



MEMORANDUM
MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Development Review Committee and
Emily Schemper, AICP, CFM, Senior Director of Planning and Environmental
Resources

From: Cheryl Cioffari, AICP, Comprehensive Planning Manager

Date: January 8, 2019

Subject: An ordinance by the Monroe County Board of County Commissioners amending the
Monroe County Land Development Code as directed by the BOCC on October 17,
2018, to create Article III *Post Disaster Procedures*, Section 134-26 *Purpose*, and
Section 134-27 *Accessory Structures*, to allow accessory concrete slabs to remain in
certain circumstances after the associated principal use or structure has been
discontinued, and amending Monroe County Code Section 102-58 *Nonconforming
Accessory Uses and Accessory Structures*, for consistency with Code Chapter 134 (File
#2018-212)

Meeting: January 15, 2019

I. REQUEST

The Monroe County Planning & Environmental Resources Department is proposing amendments to the Land Development Code, as directed by the BOCC on October 17, 2018, to create Article III *Post Disaster Procedures*, Section 134-26 *Purpose*, and Section 134-27 *Accessory Structures*, to allow accessory concrete slabs to remain in certain circumstances after the associated principal use or structure has been discontinued, and amending Monroe County Code Section 102-58 *Nonconforming Accessory Uses and Accessory Structures*, for consistency with Code Chapter 134.

II. BACKGROUND INFORMATION

On September 10, 2017, Hurricane Irma made landfall near Cudjoe Key as a Category 4 Hurricane with maximum sustained winds of 130 mph causing significant damage to existing housing stock. Following the impacts of Hurricane Irma and the subsequent rebuilding of dwelling units, it has come to the attention that there exist certain accessory structures that property owners wish to maintain until they are able to reestablish a principal use or structure.

Currently, the Code requires the removal of accessory uses and structures once the principal use or structure is discontinued or removed. The Code contains a provision to allow an accessory use or structure to continue if its principal use or structure is discontinued or removed for redevelopment, provided that the property owner is moving forward with continual development and with active concurrent permits for redevelopment of a principal use or structure [Ref. LDC Section 101-1].

However, if a property owner is not moving forward with active concurrent permits for redevelopment of a principal use or structure, then the regulations in the Code require accessory uses and structures to be discontinued or removed.

On October 17, 2018, the BOCC directed staff to start processing a text amendment that would allow accessory concrete slabs to remain in certain circumstances after the associated principal use or structure has been destroyed after a man-made or natural disaster.

Community Meeting and Public Participation

In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Land Development Code text amendment was held on November 27, 2018 in Marathon and provided for public input. There were five members of the public in attendance who posed general questions about the timeframe of implementation, who would benefit from the proposed of the proposed text amendment and what criteria would be utilized.

The subject of this staff report is the amendment to the Land Development Code.

III. PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS

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

Chapter 134. Miscellaneous.

Article III. Post-Disaster Procedures.

Section 134-26. Purpose.

It is the purpose of this Article to establish specific policies and procedures related to this Land Development Code that shall apply following a man-made or natural disaster. Such policies and procedures shall become effective when the County is within a state of emergency declared by the Monroe County Mayor.

Section 134-27. Accessory Structures.

Notwithstanding the definition of *Accessory use* or *accessory structure* in Section 101-1 and the provisions of Section 102-58, Nonconforming Accessory Uses and Accessory Structures, when a principal structure and/or use is discontinued or removed as a result of damage from a man-made or natural disaster, accessory concrete slabs associated with the discontinued use may remain with approval from the Planning Director if all of the following criteria are met:

1. Limited to properties deemed to have a conditional use;

2. The principal structure is determined to be a lawfully established dwelling unit per Section 138-22; and
3. The accessory structure may remain for up to one (1) year from the date of issuance of a demolition permit associated with the principal use.

Sec. 102-58. Nonconforming Accessory Uses and Accessory Structures.

- (a) A nonconforming accessory use shall not continue after the principal use has terminated.
- (b) A nonconforming accessory structure shall not continue after the principal use or structure is demolished or otherwise eliminated unless the structure is modified to conform to the provisions of the land use (zoning) district in which it is located and is associated with a new principal use.
- (c) Notwithstanding subsection (a) and (b), when a principal structure and/or use is discontinued or removed as a result of damage from a man-made or natural disaster, accessory concrete slabs associated with the discontinued use may remain with approval from the Planning Director pursuant to Section 134-27.

IV. ANALYSIS OF PROPOSED AMENDMENT

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

- *Accessory use or accessory structure* means a use or structure that:
 - (1) Is subordinate to and serves an existing principal use or principal structure; and
 - (2) Each individual accessory use or accessory structure as well as in total/combined, is subordinate in area (for this definition docks, pools, pool decks, driveways are excluded from the total area), extent and purpose to an existing principal use or principal structure served; and
 - (3) Contributes to the comfort, convenience or necessity of occupants of the principal use or principal structure served; and
 - (4) Is located on the same lot/parcel or on a lot/parcel that is under the same ownership as the lot/parcel on which the principal use or principal structure is located; and
 - (5) Is located on the same lot/parcel or on a contiguous lot/parcel as an existing principal use or principal structure, excluding accessory docking facilities that may be permitted on adjacent lots/parcels pursuant to section 118-12; and
 - (6) Is located in the same land use (zoning) district as the principal use or principal structure, excluding off-site parking facilities pursuant to section 114-67.

Accessory uses include the utilization of yards for home gardens, provided that the produce of the garden is for a non-commercial purpose. In no event shall an accessory use or structure be established prior to the principal use to which it is accessory. With approval from the Planning Director, an accessory use or structure may continue if its principal use or structure is discontinued or removed for redevelopment, provided that the owner is moving forward with continual development and with active concurrent permits for redevelopment of a principal use or structure. Accessory uses shall not include second dwelling units or any other habitable structures that are occupied by a separate and independent resident.

- *Principal use* means the primary land use established on a parcel.
- *Redevelopment* means the rehabilitation, improvement, and/or demolition and replacement of existing development on a site.

The current LDC does not provide a mechanism for property owners to retain certain accessory structures and uses, following damage or destruction of a principal use or structure caused by a man-made or natural disaster. Rather, the current LDC allows property owners to maintain accessory uses or structures, when approved by the Planning Director and when the property owner can demonstrate an intent to redevelop with active permits for the principal use or structure.

Following the impacts of Hurricane Irma, some property owner’s principal uses and/or principal structures were destroyed. Some property owners are unable to move forward with redevelopment for a variety of reasons including a limited availability of contractors and design professionals, backlog on mobile home purchases and limited cash funds.

The proposed amendment would allow property owners to maintain an accessory concrete slab for a limited time, provided certain criteria is met.

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

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

N/A

4. New issues;

The current LDC does not provide a mechanism for property owners to retain certain accessory structures and uses, following damage or destruction of a principal use or structure caused by a man-made or natural disaster. Rather, the current LDC allows property owners to maintain accessory uses or structures, when approved by the Planning Director and when the property owner can demonstrate an intent to redevelop with active permits for the principal use or structure.

Following the impacts of Hurricane Irma, some property owner's principal uses and/or principal structures were destroyed. Some property owners are unable to move forward with redevelopment for a variety of reasons including a limited availability of contractors and design professionals, backlog on mobile home purchases and limited cash funds.

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

N/A

6. Data updates;

N/A

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

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

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

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

GOAL 101

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

Objective 101.1

Monroe County shall ensure that all development and redevelopment taking place within its boundaries does not result in a reduction of the level-of-service requirements established and adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive plan amendments include an analysis of the availability of facilities and services or demonstrate that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180, F. S.]

Policy 101.8.9

Accessory uses or structures associated with a lawful nonconforming principal use may be permitted if in compliance with the LDC.

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

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

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
- (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
- (g) Protecting the historical heritage of the Florida Keys.
- (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - 1. The Florida Keys Aqueduct and water supply facilities;
 - 2. Sewage collection, treatment, and disposal facilities;
 - 3. Solid waste treatment, collection, and disposal facilities;
 - 4. Key West Naval Air Station and other military facilities;
 - 5. Transportation facilities;
 - 6. Federal parks, wildlife refuges, and marine sanctuaries;
 - 7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 - 8. City electric service and the Florida Keys Electric Co-op; and
 - 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 government’s programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

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

VII. PROCESS

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

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

VIII. STAFF RECOMMENDATION

Staff recommends approval of the proposed amendment.