MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)
Wednesday, May 8, 2024
2:00 p.m.

Committee Members Present:

Carl Barraco, Jr.
Victor DuPont
David Gallaher
Sam Hagan
Tracy Hayden, Vice-Chair
Tim Keene
Bob Knight
Randal Mercer, Chairman
Ian Moore
Mike Roeder

Excused / Absent:

Bill De Deugd
Michael Reitmann

Lee County Staff Present:

Joe Adams, Assistant County Attorney
Dirk Danley, Jr., Principal Planner
Brandon Dunn, Planning Manager
Adam Mendez (Zoning)
Janet Miller, DCD Administration
Anthony Rodriguez, Zoning Manager
Joe Sarracino, Planning

CALL TO ORDER AND AFFIDAVIT:

Mr. Randal Mercer, Chairman, called the meeting to order at 9:00 a.m. The meeting was held in the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida, Conference Room 1B. Mr. Mercer stated we have a quorum and asked Mr. Joe Adams, Assistant County Attorney, if we had a legal meeting.

Mr. Joe Adams, County Attorney's Office, confirmed the Affidavit of Posting was legally sufficient as to form and content and the meeting could proceed.

Mr. Mercer introduced our newest member, David Gallaher. The committee members welcomed him aboard.

APPROVAL OF MINUTES – April 9, 2024

Mr. Mercer asked if anyone had any comments or changes to the Minutes from the April 9, 2024 meeting. There were none. He asked if there was a motion to approve.

Mr. Moore made a motion to approve the April 9, 2024 minutes as written, Ms. Hayden seconded. The Chair called the motion and it passed 10-0.

AGENDA ITEM 3 – LAND DEVELOPMENT CODE AMENDMENTS

A. Restaurant Classifications

Mr. Dirk Danley, Jr., Principal Planner, gave an overview of the amendments.

Mr. Keene noted that a bakery is one of the Group 2 restaurants. He asked what a bakery would be today with this change.

Mr. Danley stated that if the bakery had a full drive-through window with a menu board and a pick-up window, it would be considered a fast-food restaurant. If it is only a bakery where customers go in to purchase a donut, coffee, etc., it would be considered a restaurant.

Mr. Keene asked if it would be considered a restaurant if someone only sells baked goods in a retail sense with no eating on-site.

Mr. Danley stated that something like Mr. Keene described is differentiated as a Group 1 because there is no seating. Group 2 would have some seating. It would still be considered a restaurant. They would need to have licenses by the State to be able to prepare and produce food and sell it. There may be instances where they may be considered a specialty retail outside of a restaurant but typically it would be considered a restaurant.

Mr. Keene felt staff may want to review it further to make sure there are no unintended consequences. There are businesses who manufacture food for delivery. He gave an example of Iguana Mia who has an industrial location where they prepare food for their various restaurants. They are property licensed from the Health Department standpoint, but they have no customers. There are instances where food is prepared but it is not necessarily in a restaurant setting. There are also retail locations where they sell packaged goods. He gave an example of places that sell day old bread. He did not consider something like that to be a restaurant.

Mr. Danley stated that the places who sell day old bread are considered to be a grocery store.

Mr. Keene felt there are other permutations that might currently fall under some of the restaurant categories. He felt staff should review it further to make sure those uses are picked up somewhere else. To him, they are almost a manufacturing kind of use.

Mr. Danley felt this was a valid point. He stated staff would look into the idea of a ghost kitchen or some type of light manufacturing or light production of food.

Mr. Keene stated it should be able to be in a commercial or industrial setting, but it does not necessarily have the parking demand that an ordinary restaurant might have. To him, a ghost kitchen is different than what he is referring to because that is similar to Door Dash, which is more like a fast-food restaurant because there is a lot of pick-ups. He referred to Footnote 15 on Page 18 of 19 that says, *"If more than 20 percent of the total floor area or 600 square feet, whichever is less, is used for the preparation and/or sale of food or beverages in a ready-to-consume state, parking will be calculated the same as a ~~fast-food~~ restaurant, with drive-through."* He felt the 20 percent of the total floor area, or 600 square feet, is a significant portion of the space. He stated it was almost impossible to directly measure the 600 square feet or the 20% in some instances. For instance, if it is Outback Steakhouse, they have a 10 x 10 area where all the Door Dash staff come in. They have

a separate entrance for Door Dash as well as some dedicated parking spaces for them. They are doing a significant amount of their business out the side door yet not necessarily getting hit with the increased parking requirement.

Mr. Danley stated there might be an applicability issue with Note 15 that it does not apply to any of the restaurant uses. He believed it applied to gas stations. Mr. Danley stated he did not have it pulled up because staff did not have all of the parking standards with them at this meeting. That footnote applies to a business such as a WAWA station.

Mr. Mercer asked that Mr. Keene clarify his directive to staff.

Mr. Keene felt staff should look at all items that are currently included in the four types of restaurants to make sure they have not inadvertently excluded some use such as people who have commissary kitchens for their businesses or bakeries where someone prepares items to be sold in a retail setting.

Mr. Danley stated he believed there was a business services standard for Group 2 which would include catering companies. Staff could evaluate that specific use and make sure that something Mr. Keene wants is being captured in that business services standard as well.

Mr. Moore stated there may be State precedent too with the Department of Health whether it is going to be consumed onsite or not which might make it simpler. Staff could defer to the State because they tend to look at it in a simplified manner (is food being consumed onsite or not).

Mr. Danley stated staff would review this further.

Ms. Hayden referred to the Table on Page 12 of 19 where it lists restaurants with drive-through. Staff removed it from the Industrial Planned Development category (IPD). She asked why staff removed it.

Mr. Rodriguez stated that fast-food restaurants are not currently allowed in an IPD.

Ms. Hayden referred to (1) g. under Sec. 34-1264. Sale or service for on-premises consumption. This section lists group II, III or IV. She felt this was an error and that staff most likely needs to strike that and replace it with “and restaurants with drive-through.”

Mr. Danley stated staff would make that correction.

Ms. Hayden made a motion to approve the restaurant classification amendments as written along with Mr. Keene’s suggestion that staff go back to the individual items that are being deleted from the four groups to make sure there are not unintended consequences and that they are covered somewhere else and her correction under Sec. 34-1264. The motion was seconded by Mr. Hagen. The Chair called the motion and it passed 10-0.

B. EMS/Fire/Sheriff's Stations

Mr. Dirk Danley, Jr., Principal Planner, gave an overview of the amendments.

Mr. Moore asked if there had been any discussion about critical infrastructure, for instance, sites like FP&L substations.

Mr. Danley stated that FP&L substations have a new statute that basically exempts them from most of the county's processes. The way the statute reads is that if you are complying with the code requirements then you are exempt from zoning. Staff has been having representatives from FP&L come in anyway because they cannot meet the development requirements. They have been coming in with deviations lately. Staff will review this further to determine whether or not changes are needed to the county's Central Service Facilities definitions. He noted it does tend to get tricky because the county's Essential Services Facilities (Group 2) includes electric substations, wastewater treatment plants, and solid waste transfer facilities. Mr. Danley stated that substations are protected by Statute today.

Mr. Moore felt this would be a hot topic that staff will see come before them much more over the next five years.

Mr. Roeder made a motion to accept the amendments to Agenda Item 3.B. EMS/Fire/Sheriff's Stations. The motion was seconded by Mr. Moore. The Chair called the motion and it passed 10-0.

C. Accessory Apartments and Accessory Dwelling Units (ADUs)

Mr. Adam Mendez, Senior Planner, gave an overview of the amendments.

Mr. Mercer referred to Sec. 34-1180. Additional dwelling unit on a lot in Agricultural Districts (Page 2 of 3). He gave an example where someone owns a couple of acres in a recorded subdivision that is still zoned AG. They have a current home on the property and the property owner wants to build an accessory unit. In an instance such as this, would the property owner have to demonstrate that the additional accessory unit would be located on the lot that could be split even if it is not split at this time?

Mr. Mendez stated this was an existing regulation in the AG district. He directed the Board to the AG Use Regulations Table and explained it had a unique classification called "second principle single family residence" and it is permitted by right across all AG districts. It leads you to these regulations that are existing in the Land Development Code in the accessory section. It is basically saying that the property owner must have a lot that is large enough to where you could have two separate lots, but without dividing them into two separate lawful lots. You are allowed to put two single family residences on the property without dividing them. He noted there is nowhere else in the residential districts, except for multi-family districts, where you can have more than one principle single family residence on one lawful lot whether it is a lot of record or a conforming lot. Mr. Mendez stated this is a unique single family development standard that is unique to agricultural lots where someone can have two single family residences on one property.

Mr. Moore asked what prompted this amendment. He asked if staff came up with it on their own or if there were some instances that came up to where staff felt it needed to be clarified.

Mr. Mendez stated there have been several property owners seeking an accessory apartment and they all have had different situations. He provided examples. This amendment will allow a legitimate lot of record that meets density to have an accessory apartment.

Mr. Mercer asked what would happen in an instance where someone has an existing building in the middle of the agricultural lot to where there is no logical way they could divide the land. Is this amendment saying they could not have a mother-in-law house?

Mr. Keene referred to (b) (6) on Page 2 of 3 that says, *"Each dwelling unit and all accessory buildings and structures must be located on the parcel in such a manner that the parcel could be separated into individual lots and still meet the property development regulations for the zoning district as well as the density requirements for the applicable land use category without first creating a new street easement or right-of-way."*

Mr. Dunn stated that staff is referring to each principle dwelling unit, not necessarily the mother-in-law suite or the accessory dwelling unit.

Mr. Rodriguez stated that Sec. 34-1180 applies to scenarios where you have an agricultural lot in an agricultural district. You are allowed to build two principle single family residences if you have the density.

Mr. Keene asked if a sentence could be added to paragraph (a) to clarify that. Something to the effect of *"This section does not preclude accessory dwelling units to a principle single-family residence."*

Mr. Mendez gave further clarification that a property owner cannot have accessory dwelling units, but they can have accessory apartments that are attached to the principal single-family residence.

Mr. Keene felt additional verbiage was needed to this section to clarify what is being discussed today.

Staff agreed to review this further to see how they can clarify it.

Mr. Mercer asked if accessory dwelling units can include a kitchen.

Mr. Mendez stated this is a separate discussion. An *"accessory apartment"* is defined as an attached living unit without a kitchen. An *"accessory dwelling unit"* is defined as a living unit that is either attached or detached and may or may not have a kitchen. If it is detached, it is an accessory dwelling unit whether it has a kitchen or not. If it is attached and it has no kitchen, it is an accessory apartment meaning it would not be reviewed in terms of density. The kitchen element does signify it being a dwelling unit in any situation attached

or detached. The only variable is if you detach it, whether it has a kitchen or not, it counts as an accessory dwelling unit. Even if you decide not to put a kitchen in it, it will still count as a unit in terms of density.

Mr. Keene asked if an additional dwelling unit is a separate line item in the Use Table for AG-2.

Mr. Rodriguez stated that was correct.

Mr. Mercer stated he has always been concerned with unintended consequences. He felt that at some point down the road when there are different board members and different staff they might interpret these regulations somewhat differently.

Mr. Roeder asked how many accessory dwelling units staff has seen within the last 3-4 years.

Mr. Mendez stated it was a significant amount and noted there are many garage conversions.

Mr. Keene suggested that staff group the dwelling types together on the AG use table. He felt it would be helpful in the future.

Mr. Gallaher stated there are instances where someone's parents are having difficulty living on their own due to inflation and the prices of housing and rent. He asked why this section only relates to agricultural land and not residential. There will be those who want to convert their garage to a dwelling unit for their parents because it would be the most economical option. He asked why this would not be allowed in a residential area if they have a large enough lot.

Mr. Mendez stated this particular section relates to agricultural lands only. The section prior to this one where it outlined the actual development standards for accessory dwelling units and accessory apartments apply generally to all districts that permit them in their respective categories. He noted that the modification of Sec. 34-1177 (b) (4) on Page 2 of 3 will make it significantly easier for single family residences in Lee County to have a mother-in-law suite in their garage even if they are undersized provided they are a legitimate lot of record.

Mr. Gallaher asked how the county regulates a situation where someone wants an Air B&B.

Mr. Mendez stated that currently the county does not regulate Air B&Bs. A living unit is to be occupied by family. The county does not restrict how long someone leases or rents to someone. The only control would be on a private basis such as an HOA or something like that.

Mr. Keene noted that the City of Fort Myers has a definition between transient and non-transient housing, and they consider Air B&Bs to be transient and not allowed in single family districts. He asked if staff had looked into that.

Mr. Rodriguez stated staff has not evaluated that.

Mr. Adams stated there is state law regarding short term rentals and they may be grandfathered in if they had it in their code before that law became effective.

Mr. Keene referred to Sec. 34-1180 on Page 2 of 3. He requested that in the applicability section staff clarify that this applies to an additional dwelling unit and not to accessory apartments and dwelling units. It would provide a cross reference for the lay user. He also requested that in the Use Table for the AG-2 districts, for the residential districts, that staff consider moving accessory dwelling units under dwelling units and not in alphabetical (a) in the use table.

Mr. Moore made a motion to accept the amendments to Agenda Item 3.C. Accessory Apartments and Accessory Dwelling Units (ADUs) along with the recommendations made by Mr. Keene. The motion was seconded by Mr. Barraco. The Chair called the motion and it passed 10-0.

D. <u>Dwelling Unit Types on Nonconforming Lots of Record</u>

Mr. Rodriguez, Zoning Manager, gave an overview of the amendments.

During his presentation, Mr. Rodriguez provided an example by stating that current regulations do not allow non-conforming lots of record to be developed with anything other than a single-family residence even if an underlying zoning district allows another type of residence such as a duplex or a townhouse. These regulations are intended to loosen that restriction to allow a non-conforming lot of record to be developed with whatever dwelling unit type is permitted in its underlying zoning district if has the density and complies with the Lee Plan in any other respect.

Mr. Keene asked if it would be considered a duplex in the context that it would be a single-family home with an attached accessory dwelling unit.

Mr. Rodriguez clarified that it would be a duplex in the sense that it is one building containing two units that is either split down the middle, so it is a side by side attached, or top to bottom attached two-story with one unit on either floor.

Ms. Hayden made a motion to accept the amendments to Agenda Item 3.D. Dwelling Unit Types on Nonconforming Lots of Record. The motion was seconded by Mr. Roeder. The Chair called the motion and it passed 10-0.

E. <u>RVs as Temporary Living Facilities</u>

Mr. Anthony Rodriguez, Zoning Manager, gave an overview of the amendments.

Mr. Mercer asked if the weather event of 2022 was what prompted these amendments.

Mr. Rodriguez stated that was correct.

Mr. Keene asked if there were rules that allow these types of RVs, since they are temporary, to not have to comply with setbacks and other typical requirements/permits.

Mr. Rodriguez stated the county requires a temporary use permit. When they submit for this permit, they must demonstrate electrical service, water, and waste disposal.

Mr. Keene asked for clarification that they would not need to meet setbacks or minimum finished floor, etc.

Mr. Rodriguez stated that was correct.

Mr. Gallaher asked if there was an expiration date for the permit such as 90 days. If there is an expiration date of 90 days (example) and the owners stay for 90 days and then leave for a month, are they allowed to come back? Does the permit reset?

Mr. Rodriguez stated that because a permit is required, the county would apply the permit duration. This means they would not be able to obtain a second permit on the back of that first permit.

Mr. Roeder had no issues with these amendments and felt they made sense.

Mr. Moore referred to (b)(2) which says that the maximum duration of the temporary use is nine months or 270 days for a commercial business. Due to what is involved with insurance companies and litigation, he felt it should be extended to 24 months.

Mr. Moore made a motion to accept the amendments to 3.E. RVs as Temporary Living Facilities with the recommendation to extend 270 days to 24 months for businesses after the date of issuance or declaration of state of emergency (Sec. 34-3046 (b)(2). The motion was seconded by Mr. Keene. The Chair called the motion and it passed 10-0.

Mr. Knight asked about office trailers which are not recreational.

Mr. Rodriguez stated these amendments only address mobile homes and RVs. Businesses that have a mobile home or temporary construction trailer are already captured in the code.

Mr. Moore and Mr. Keene noted there were several businesses that are operating out of an office trailer or RV because there has been no other way to conduct their businesses. They cannot rebuild their structure because they do not meet FEMA, setbacks, the lots are small, they don't have enough parking, etc.

Mr. Danley acknowledged that particularly in coastal areas he has seen many restaurants operating out of something similar.

F. Clean-up Items

Mr. Rodriguez, Zoning Manager, gave an overview of the amendments. He also noted that this section establishes the definition of affordable housing that is consistent with federal regulations but is not identified with our code.

Mr. Roeder referred to Sec. 2-143. Definitions and stated that he understood the definition for affordable housing, but he noted that affordable housing depends on how many people are in the household and that can change over time. He asked who in the county manages or administers the program or if there is a system in place that monitors and administers the program.

Mr. Dunn stated that affordable housing is reviewed by the Department of Community Development. They handle the SHIP programs, for bonus density. There are also other departments that review it as well (Human Veteran Services, other grant programs). Staff is aware that based on the family and household size there are different income requirements. He noted that HUD normally puts out a matrix of affordability.

Mr. Roeder gave an example of a two-bedroom apartment. Anywhere from 1 to 6 people might be living there, which would make the affordable rent amount change. To him, it seemed that this could be a challenge.

Mr. Dunn stated that the way HUD defines it is not based on the size of the home, but the number of people in the family.

Mr. Roeder pointed out that the number of people in the family can change.

Mr. Dunn acknowledged this to be true and noted it was part of the reason this definition is needed. There has been concern that our requirement says you must provide affordable housing, but it did not necessarily say the housing had to be affordable for the people living within that unit. This definition is more of a clarification that if you provide affordable housing for bonus density or through the SHIP program, you must provide housing at an affordable rate but based on household size and that housing needs to be affordable for the household that is in there.

Mr. Roeder asked if someone keeps track of how many people are living in these apartments.

Mr. Dunn confirmed there is staff that keeps track of that.

Mr. Keene referred to Accessory Apartments and Accessory Dwelling Units. Language was added that says, *"Accessory dwelling units are presumed to be site-built affordable housing units and must pay applicable impact fees pursuant to Chapter 2."* He asked if this definition is going to apply to the other section or change how an accessory dwelling unit is handled.

Mr. Dunn clarified that typically when there is an affordable housing project staff keeps track of the households. They must income certify each dwelling unit/each household that is within those units. The additional language in the Accessory Apartments and Accessory Dwelling units tells staff to assume that it is serving the need of providing affordable housing, so that staff does not have to monitor it and so that someone does not have to go out and buy a transferrable development unit to get that bonus density.

Mr. Sarracino noted a scrivener's error on Page 2 (B)(7). Although (7) is deleted, it remains on the page, so it will be removed.

Mr. Moore made a motion to accept the amendments to Agenda Item 3.F. Clean-up Items including the scrivener's error noted by Mr. Sarracino. The motion was seconded by Mr. Barraco. The Chair called the motion and it passed 10-0.

Mr. Mercer asked if any other Boards/Committees had reviewed this.

Mr. Rodriguez stated the Executive Regulatory Oversight Committee was the first to review it. It goes before the Land Development Code Advisory Committee on May 10th and the Local Planning Agency on May 20th. The meeting packets for those other two committees were sent out and posted already, so the recommendations from today's meeting are not incorporated into their packets. However, staff compiles all committee comments into the back-up for the Board of County Commissioners' consideration.

Agenda Item 4 – Adjournment – Next Meeting Date: May 08, 2024

The next meeting is scheduled for Wednesday, July 10, 2024.

There was no further business.

Mr. Moore made a motion to adjourn. The motion was seconded by Mr. Hagen. The Chair called the motion and it passed 10-0. The meeting adjourned at 3:10 p.m.