



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

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

From: Brad Stein, AICP, Planning & Development Review Manager

Date: August 30, 2021

Subject: *Request for an Administrative Setback Variance that was requested to go before the Planning Commission pursuant to Section 102-186(k) for property described as a parcel of Land in Section 14, Township 65 South, Range 34 East, Conch Key, Monroe County, Florida, having Parcel Identification Numbers 00385780-000000 & 00385780-000400 (File # 2021-098)*

Meeting: September 29, 2021

1 I REQUEST:

2 The applicant is requesting approval of a variance of five (5) feet from the required 25-foot
3 primary front yard setback adjacent the South Conch Avenue right-of-way, a reduction of five
4 (5) feet from the required 15-foot secondary front yard setback adjacent a secondary portion
5 of South Conch Avenue right-of-way (formally a portion of US-1), a reduction of two and a
6 half (2.5) feet from the required 15-foot secondary front yard setback adjacent the North Conch
7 Avenue right-of-way of the subject property and a reduction of ten (10) feet from the required
8 twenty-foot rear yard setback requirement. If approved, the required primary front yard setback
9 along South Conch Avenue would be twenty (20) feet, the secondary front yard setback
10 adjacent a secondary portion of South Conch Avenue will be ten (10) feet, the secondary front
11 yard setback adjacent North Conch Avenue would be twelve and a half (12.5) feet and the rear
12 yard setback would be ten (10) feet. The variances are requested in order to construct ten (10)
13 detached affordable dwelling units.



14 *Subject Property highlighted in blue on 2018 Aerial*

15

1 **II BACKGROUND INFORMATION:**

2 **Location:** Conch Key, Mile Marker 62.8

3 **Address:** 2 N. Conch Ave, Conch Key, Florida

4 **Legal Description:**

The West 70 feet of Lot 14, CONCH KEY SUBDIVISION, according to the Plat thereof, recorded in Plat Book 2, Page 130, of the Public Records of Monroe County, Florida. Said parcel of land being more particularly described as follows, to wit:

At the Point of Beginning commence at a point on the North Right-of-Way line of South Conch Avenue and the Southwest corner of Lot 14, Conch Key Subdivision, according to the Plat thereof as recorded in Plat Book 2, Page 130, of the Public Records of Monroe County, Florida; thence run in a Northerly direction along the West boundary line of Lot 14 for a distance of 70 feet to the Northwest corner of said Lot 14; thence proceed at a right angle along the Northern lot line of Lot 14 for a distance of 70 feet to a point; thence at a right angle and running parallel with the East lot line of Lot 14, run a distance of 70 feet to a point on the South lot line of Lot 14, and on the North Right-of-way line of South Conch Avenue said point being 70 feet from the Point of Beginning; thence at a right angle proceed in a Westerly direction along the South lot line of Lot 14 a distance of 70 feet back to the Point of Beginning.

5 **Parcel Identification Numbers:** 00385780-000000 & 00385780-000400

6 **Property Owner/Applicant:** Monroe County

7 **Agent:** Erica Poole, K2M Design, Inc.

8 **Size of Site:** 21,019 square feet (per Survey by Reece & Associates dated 10/28/2019)

9 **Land Use District:** Commercial Fishing Special District 16 (CFSD16)

10 **Future Land Use Map (FLUM) Designation:** Mixed Use/Commercial Fishing (MCF)

11 **Tier Designation:** III

12 **Flood Zone:** AE10

13 **Existing Uses:** Mobile homes, RVs and partially vacant

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

15 **Community Character of Immediate Vicinity:** Single family residences, Monroe County
16 Fire Station, resort use and commercial fishing uses

17
18
19 **III RELEVANT PRIOR COUNTY ACTIONS:**

- 20 1. In 1996, a Land Use Map amendment was approved changing the land use (zoning) district of
21 the property from Commercial Fishing Area (CFA) to Commercial Fishing Special District –
22 Conch Key (CFSD-16).
23
- 24 2. On September 29, 2005, the County issued a Letter of Understanding to Frank Greenman
25 regarding a determination of number of lawfully established transient units at the Bayview Inn
26 parcels. The applicant claimed 10 units. Staff determined six units lawfully existed: five
27 transient hotel rooms and one permanent; and determined 1,300 square feet of nonresidential
28 floor area lawfully existed in the form of a commercial retail bait store. The LOU was
29 originally dated 9/14/2005, then corrected on 9/29/2005 per a memo dated 10/5/2005. This
30 determination was appealed.
31
- 32 3. An appeal of the prior determination resulted in a post-appeal agreement Letter of
33 Understanding dated June 27, 2006 from then-Planning Director Aref Joulani. Prior to the
34 appeal hearing (File # 25097), an agreement was entered into between the applicant, Edward
35 Buxton of Seashime, LLC and the County resolving all issues of the appeal regarding the

1 number of lawfully established units on the property. The County agreed that the Seaview
 2 Hotel had/has 10 existing hotel/transient units on the property that are lawful and ROGO
 3 exempt. Buxton and Seashime agreed not to enlarge or expand any hotel units as they existed;
 4 prior to any redevelopment, the property will have to come into full compliance with the LDC
 5 and building codes in effect at time of redevelopment application; and existing structures will
 6 stay in same configurations and footprint as they presently exist, other than reasonable repair
 7 and maintenance.
 8

- 9 4. On December 18, 2007, a Letter of Development Rights Determination (File # 27125) was
 10 issued determining that five transient residential units (RV spaces) and 12 permanent
 11 residential units are lawfully-established on the Conch Trailer Court parcel.
 12
- 13 5. On May 13, 2008, a Letter of Understanding (File # 27124) was issued regarding the proposal
 14 to redevelop from a mixed use site currently developed with 12 mobile homes, five RV spaces,
 15 a 10-unit hotel and a 1,300-square-foot commercial retail store, to a site that consists of only
 16 permanent residential uses.
 17
- 18 6. On July 7, 2016, a Letter of Understanding (File # 2015-216) was issued regarding the
 19 proposal to redevelop by transferring offsite the transient density and to rebuild 14 market
 20 rate dwelling units.
 21
- 22 7. On January 22, 2020 the Board of County Commissioners at regular meeting reserved 10
 23 affordable ROGO allocations until October 16, 2020, through Resolution 026-2020.
 24
- 25 8. On February 17, 2021 the Board of County Commissioners at regular meeting continued the
 26 reservation of 10 affordable ROGO allocations until October 16, 2022, through Resolution
 27 060-2021.
 28

29 **IV REVIEW OF APPLICATION:**

30 The proposed variance is requested in order to construct ten (10) new detached affordable
 31 dwelling units on the subject property.
 32

33 The property is located within the Commercial Fishing Special District 16 (CFSD16) Land
 34 Use District. Pursuant to Land Development Code Section 131-1, the required non-shoreline
 35 setbacks within the CFSD16 District are as follows:
 36
 37

Land Use District/ Land Use	Primary Front Yard (ft.)	Secondary Front Yard (ft.)	Primary Side Yard (ft.)	Secondary Side Yard (ft.)	Rear Yard (ft.)
Commercial Fishing Special District 16 (CFSD16)	25	15	10	5	20

38 Approval of this variance would result in a primary front yard setback along South Conch
 39 Avenue of twenty (20) feet, the secondary front yard setback adjacent a secondary portion of
 40 South Conch Avenue would be ten (10) feet, the secondary front yard setback adjacent North
 41

1 Conch Avenue would be twelve and a half (12.5) feet and the rear yard setback would be ten
2 (10) feet, according to the site plan submitted with the application, signed and sealed by Scott
3 C. Maloney, Architect, on June 10, 2021.
4

5 See snap shot of the proposed site plan below:



6
7
8 **This Variance request was reviewed under the criteria set forth for an Administrative**
9 **Variance LDC Section 102-186(f), and was found by the Planning Director to be in**
10 **compliance with these requirements. Upon the required 30 calendar days of**
11 **posting/noticing of the intent to grant the variance, several property owners/residents**
12 **requested in writing that the variance be considered at a public hearing by the Planning**
13 **Commission, as is allowed by LDC Section 102-186(k). This in turn requires the**
14 **Administrative Variance to be reviewed in accordance with LDC Section 102-187.**
15

16 *Pursuant to LDC Section 102-187(d), a variance may only be granted if the applicant*
17 *demonstrates that all of the following standards are met:*
18

- 19 (1) *The applicant shall demonstrate a showing of good and sufficient cause:*
20 **IN COMPLIANCE**
21

22 The applicant states, “The units are small, affordable housing units and the shape of the
23 site does not allow for much buildable area for the affordable units. By granting this
24 variance, single family affordable housing units can be maximized, without using all of the
25 allocations previously allotted to the site.”
26

27 Lawfully established density is protected and allowed to be replaced onsite pursuant to
28 LDC Section 130-163 but has to follow current Land Development Code (LDC)
29 requirements to include setbacks. The proposed plan is for 10 detached dwellings, the

1 proposed footprint and scale of the buildings are consistent with other detached dwelling
2 units in the community.

3
4 Staff confirms that the applicant demonstrates a showing of good and sufficient cause.

5
6 (2) *Failure to grant the variance would result in exceptional hardship to the applicant:*
7 **IN COMPLIANCE**

8
9 LDC Section 101-1 defines *exceptional hardship* as “a burden on a property owner that
10 substantially differs in kind or magnitude from the burden imposed on other similarly
11 situated property owners. Financial difficulty/hardship does not qualify as exceptional
12 hardship.”

13
14 The applicant states, “Failure to grant the variance would create a minimal building area
15 that could not provide for the affordable housing proposed for this lot.”

16
17 The subject property has lawfully established density of 15 units, the applicant is only
18 requesting to replace **10** of the lawfully established dwelling units with detached affordable
19 housing to match what is currently around the subject property. The failure to grant these
20 variances would be an exceptional hardship to the applicant. That pursuant to Section 130-
21 163 are permitted to replace the dwelling units.

22
23 LDC Sec. 130-163. Existing Residential Dwelling Units and Transient Units.

24 Notwithstanding the provisions of sections 130-157 and 130-162, the owners of land upon
25 which a lawfully established dwelling unit, mobile home, or transient unit exists shall be
26 entitled to one dwelling unit for each type of dwelling unit in existence before January 4,
27 1996. Such lawfully-established dwelling unit shall not be considered nonconforming as
28 to density. Notwithstanding the nonconforming use provisions of section 102-56, existing
29 lawfully established residential uses, not including mobile homes and not including
30 transient uses, shall be entitled to repair and/or replace such dwelling units with the same
31 type of dwelling unit and shall not be considered a nonconforming use(s). Lawfully
32 established mobile homes shall be entitled to replace such dwelling units with a detached
33 dwelling unit and shall not be considered a nonconforming use(s).

34
35 (3) *Granting the variance will not result in increased public expenses, create a threat to public*
36 *health and safety, create a public nuisance, or cause fraud or victimization of the public:*
37 **IN COMPLIANCE**

38
39 The applicant states, “Granting the variance will not result in public expenses for this grant
40 funded project. The approval would not create a threat to public health or safety, nor will
41 it create a public nuisance or cause fraud or victimization of the public.”

42
43 Staff does not anticipate that granting the variance would result in an increased expense,
44 create a threat to public health and safety, create a public nuisance, or cause fraud or
45 victimization to the public.

46
47 (4) *Property has unique or peculiar circumstances:* **IN COMPLIANCE**

1
2 The applicant states, “The subject site is on a corner, with three (3) front yards, a rear yard,
3 and two side yards. This site geometry and setback considerations make for a difficult
4 building environment. Despite the coverage we are proposing, we are not requiring
5 variances other than the setbacks.
6

7 The property has multiple unique or peculiar circumstances in that it previously has
8 lawfully established density of 15 dwelling units. The density is protected and can be
9 replaced. The applicant is asking to replace that density with detached affordable dwelling
10 units and is reducing the previous density by 5 dwelling units to 10. The site is located on
11 3 street frontages, the LDC has larger setbacks for frontages than side yard setbacks
12 creating a unique or peculiar circumstance to replace the dwelling units under conforming
13 setbacks.
14

15 Staff has determined that the subject property has a unique or peculiar circumstance that
16 applies to this property, but does not apply to all other properties within the CFSD16 zoning
17 district.
18

- 19 (5) *Granting the variance will not give the applicant any special privilege denied to another*
20 *property owner in the immediate vicinity: IN COMPLIANCE*
21

22 The applicant states, “Granting the variance will not give the applicant any special privilege
23 denied other properties. The majority of structures within this district have a smaller front
24 setback footprint due to their age and date of construction.”
25

26 The granting of this variance will not give the applicant a special privilege denied other
27 properties in the immediate neighborhood in terms of the provisions of this chapter or
28 established patterns.
29

- 30 (6) *Granting the variance is not based on disabilities, handicaps or health of the applicant or*
31 *members of his family: IN COMPLIANCE*
32

33 The applicant states, “Granting the variance is not based on disabilities, handicaps, or
34 health of the applicant or property inhabitants.”
35

36 Staff confirms that granting the variance is not based on disabilities, handicaps or health of
37 the applicant or members of his family.
38

- 39 (7) *Granting the variance is not based on the domestic difficulties of the applicant or his*
40 *family: IN COMPLIANCE*
41

42 The applicant states, “Granting the variance is not based on the domestic difficulties of the
43 applicant or property end users.”
44

45 Staff confirms that granting the variance is not based on the domestic difficulties of the
46 applicant or his family.
47

1 (8) *The variance is the minimum necessary to provide relief to the applicant:*

2 **IN COMPLIANCE**

3
4 The applicant states, “The variance is the minimum necessary to provide relief to the
5 applicant.”

6
7 Staff confirms that the variance is the minimum necessary to provide relief to the applicant.
8

9 **V RECOMMENDATION:**

10 Staff recommends **APPROVAL** of the requested variance of five (5) feet from the required
11 25-foot primary front yard setback adjacent the South Conch Avenue right-of-way, a reduction
12 of five (5) feet from the required 15-foot secondary front yard setback adjacent a secondary
13 portion of South Conch Avenue right-of-way (formally a portion of US-1), a reduction of two
14 and a half (2.5) feet from the required 15-foot secondary front yard setback adjacent the North
15 Conch Avenue right-of-way of the subject property and a reduction of ten (10) feet from the
16 required twenty-foot rear yard setback requirement. If approved, the required primary front
17 yard setback along South Conch Avenue would be twenty (20) feet, the secondary front yard
18 setback adjacent a secondary portion of South Conch Avenue will be ten (10) feet, the
19 secondary front yard setback adjacent North Conch Avenue would be twelve and a half (12.5)
20 feet and the rear yard setback would be ten (10) feet. The variances are requested in order to
21 construct ten (10) detached affordable dwelling units, with the following:
22

- 23 1. The approval of this Administrative Variance requested to go to PC pursuant to Section
24 102-186(k) is based on the design and placement of the proposed structures as shown on
25 the site plan signed and sealed by Scott C. Maloney, Architect, on June 10, 2021, as a part
26 of this variance application. Work not specified or alterations to the site plan may not be
27 carried out without additional Planning and Environmental Resources Department
28 approval.
29
- 30 2. The variance approval does not waive any other required setbacks for any future structures
31 or additions.
32

33 **VI PLANS REVIEWED:**

34 A. Site Plan signed and sealed by Scott C. Maloney, Architect, on June 10, 2021

35 B. Boundary Survey by Reece & Associates dated 10/28/2019
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39
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