lines and the parking that has existed and had been approved by Planning and the County in 1993 exists within the FDOT right-of-way. The applicant is proposing no change in the location of the parking and no increase in the number of parking spaces within that right-of-way. The number of spaces is more than compliant. The location of spaces is not, but is not changing.

Chair Coward asked about previous alcohol permit approvals where people wanting outside seating would highlight specific areas outside of the restaurant, and asked whether that was included as part of this permit. Ms. Lustberg responded that one of the questions on the application is: Are you proposing live music. And this applicant responded no. If the applicant is proposing live music, at that point they must meet other criteria. Chair Coward continued, even without live music, if the applicant wanted tables outside, would they have to get an exemption for their alcohol permit or would it not be allowed. Ms. Lustberg responded that they are allowed to have a restaurant with seating however the restaurant permit is approved. The alcohol permit is strictly for the restaurant and she had not reviewed whether the restaurant has any exterior seating, but if they did, then it would apply to the exterior seating.

Chair Coward asked if the applicant wished to speak. Mr. James Reynolds, the applicant, stated that he was available for questions. There were none. Chair Coward asked for further comments or questions. There were none. Chair Coward then asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Demes made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. Motion passed unanimously.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 10:50 a.m.