



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

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

From: Devin Tolpin, AICP, CFM, Principal Planner

Date: March 23, 2023

Subject: *Request for a Minor Conditional Use Permit for the transfer of seven (7) market rate ROGO Exemptions (TREs) from a Sender Site to be held in certificate by Summit Development South, LLC (File# 2022-189)*

Meeting: March 28, 2023

I REQUEST:

The applicant is requesting approval of a minor conditional use permit to transfer seven (7) market rate Rate of Growth Ordinance (ROGO) Exemptions – known as TREs, from the sender site, to be held in certificate by Summit Development South, LLC. The sender site is located at 92330 Overseas Highway, Tavernier. A receiver site has not been identified at this time. An additional Minor Conditional Use Permit(s) will be required to transfer the TREs from certificate form to a specific property/ies.

II BACKGROUND INFORMATION:

Sender Site (92330 Overseas Highway, Tavernier):

Location: Tavernier, Mile Marker 92

Address: 92330 Overseas Highway

Description: Lots 1,2,3,4,5 and 6, Tavernier Bend, according to the plat thereof, as recorded in Plat Book 2, Page(s) 74, of the Public Records of Monroe County, Florida

Parcel ID Number: 00487310-000000

Owner/Applicant: 92330 Overseas Highway, LLC

Agent: Smith Hawks, P.L.

Size of Site: 22,571.8 square feet (0.52 acres)

Land Use District (LUD): Suburban Commercial (SC)

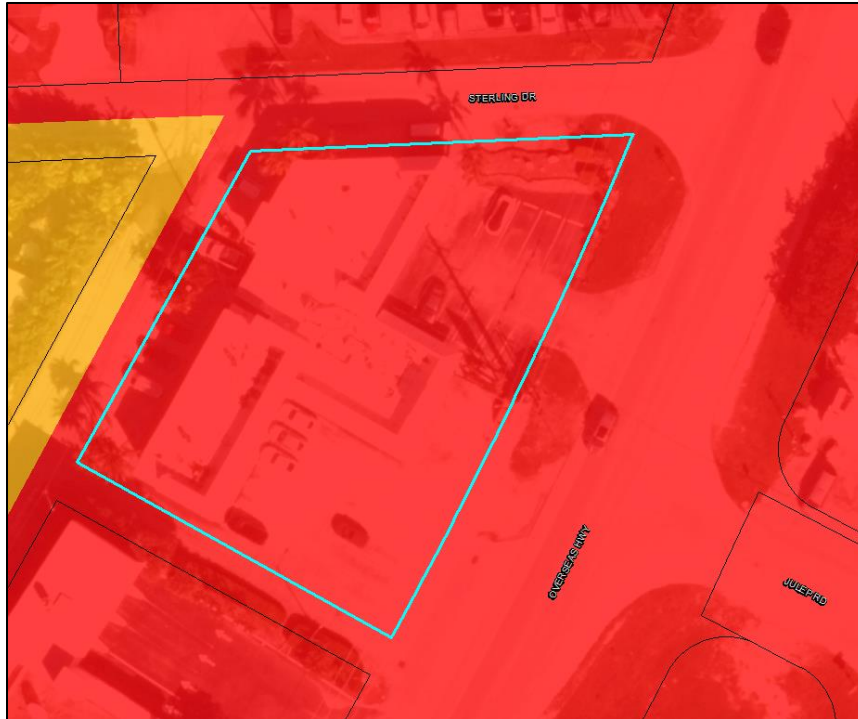
Future Land Use Map (FLUM) Designation: Mixed Use Commercial (MC)

Tier Designation: Tier III (infill area)

Flood Zone: AE 9

Existing Use: Restaurant, Office, Attached Dwelling Units

Existing Vegetation / Habitat: Developed land



Sender Site with Land Use Districts Overlaid, Aerial dated 2022

III RELEVANT PRIOR COUNTY ACTIONS:

Sender Site (92330 Overseas Highway, Tavernier):

On September 12, 2018, a Letter of Development Rights Determination (LDRD) was issued by the Senior Director of Planning and Environmental Resources, which determined that 8 permanent residential dwelling units and 5,746.25 square feet of nonresidential floor area had been lawfully established on the subject property and are thereby exempt from the ROGO and NROGO Allocation Systems, respectively.

IV REVIEW OF APPLICATION:

(b) **Transfer off-site.** Residential dwelling units and transient units may be transferred to another site in the same ROGO subarea, provided that the units lawfully exist and can be accounted for in the County's hurricane evacuation model.

Pursuant to Monroe County Land Development Code Section 138-22(b), the following criteria must be met to transfer permanent market rate ROGO exemptions.

(1) ROGO exemptions may be transferred as follows:

- a. between sites within the Upper Keys ROGO subarea;
- b. between sites within the Lower Keys ROGO subarea;
- c. between sites within the Big Pine Key and No Name Key ROGO subarea;
- d. from the Big Pine Key and No Name Key ROGO subarea to the Lower Keys ROGO subarea.

Compliance to be Determined. The applicant's proposal is to transfer seven (7) out of the eight (8) existing market rate TREs off of the subject property to be held in certificate form. The receiver site will be required to be located within the Upper Keys ROGO subarea.

- (2) No sender units may be transferred to an area where there are inadequate facilities and services.

Compliance to be Determined. The applicant's proposal is to transfer seven (7) out of the eight (8) existing market rate TREs off of the subject property to be held in certificate form. The receiver site will be required to be located within an area with adequate facilities and services.

- (3) Transfer off-site shall consist of either the demolition of a dwelling unit on a sender site or a change of use of the floor area of dwelling unit on a sender site to another permitted use in the applicable land use (zoning) district that does not require the ROGO exemption and the development of a new dwelling unit, transient unit or affordable housing unit on a receiver site.

Compliance to be Determined. According to the LDRD, there is currently one mixed use structure on the property with eight (8) market rate dwelling units and 5,746.25 square feet of nonresidential floor area. The applicant intends to change the use of the market rate dwelling units to seven (7) attached, affordable dwelling units, as noted in the excerpt of the application pictured below:

on the Property. The Property is currently developed as eight (8) market rate dwelling units that are compliant with the Monroe County Comprehensive Plan and the Land Development Code. Enclosed, please find as built floor plans depicting the existing dwelling units on the Property. The Applicant is proposing to utilize the existing units as much needed deed restricted affordable housing units after transferring the seven (7) of the market rate TREs off site pursuant to the minor conditional use approval that is the subject of this application. The remaining one (1) market rate TRE will remain associated with the sender site but will not be developed until such time as the Applicant submits a required minor conditional use application for the transfer of the TRE. As such, Applicant is requesting seven (7) affordable ROGO allocations for the Property to allow the conversion of the existing eight (8) market rate dwelling units into seven (7) deed restricted affordable housing units, after approval of the requested minor conditional use approval, the seven (7) market rate TREs are to be held on paper by Summit.

Staff is recommending that the following conditions be added to the Minor Conditional Use Permit for the transfer of the seven (7) ROGO Exemptions:

- 1) This Minor Conditional Use Permit to transfer seven (7) market rate ROGO Exemptions off of the sender site to be held in certificate shall not become effective until the date that a County building permit is closed for the demolition of seven (7) of the market rate dwelling units on the sender site and/or the change of use of the floor area of the seven (7) dwelling units to another permitted use in the SC land use (zoning) district that does not require the market rate ROGO exemption(s).**

- 2) In the event that less than seven (7) market rate dwelling units are demolished and/or redeveloped to a different use on the sender site, this Minor Conditional Use Permit shall become null and void and the applicant must apply for a new Minor Conditional Use Permit to transfer the desired number of market rate ROGO Exemptions.**

It should be noted that the redevelopment of the existing structure will be subject to the requirements and restrictions as set forth in the Monroe County Comprehensive Plan, Land Development Code (LDC), the Florida Building Code, and any other applicable codes and/or restrictions.

In accordance with LDC Section 138-21, an affordable ROGO Allocation shall be required prior to issuance of a building permit for the construction/redevelopment of the aforementioned market rate units into affordable dwelling units.

For reference purposes only, staff has prepared the following density/intensity calculations based on the existing and proposed redevelopment plan for the subject property, in accordance with LDC Sections 130-157 and 130-164:

Use within SC	Density/ Intensity	Total Area	Maximum Density/Intensity
Affordable Dwelling Units (DU)	18 DU/ buildable acre	0.415 buildable acres	7.47 Affordable DU
Medium Intensity Commercial Retail or Restaurant	0.25 FAR	22,571.8 SF	5,642.95 SF
Office	0.40 FAR	22,571.8 SF	9,028.72 SF

Pursuant to LDC Section 130-156, no structure or land in the county shall hereafter be developed, used or occupied at an intensity or density greater than the standards set out in this article. No density shall be allocated for any land designated as mangroves on the existing conditions map.

The density and intensity provisions set out in this section are intended to be applied cumulatively so that no development shall exceed the total density limits of this article. For example, if a development includes both residential and commercial development, the total gross amount of development shall not exceed the cumulated permitted intensity of the parcel proposed for development. If a proposed development is for a combination of nonresidential uses, the acreage required for each use shall be determined independently based on the floor area ratio in section 130-164 for each individual use such that no acreage shall be dedicated for more than one use.

However, pursuant to LDC Section 139-1(b)(5), notwithstanding the provisions of this article, when calculating density, any existing lawfully established or proposed affordable or employee housing on a parcel and the floor area thereof shall be excluded from the calculation of the total gross nonresidential floor area and hotel/motel density development that may be lawfully established on the parcel, provided, however, that the total residential density allowed on the site shall not exceed the maximum net density for affordable and employee housing

It should also be noted that the existing mixed use structure may be nonconforming to the requirements of the current Land Development Code. In accordance with LDC Section 102-57, a nonconforming structure devoted to a use permitted in the land use (zoning) district in which it is located, or devoted to a nonconforming use with authority to continue pursuant to Section 102-56, may be continued in accordance with the provisions of this section [102-57].

(4) Transfer of Lawfully Established Unit Types:

c. *Transfer of a market rate unit.* A lawfully established permanent market rate dwelling unit may be transferred to a receiver site and developed as a single family detached market rate dwelling unit, subject to the following:

1. The transfer of market rate ROGO exemptions may be allowed provided that one of the following is satisfied:
 - i. A 99 year deed-restricted affordable housing unit, pursuant to Sections 101-1 and 139-1, is retained or redeveloped on the sender site. **If the existing dwelling unit is proposed as the deed-restricted affordable housing unit, the unit shall pass a life safety inspection conducted in a manner prescribed by the Monroe County Building Department, comply with hurricane standards established by the Florida Building Code, and habitability standards established under the Florida Landlord and Tenant Act;** or
 - ii. The sender site is dedicated to Monroe County for the development of affordable housing and an in-lieu fee per unit, based on the current maximum sales price for a one-bedroom affordable unit as established under Section 139-1(a), is paid to the affordable housing trust fund; or
 - iii. A 99 year deed-restricted affordable housing unit, pursuant to Sections 101-1 and 139-1, is developed on a Tier III property (single-family residential lots or parcels) and the dwelling unit on the sender site is demolished and the sender site is restored.
2. The receiver site for the market rate ROGO exemption must meet the criteria of subsection (6) and the following:
 - i. Receiver site is a legally platted lot; and
 - ii. Receiver site is within the Improved Subdivision (IS) Land Use District or the Urban Residential Mobile Home (URM) Land Use District; and
 - iii. Receiver site is located within the same ROGO subarea as the sender site, except exemptions may be transferred from the Big Pine Key and No Name Key ROGO subarea to the Lower Keys ROGO subarea; and

- iv. Receiver site property is not a recreational and commercial working waterfront.

Compliance to be determined. The aforementioned conditions that staff is requesting be included as part of the Minor Conditional Use Development Order will ensure that the affordable housing component of the transfer of market rate ROGO exemptions is satisfied. Additionally, once a receiver site is identified, it will be required to be a legally platted lot within the Improved Subdivision (IS) or Urban Residential Mobile Home (URM) zoning districts. The receiver site must be located within the Upper Keys subarea and cannot be a recreational and commercial working waterfront.

(5) Sender Site Criteria:

- a. Contains a documented lawfully-established sender dwelling unit pursuant to subsection (a) and recognized by the County; and
- b. Located in a Tier I, II, III-A, or III designated area; including any tier within the County's Military Installation Area of Impact (MIAI) Overlay.

In Compliance.

(6) Receiver Site Criteria:

- a. The Future Land Use category and Land Use (Zoning) District must allow the requested use;
- b. Must meet the adopted density standards;
- c. Includes all infrastructure (potable water, adequate wastewater treatment and disposal wastewater meeting adopted LOS, paved roads, etc.);
- d. Located within a Tier III designated area; and
- e. Structures are not located in a velocity (V) zone or within a CBRS unit.

Compliance to be determined upon submittal of a Minor Conditional Use Permit Request to transfer market rate ROGO Exemption(s) from certificate to identified sender site(s).

V PROCEDURES FOR TRANSFER OFF-SITE:

- (1) A pre-application conference and, at a minimum, a minor conditional use permit approval shall be required for both the sender site and the receiver site. The minor conditional use for the transfer shall be reviewed pursuant to standards in this subsection (2) and not the standards provided in Section 110-67. As part of the minor conditional use permit approval process, mailing of notice shall be required to owners of real property located within 600 feet of the receiver site and owners of real property located within 600 feet of the sender site. The receiver

shall be posted in accordance with Sections 110-5(h) and 110-69. Posting of notice, as required in Section 110-5(c) shall be required for the receiver site, but not the sender site.

The required Pre-Application Conference to discuss the feasibility and requirements of this transfer was held between Planning staff and the applicant on November 30, 2022. If approved, this application for a Minor Conditional Use Permit will satisfy the requirements set forth in LDC Section 138-22(c).

(2)A sender unit shall be assigned a unique identifier number that shall be used for tracking and monitoring by the Planning and Environmental Resources Department. Multiple units to be transferred from a sender site to a single receiver site may be authorized under a single minor conditional use permit approval. The unique identifier number shall be itemized in the minor conditional use permit development orders and building permits required for both the sender and receiver sites.

The seven (7) transient Transferrable ROGO Exemptions (TREs) have been assigned the following unique identifier numbers:

- **M-0107**
- **M-0108**
- **M-0109**
- **M-0110**
- **M-0111**
- **M-0112**
- **M-0113**

VI RECOMMENDATION:

Staff recommends **APPROVAL** to the Director of Planning & Environmental Resources of a Minor Conditional Use Permit allowing the transfer of seven (7) transient Transferrable ROGO Exemptions (TREs), from a sender site located at 92330 Overseas Highway, Tavernier, having Parcel Identification Number 00487310-000000 to be held in certificate by Summit Development South, LLC, subject to the following conditions:

- 1) This Minor Conditional Use Permit to transfer seven (7) market rate ROGO Exemptions off of the sender site shall not become effective until the date that a County building permit is **closed** for the demolition of seven (7) of the market rate dwelling units on the sender site and/or the change of use of the floor area of the seven (7) dwelling units to another permitted use in the SC land use (zoning) district that does not require the market rate ROGO exemption(s).
- 2) This Minor CUP approval does not, in any way, bind or obligate Monroe County to approve any future building permits.
- 3) Building permit approval is required for the construction of all new dwelling units.