

MINUTES REPORT
LAND DEVELOPMENT CODE ADVISORY COMMITTEE
(LDCAC)
Friday, May 10, 2024
8:30 a.m.

Committee Members Present:

| | |
|------------------------|-------------------------|
| Veronica Martin | Christopher Scott |
| Paula McMichael, Chair | Amy Thibaut, Vice Chair |
| Jennifer Sapen | Patrick Vanasse |

Excused / Absent:

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|-------------|----------------|
| Jem Frantz | Jarod Prentice |
| Jay Johnson | Bill Prysi |
| Randy Krise | Al Quattrone |
| Tom Lehnert | Linda Stewart |
| Jack Morris | |

Lee County Government Staff Present:

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| Joe Adams, Asst, County Atty. | Janet Miller, DCD Admin. |
| Dirk Danley, Jr., Zoning | Joe Sarracino, Planning |
| Tad Delnay, Deputy Bldg. Official | Anthony Rodriguez, Zoning Manager |
| Adam Mendez, Zoning | |

AGENDA ITEM 1 - CALL TO ORDER/REVIEW OF AFFIDAVIT OF PUBLICATION

Ms. McMichael, Chair, called the meeting to order at 8:30 a.m. in the Large First Floor CR 1B, Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida.

Mr. Joe Adams, Assistant County Attorney, reviewed the Affidavit of Publication and found it legally sufficient as to form and content.

AGENDA ITEM 2 - APPROVAL OF MINUTES – March 8, 2024

Ms. Martin made a motion to approve the March 8, 2024 minutes, seconded by Mr. Scott. The motion was called and passed unanimously.

AGENDA ITEM 3 – LAND DEVELOPMENT CODE AMENDMENTS

A. Restaurant Classifications

Mr. Dirk Danley, Principal Planner, provided an overview of these amendments. He informed the Board that it was staff's preference to have a motion for each item separately.

Sec. 33-1261. Permitted Uses

Ms. Sapen noted the different group numbers (i.e. Group 1 thru IV) are being removed. She asked what will take place if someone gets their zoning approved and one group approved, but not the other groups. Now that the group numbers are being removed, does this mean someone's restaurant would be allowed in all groups by default?

Mr. Rodriguez stated that would not be the case because there are no more groups.

Mr. Danley referred the Committee to the definition of restaurant and noted there is a line item that says, *“This definition includes uses previously classified as Restaurants, Groups I, II, III and IV.”* Now, the restaurant classification is under an umbrella of what it was previously designated as.

LDC Section 34-2. – Definitions

Mr. Scott asked if an establishment would still be considered a restaurant with drive-through if it is a fast-food restaurant that does not have a drive-through. He also was not certain the definition is necessary because restaurant is already defined as well as a drive-through. Some establishments have a drive-through lane.

Mr. Danley stated that was an interesting question and suggested staff might change the word “or” to “and.” He further stated the intent is that as soon as a drive-through is associated with a restaurant, it would be considered a fast-food restaurant. An example is Starbucks, which is a Group II restaurant. As soon as it has a drive-through, it triggers the 34-1353 requirements of a fast-food restaurant. Currently, the Starbucks in downtown Fort Myers is a restaurant because it does not currently have a drive-through. If at some point, they add a drive-through, it becomes a fast-food restaurant. Staff will clarify that the presence of a drive-through is what is triggering that requirement.

Mr. Scott stated if that is the intent his recommendation would be to strike the definition because both restaurant and drive-through is already defined. If the only qualification is a restaurant that includes a drive-through, he did not see why staff needs to define it any further.

Ms. McMichael asked if there was anything other than a fast-food restaurant that staff is trying to regulate other than the drive-through?

Mr. Danley stated that in terms of triggering something into a fast-food restaurant, it is the presence of the drive-through that changes the nature of the business. Staff is trying to capture the way the ITE captures different types of restaurants. They have many different categories, such as a coffee shop that does not have a lot of trips. However, a coffee shop with a drive-through is one of the highest trip generating businesses in the ITE. The reason is the convenience of being able to stay in your car, order, and drive away.

Mr. Vanasse stated that although we were not looking at the parking requirements, he noticed there was not much difference in the parking required for a drive-through versus a sit-down restaurant. He felt the parking numbers should be significantly reduced for drive-throughs. He was in favor of there being a distinction between the two so that staff can adjust the parking requirement at some point.

Ms. Martin referred to the definition of “Drive-through Facility.” It says, *“...in which the patron may temporarily depart from a vehicle in a non-parking space while servicing it.”* She asked if staff could provide an example of that.

Mr. Rodriguez stated one example would be people bringing their vehicle in for an oil change. He explained that the business of instant oil change places has changed in the last 5 years to where patrons can stay in their car. It used to be that a patron would get out of their car, wait in the waiting room while their vehicle is being serviced, get back in their car once the service is completed, and drive away. This is what the clause is trying to capture.

Ms. McMichael referred to the strike-through language and felt it was helpful and should be kept in. It includes examples such as “*do it yourself car washes*” and “**fuel pumps.**”

Ms. Martin and Ms. Sapen concurred with Ms. McMichael and felt the strike-through language should be kept.

Mr. Danley stated that historically staff tries to take out examples in the code, but they can consider leaving it in since the Committee feels it is helpful.

Ms. McMichael referred to “*pick-up window.*” She asked if there were instances where it would not be a window. In other words, is staff only allowing a pick-up window?

Mr. Danley did not feel the intent was to limit it to a window. In the downtown Fort Myers area, there is a dry cleaning facility where people drop their items to be dry cleaned through a sliding glass door. Staff can make it a point of egress or something less specific so there is not a situation.

Section 34-844. Use Regulations for Conventional Commercial Districts

Mr. Scott noted staff was adding restaurant uses to a couple of zoning districts that did not previously allow for restaurants (C-1 and CN-I). He stated he was not objecting to it. He just wanted to make sure it was not a typo.

Mr. Danley stated both of those are intended to be there. He believed that C-1 is an intensive commercial district that straddles some industrial uses. Staff is loosening up the industrial districts to allow for more restaurant uses. In terms of a neighborhood commercial district, staff felt people would want a restaurant in a neighborhood commercial district.

Mr. Rodriguez stated staff also talked about determining it by the neighborhood commercial districts. There are restrictions on hours of operation and size of facilities. Staff felt that was adequate control to allow those uses to operate. The goal is to shorten some trips.

Sec. 34-1264. Sale or Service for On-premises Consumption

Ms. Martin referred to the last sentence in (a)(1) g. on Page 14 of 19 and noted it still includes outdoor seating with a group II, III, or IV restaurant.

Mr. Danley stated that the Executive Regulatory Oversight Committee caught this as well when they met on May 8th. Staff is making that correction.

Sec. 34-1353. Convenience Food and Beverage Stores, Automobile Service Stations, Restaurants with Drive-throughs, and Car Washes

Mr. Scott noticed that in some instances staff is referring to it as restaurant, with drive-through and in other places it is restaurant with drive-through (minus the comma). He felt the comma could be omitted to where it just says restaurant with drive-through.

Sec. 34-2020. Required Parking Spaces

Mr. Vanasse referred to his earlier comment about required parking spaces. With restaurants the parking spaces must be 14 spaces per 1,000 square feet whereas drive-throughs must have 13 spaces per 1000 square feet. He felt there should be adjustments made to that.

Ms. Martin stated she agreed with Mr. Vanasse's sentiment. Her company does many "hybrid restaurants" where some are carry-out only. For instance, a strip plaza might have a Chinese restaurant that might have 2 – 4 booths, but you never see anyone eating there. People only seem to be waiting to pick-up their food and leave. There are also Hungry Howie's throughout Southwest Florida, which have eat-in, they offer delivery, and have a pick-up window, but they do not have a menu board where someone can go to, place an order, and drive away. She felt the parking requirements for those types of facilities should be looked at as well.

Mr. Danley was not certain when staff would be reviewing the parking requirements again, but he plans to add these comments to the list staff is compiling of other comments they have received from members of the public asking for adjustments. Staff will make note of this discussion.

Mr. Scott stated he also disagrees with parking requirements for drive-through restaurants. He referred to Note (9) and questioned why it is in this document since it basically says that it does not apply to restaurants with drive-throughs.

Mr. Danley stated he understood and would make note of that.

Mr. Scott felt there was a difference in shopping centers or multi-tenant buildings that include a Starbucks with a drive-through or a Chipotle with a drive-through. He believed the number of people visiting those sites is much lower to where it might be appropriate to allow reduced parking. However, standalone buildings versus ones that are in a larger shopping center typically have different parking demands.

Mr. Danley stated that staff tried to conceptualize as many situations as possible to make sure this was not a broken code. Regarding Note (9), previously if you were a restaurant in group I or II, and located in a shopping center, you had a reduced parking rate, similar to the Chinese restaurant. Staff cannot make things more restrictive, and they are not allowed to simply strike the Code. Typically, it will not be an issue to provide 1 space per 350 square feet for smaller restaurants. There are some businesses such as Outback Steakhouse by the Bell Tower Mall that would be significantly under-parked at 1 space per 350 square feet. Staff is trying to make sure there is under-parking in some areas. However, Mr. Danley acknowledged staff could review this further to see if there could be some parking adjustments.

Section 34-2021. Drive-through Stacking Requirements

Ms. Sopen noted staff had a requirement of 10 spaces for stacking and 5 before the menu board. She felt that requiring 5 before each menu board penalizes someone for having two menu boards because they would need to have 5 spaces per each menu board and whatever it takes to get from the menu board to the window.

Mr. Rodriguez felt the intent was that if someone has two menu boards at one pick-up location, the total would be 10 stack spaces (5 total split between the two menu boards and 5 for the pick-up area). Although it is not written that way, that is the intent.

Ms. Sopen asked how staff regulates a business such as Chick-Fil-A. She referred to the one on Colonial which is already a busy thoroughfare but is made worse near the Chick-Fil-A area.

Mr. Danley stated the same is true for the one located on Pine Island Road. Staff is open to any suggestions the Committee has on this issue.

Mr. Scott made a motion to accept the amendments to Agenda Item 3.A. Restaurant Classifications with the suggestion to remove the definition of restaurant with drive-through or clean up the language to clearly identify that it is solely for a restaurant with drive-through and remove all the “or” clauses and double check Note 9 within the parking table (Table 34-2020 (b)) for a restaurant with drive-through, The motion was seconded by Ms. Sopen.

Mr. Vanasse asked if it will complicate things with the definition if staff applies different parking ratios.

Mr. Scott stated he was not incorporating the parking requirement issues as part of his motion because it is a separate issue that staff stated they were aware of and would address at a later date.

Ms. McMichael stated there still seemed to be an issue with having a definition for Restaurant and Restaurant with Drive-through. Should we have a separate definition for Restaurant with Drive-through?

Ms. Sopen stated that a drive-through does not have a parking count. The only way to get a parking count is restaurant with drive-through, which is where the definition comes in.

Mr. Rodriguez stated there is also a definition for “*Drive-through Facility.*” If staff strikes the definition of Restaurant with Drive-through, they will call it a Restaurant with Drive-through Facility which are both defined and will address it in 34-2020 accordingly.

Mr. Vanasse stated it might be simpler to have the definition of Restaurant with Drive-through that includes a drive-through lane, vehicular ordering, and pickup.

Mr. Scott stated there was also the issue of the comma that he wanted to include.

Final Motion:

Mr. Scott made a motion to accept the amendments to Agenda Item 3.A. Restaurant Classifications with the following suggestions: 1) to remove the definition of restaurant with drive-through or clean up the language to clearly identify that it is solely for a restaurant with drive-through; 2) remove all the “or” clauses and double check Note 9 within the parking table, Table 34-2020 (b), for a restaurant with drive-through; and, 3) remove the commas under Section 34-1353 in instances where it is listed as Restaurant, with drive-through so that it just reads, Restaurant with drive-through (minus the comma). The motion was seconded by Ms. Sopen. The Chair called the motion and it passed 6-0.

Mr. Rodriguez assured the Committee that staff is making note of all their comments.

B. EMS/Fire/Sheriff’s Stations

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

Sec. 34-941. Private Recreational Facilities Planned Developments

Ms. McMichael asked if the public facilities are defined in the plan or the code.

Mr. Danley stated it was a defined term.

Ms. McMichael asked if it was considered a commercial use.

Mr. Rodriguez stated it was in terms of how it is buffered.

Ms. McMichael asked for clarification that staff did not need to make any changes to the special exception criteria to address this specific use that is already addressed in the county's special exception process.

Mr. Danley stated the special exception criteria is somewhat general and to ensure compatibility with the use in other situations staff has taken these through special exception, so the procedure would not be different than what is already in place.

Ms. Sapen made a motion to accept the amendments to Agenda Item 3.B. EMS/Fire/Sheriff's Stations. The motion was seconded by Mr. Vanasse. The Chair called the motion and it passed 6-0.

C. Accessory Apartments and Accessory Dwelling Units (ADUs)

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

Sec. 34-1177. Accessory Apartments and Accessory Dwelling Units

Ms. Sapen referred to (a)(2) on Page 1 of 3 and asked why they are presumed to be affordable housing units.

Mr. Mendez stated that the existing language says, "*An accessory dwelling unit is subject to density provisions of the Lee Plan. Density may be calculated using the maximum total (bonus) density range....*" In discussing this language with Planning staff, zoning staff asked if these need to be rent controlled once someone builds an accessory dwelling unit or if there needs to be an agreement for what the rent is. The intent is to allow them to be assumed to be affordable housing units and not have that rent control aspect to it just by virtue of the fact that they are subordinate to the principal single-family unit so they are smaller in size in comparison.

Ms. Sapen stated that the way it is written it seemed to be something someone wants, but there is nothing requiring it. To her, it should be that it is required or not required. This may be intent language, but she did not want the county to get into an analysis of dollar amounts if their intention is not to do that.

Mr. Mendez stated staff can review that section further to see if there is a way to clarify it.

Ms. McMichael stated she was confused with the term "*nonliving*" area. She also noted that "*living area*" is in the same section.

Mr. Mendez stated staff does not have a definition for "*nonliving area*," so they referenced "*living area*" to make the delineation. Staff can define what they consider to be a "*living area*." Anything outside of that is a "*nonliving area*."

Ms. McMichael asked if staff was trying to capture items such as storage or something similar to that.

Mr. Mendez stated that was correct, but that they want to capture the garages as well.

Mr. Vanasse asked if it included lanais.

Mr. Mendez stated that was correct.

Ms. Martin asked how staff would address a larger estate type of home that is connected through their backyard that has a man cave next to the pool, pool table, lounge, bar, grill, bathroom, etc. She asked if this would be considered an accessory dwelling unit for density purposes.

Mr. Mendez stated that staff has reviewed items like that occasionally. When they do, it is a floor plan level review in instances where they are not planning to have the space used as an accessory apartment or an accessory dwelling unit. Staff reviews the floor plan, and the applicant must submit a *"no separate dwelling affidavit"* as well.

Mr. Scott made a motion to accept the amendments to Agenda Item 3.C. Accessory Apartments and Accessory Dwelling Units (ADUs). The motion was seconded by Mr. Vanasse. The Chair called the motion and it passed 6-0.

D. Dwelling Unit Types on Nonconforming Lots of Record

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

Mr. Vanasse stated he felt these were good changes and he supports staff for doing this especially post storm. He stated that many times when we create non-conformities the planning theory is that over time you want to eliminate those. However, there are property rights involved and there are people that are hurting and want to bring back what they had before.

Mr. Rodriguez noted there is also a housing affordability problem in Lee County, so he felt these amendments will help ease that issue a bit.

Mr. Vanasse made a motion to accept the amendments to Agenda Item 3.D. Dwelling Unit Types of Nonconforming Lots of Record. The motion was seconded by Ms. Martin. The Chair called the motion and it passed 6-0.

E. RVs as Temporary Living Facilities

Mr. Anthony Rodriguez, Zoning Manager, gave an overview of the amendments. He noted that the Executive Regulatory Oversight Committee recommended a change to Subsection (b)(2) which establishes a maximum temporary duration of a business occupying these temporary facilities as 270 days. The Executive Regulatory Oversight Committee recommended an extension of that to 24 months by virtue of having to sort through insurance claims and subsequent litigation that is associated with that so that businesses have more time operating the way that they are so they can be a viable business until things are sorted out.

Ms. McMichael stated that the City of Sanibel gives two years for those temporary commercial uses. She referred to (a)(1) on Page 1 of 2 that says, “*If fire or disaster renders a permanent residential structure...*” instead of a single-family residence that was previously in the language. She asked if staff was anticipating that if someone has a duplex or multi-family structure, they could also have a mobile home or RV.

Mr. Rodriguez stated that customarily this is another issue that comes up after a huge storm event. Staff did not have carve outs for anything more than a single-family home, but the need was there. Staff is trying to recognize and codify that by allowing those placements (duplex, multi-family, etc.) so that rehabilitation can occur.

Ms. McMichael stated that the City of Sanibel opted not to do multi-family structures because staff could not figure out how people would fit them into those condos.

Mr. Rodriguez stated he appreciated that information and that it was a good point.

Mr. Scott made a motion to accept the amendments to Agenda Item 3.E. RVs as Temporary Living Facilities with the amendment to extend the maximum duration of the temporary use to 24 months. The motion was seconded by Ms. Sapen. The Chair called the motion and it passed 6-0.

F. Clean-up Items

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

Ms. Sapen made a motion to accept the amendments to Agenda Item 3.F. Clean-up Items. The motion was seconded by Mr. Vanasse. The Chair called the motion and it passed 6-0.

Agenda Item 4 – Adjournment/Next Meeting Date

Mr. Rodriguez stated that even though the agenda lists June 14, 2024 as the next meeting date, he felt it would be cancelled and that the next meeting date would be July 12, 2024 instead.

Ms. Martin asked what the best course of action would be if a committee member wants to bring some Land Development Code amendments to staff’s attention for discussion.

Mr. Adams stated a committee member could bring the issue up at one of these meetings. These meetings are a venue to bring issues to staff’s attention, but ultimately it will be up to the Board of County Commissioners to direct staff to move forward with those amendments.

Ms. Martin stated that several committee members are on the ground level and see the amendment needs. They are more reactive to what is going on. By the time amendments are brought before the various committees, it is behind the times. She wished things could be more proactive at times.

Mr. Vanasse stated the best course of action would be to contact the Board of County Commissioners. Mr. Adams and zoning staff agreed.

Mr. Rodriguez stated the pick-up window issue is a good example. It first began because someone contact the Commissioners.

Ms. McMichael felt that if the recommendations are merely clean-up items or something where a committee member may not know how to interpret a particular section of the code, they could contact staff.

Mr. Rodriguez agreed with that, but said that for substantive items, it would be best to contact the Board of County Commissioners so they can begin the direction process.

There was no further discussion. Ms. McMichael adjourned the meeting at 9:25 a.m.