



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

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

From: Cheryl Cioffari, AICP, Comprehensive Planning Manager

Date: May 8, 2019

Subject: An ordinance by the Monroe County Board of County Commissioners amending the Monroe County Land Development Code, Section 102-57(e)(2)c., to allow residential dwelling units with lawfully nonconforming open space to redevelop at the previously approved open space ratio in cases where compliance with current open space regulations would result in a reduction in lot coverage and consider amendments to clarify the maximum shoreline setback therein. (File #2019-021)

Meeting: May 29, 2019

I. REQUEST

The Monroe County Planning & Environmental Resources Department is proposing amendments to the Land Development Code to amend Section 102-57(e)(2)c., to allow residential dwelling units with lawfully nonconforming open space to redevelop at the previously approved open space ratio in cases where compliance with current open space regulations would result in a reduction in lot coverage and consider amendments to clarify the maximum shoreline setback therein.

II. BACKGROUND INFORMATION

Monroe County's current adopted Comprehensive Plan and Land Development Code has existing policy that allows for the substantial improvement of reconstruction of nonconforming single-family homes that are nonconforming to setback requirements set forth in Chapter 131 where strict compliance would result in a reduction of lot coverage as compared to the pre-destruction footprint of the house. LDC Section 102-57(e)(2)c. allows the reduction in setback, provided the maximum shoreline setback is maintained and no less than ten (10) feet from the Mean High Water Line (MHWL).

Following the impacts of Hurricane Irma and the subsequent rebuilding of dwelling units, it has come to the attention of staff that some property owners are prevented from rebuilding in the pre-

1 destruction footprint of the house because the property is nonconforming to open space provisions
2 set forth in Chapter 131. In some cases, compliance with open space would mean the reduction in
3 size of the single-family residence and/or removal of previously approved accessory structures.
4

5 **Community Meeting and Public Participation**

6 In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Land Development
7 Code text amendment was held on March 26, 2019 in Marathon and provided for public input.
8 There was no public in attendance.
9

10 **Development Review Committee and Public Input**

11 At a regular meeting held on April 23, 2019, the Development Review Committee (DRC)
12 considered the proposed Comprehensive Plan text amendment and provided for public comment.
13

14 **III. PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS**

15 Proposed Amendment (deletions are ~~stricken through~~; additions are shown in underlined).

16 **Chapter 102 – ADMINISTRATION**

17 *****

18 **Sec. 102-57 Nonconforming Structures.**

19 *****

20 **(e) Termination.**

21 *****

22 **(2) Damage or destruction.**

23 *****

- 24 c. Substantial improvement or reconstruction of nonconforming single-family residences shall
25 comply with all applicable setback and open space provisions of this Land Development Code
26 set forth in Chapters 130 and 131 except where strict compliance would result in a reduction in
27 lot coverage as compared to the pre-destruction footprint of the house. In such cases, the
28 previously approved open space ratio shall be applied; and the maximum shoreline setback shall
29 be maintained and in no event shall the shoreline setback be less than ten (10) feet from mean
30 high water.
31
32

33 *****

34 **IV. ANALYSIS OF PROPOSED AMENDMENT**

35 The following definitions are provided in Section 101-1 of the LDC:

- 36 • *Nonconforming structure* means a structure which does not conform to a current provision
37 or regulation provided in the Comprehensive Plan and/or this LDC.
38
- 39 • *Nonconforming structure, lawful* means a structure which does not conform to a current
40 provision or regulation provided in the Comprehensive Plan and/or this LDC, but was
41 permitted, or otherwise in existence lawfully, prior to the effective date of the ordinance
42 adopting the current provision or regulation that rendered the structure nonconforming.
43
44
45

- *Open Space* means (in relation to open space ratio calculations) that portion of any parcel or area of land or water that is required to be maintained such that the area within its boundaries is open and unobstructed from the ground to the sky (This definition is not intended to exclude vegetation from required open space).

Monroe County’s current adopted Comprehensive Plan and Land Development Code have regulations that allow for the substantial improvement of reconstruction of nonconforming single-family homes that are nonconforming to setback requirements where strict compliance would result in a reduction of lot coverage as compared to the pre-destruction footprint of the house. Comprehensive Plan Policy 101.9.4 and LDC Section 102-57(e)(2)c., allows the reduction in setback, provided the maximum shorelines setback is maintained and no less than ten (10) feet from the Mean High Water Line (MHWL); however, there is no similar mechanism for single-family homes that are nonconforming to open space.

Setbacks and open space requirements are inherently intertwined, but not mutually exclusive. Setbacks and open space provide areas on a parcel that are to remain unobstructed from the ground upward/to the sky. Required setbacks and open space enhance aesthetics, protect native habitat and provide open areas for the movement and safety of the human population utilizing the development. However, in some future land use map categories and associated zoning (land use) districts, the open space requirements are much greater than any applicable setback requirements.

During the 2016 update to the Land Development Code and Comprehensive Plan the open space requirement was increased in at least one future land use map category and land use (zoning) district. The Land Development Code and Comprehensive Plan were not updated to allow lawfully established single family residences the same flexibility with nonconforming single-family homes to open space, as provided for setbacks.

Comprehensive Plan Objective 101.9 requires the County to reduce or eliminate the frequency of structures which are inconsistent with the land development regulations, zoning districts, Future Land Use categories and the Future Land Use Map, while recognizing that some nonconforming structures are an important part of the community character. The proposed amendment would allow for substantial improvement of single-family homes that are nonconforming to open space requirements, to utilize the previously approved open space ratio while maintaining the maximum shoreline setback.

V. CONSISTENCY WITH THE MONROE COUNTY LAND DEVELOPMENT CODE

The proposed amendment is consistent with one or more of the required provisions of LDC Section 102-158(d)(7)(b):

1. Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;

N/A

2. Changed assumptions (e.g., regarding demographic trends);

N/A

1 3. Data errors, including errors in mapping, vegetative types and natural features described in
2 volume 1 of the plan;

3 N/A
4

5 4. New issues;

6 N/A
7

8 5. Recognition of a need for additional detail or comprehensiveness; or
9

10 The current LDC has regulations that allow for the substantial improvement of reconstruction of
11 nonconforming single-family homes that are nonconforming to setback requirements where strict
12 compliance would result in a reduction of lot coverage as compared to the pre-destruction
13 footprint of the house. Comprehensive Plan Policy 101.9.4 and LDC Section 102-57(e)(2)c.,
14 allows the reduction in setback, provided the maximum shorelines setback is maintained and no
15 less than ten (10) feet from the Mean High Water Line (MHWL); however, there is no similar
16 mechanism for single-family homes that are nonconforming to open space.
17

18 6. Data updates;

19 N/A
20

21 **In no event shall an amendment be approved which will result in an adverse community change**
22 **to the planning area in which the proposed development is located or to any area in accordance**
23 **with a livable communities master plan pursuant to findings of the board of county**
24 **commissioners.**

25 The proposed text amendment is not anticipated to result in an adverse community change. All
26 development shall be required to comply with level of service, concurrency, the regulations set forth
27 in the Land Development Code and the Florida Building Code.

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29 **VI. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE**
30 **PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.**
31

32 **A. The proposed amendment is consistent with the Goals, Objectives and Policies of the**
33 **Monroe County 2030 Comprehensive Plan. Specifically, it furthers:**
34

35 **GOAL 101**

36 Monroe County shall manage future growth to enhance the quality of life, ensure the safety of
37 County residents and visitors, and protect valuable natural resources. [§163.3177(1), F.S.]
38

39 **Objective 101.1**

40 Monroe County shall ensure that all development and redevelopment taking place within its
41 boundaries does not result in a reduction of the level-of-service requirements established and
42 adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive

1 plan amendments include an analysis of the availability of facilities and services or demonstrate
2 that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180, F. S.]
3

4 **Objective 101.9**

5 Monroe County shall eliminate or reduce the frequency of structures which are inconsistent
6 with the applicable provisions of the land development regulations, zoning districts, Future
7 Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming
8 structures are an important part of the community character and the County desires to maintain
9 such character and protect these lawfully established, nonconforming structures and allow them
10 to be repaired or replaced. [§163.3177(6)(a)2.e., F.S.]
11

12 **B. The amendment is consistent with the Principles for Guiding Development for the Florida**
13 **Keys Area, Section 380.0552(7), Florida Statutes.**
14

15 For the purposes of reviewing consistency of the adopted plan or any amendments to that plan
16 with the principles for guiding development and any amendments to the principles, the principles
17 shall be construed as a whole and no specific provision shall be construed or applied in isolation
18 from the other provisions.
19

- 20 (a) Strengthening local government capabilities for managing land use and development so that
21 local government is able to achieve these objectives without continuing the area of critical
22 state concern designation.
- 23 (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations,
24 seagrass beds, wetlands, fish and wildlife, and their habitat.
- 25 (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native
26 tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and
27 beaches, wildlife, and their habitat.
- 28 (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound
29 economic development.
- 30 (e) Limiting the adverse impacts of development on the quality of water throughout the Florida
31 Keys.
- 32 (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural
33 environment, and ensuring that development is compatible with the unique historic character
34 of the Florida Keys.
- 35 (g) Protecting the historical heritage of the Florida Keys.
- 36 (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and
37 proposed major public investments, including:
38
- 39 1. The Florida Keys Aqueduct and water supply facilities;
 - 40 2. Sewage collection, treatment, and disposal facilities;
 - 41 3. Solid waste treatment, collection, and disposal facilities;
 - 42 4. Key West Naval Air Station and other military facilities;
 - 43 5. Transportation facilities;
 - 44 6. Federal parks, wildlife refuges, and marine sanctuaries;
 - 45 7. State parks, recreation facilities, aquatic preserves, and other publicly owned
46 properties;
 - 47 8. City electric service and the Florida Keys Electric Co-op; and
 - 48 9. Other utilities, as appropriate.

- (i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.
- (j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
- (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
- (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
- (m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.
- (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute (F.S.). Specifically, the amendment furthers:

163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local

1 government's programs, activities, and land development regulations will be initiated,
2 modified, or continued to implement the comprehensive plan in a consistent manner. It is not
3 the intent of this part to require the inclusion of implementing regulations in the
4 comprehensive plan but rather to require identification of those programs, activities, and land
5 development regulations that will be part of the strategy for implementing the comprehensive
6 plan and the principles that describe how the programs, activities, and land development
7 regulations will be carried out. The plan shall establish meaningful and predictable standards
8 for the use and development of land and provide meaningful guidelines for the content of
9 more detailed land development and use regulations.

10
11 163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory
12 authority. – It is the intent of this act that adopted comprehensive plans or elements thereof
13 shall be implemented, in part, by the adoption and enforcement of appropriate local
14 regulations on the development of lands and waters within an area. It is the intent of this act
15 that the adoption and enforcement by a governing body of regulations for the development
16 of land or the adoption and enforcement by a governing body of a land development code for
17 an area shall be based on, be related to, and be a means of implementation for an adopted
18 comprehensive plan as required by this act.

19 20 **VII. PROCESS**

21
22 Land Development Code Amendments may be proposed by the Board of County Commissioners,
23 the Planning Commission, the Director of Planning, private application, or the owner or other person
24 having a contractual interest in property to be affected by a proposed amendment. The Director of
25 Planning shall review and process applications as they are received and pass them onto the
26 Development Review Committee and the Planning Commission.

27
28 The Planning Commission shall hold at least one public hearing. The Planning Commission shall
29 review the application, the reports and recommendations of the Department of Planning &
30 Environmental Resources and the Development Review Committee and the testimony given at the
31 public hearing. The Planning Commission shall submit its recommendations and findings to the
32 Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the
33 adoption of the proposed amendment, and considers the staff report, staff recommendation, Planning
34 Commission recommendation and the testimony given at the public hearing. The BOCC may adopt
35 the proposed amendment based on one or more of the factors established in LDC Section 102-
36 158(d)(7).

37 38 **VIII. STAFF RECOMMENDATION**

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40 Staff recommends approval of the proposed amendment.