



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, Section 130-163, to address existing lawfully
established nonconforming residential uses, not including mobile homes and not
including transient uses, to allow for repair and replacement. (File #2018-210)

Meeting: **January 15, 2019**

I. REQUEST

The Monroe County Planning & Environmental Resources Department is proposing amendments to the Land Development Code to amend Section 130-163 to address existing lawfully established nonconforming residential uses, not including mobile homes and not including transient uses, to allow for repair and replacement of such dwelling units with the same type of dwelling unit, and it shall not be considered a nonconforming use.

II. BACKGROUND INFORMATION

Monroe County's current adopted Comprehensive Plan has an existing policy that protects nonconforming lawfully established residential density. This policy allows the density to be replaced, regardless of the density limitations established in Policy 101.5.25. Most nonconforming single-family residences can be replaced in footprint, but only if it is located in a FLUM and zoning district that permits residential uses.

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 because the residential dwelling unit is considered a nonconforming use within certain Future Land Use Map (FLUM) categories and land use (zoning) districts.

Community Meeting and Public Participation

In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Comprehensive Plan and Land Development Code text amendments 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 and who would benefit from the proposed of the proposed text amendment.

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 130- LAND USE DISTRICTS

Article V. Land Use Intensities

Sec. 130-163. Existing residential dwelling units and transient units.

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

IV. ANALYSIS OF PROPOSED AMENDMENT

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

- *Nonconforming Use* means a use which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or LDC.
- *Nonconforming Use, Lawful* means a use which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or LDC, but was permitted, or otherwise in existence lawfully, prior to the effective date of the ordinance adopting the current provision or regulation that rendered the use nonconforming.
- *Redevelopment* means the rehabilitation, improvement, and/or demolition and replacement of existing development on a site.

Monroe County's current adopted Comprehensive Plan has an existing policy that protects nonconforming lawfully established residential density. This policy allows the density to be replaced, regardless of the density limitations established in Policy 101.5.25.

Policy 101.5.29

Notwithstanding the density limitations set forth in Policy 101.5.25, land upon which a lawfully established residential dwelling unit exists shall be entitled to a density of one dwelling unit per each recognized lawfully established unit. Such lawfully-established dwelling unit(s) shall not be considered as nonconforming as to the density provisions of Policy 101.5.25 and the Monroe County Code.

Most nonconforming single-family residences can be replaced in footprint, but only if it is located in a FLUM and zoning district that permits residential uses.

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 because the residential dwelling unit is considered a nonconforming use within certain Future Land Use Map (FLUM) categories and land use (zoning) districts.

The County’s current adopted Land Development Code contains a subsection that protects nonresidential uses within the OS, NA, SS, SR, SR-L, IS, IS-D, URM and land use districts; however, these protections do not extend to residential uses.

Section 102-56(a)(2) states: “Nonconforming nonresidential uses in OS, NA, SS, SR, SR-L, IS, IS-D, URM, and UR land use districts, which lawfully existed on January 4, 1996, may develop, redevelop, reestablish and/or substantially improve, provided that the use is limited in intensity, floor area, and to the type of use that existed on January 4, 1996 and is registered in accordance with section 102-55.”

Comprehensive Plan Objective 101.8 requires the County to reduce or eliminate the frequency of uses 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 uses are important part of the community character.

The proposed amendment would allow the replacement of existing lawfully established residential uses, not including mobile homes and not including transient uses, with the same type of dwelling units and would not be considered a nonconforming use. The replacement dwelling unit would still be required to comply with regulations set forth in the Land Development Code and Florida Building Code.

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;

N/A

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

The current LDC does not allow the replacement of a residential dwelling unit when the residential use is not permitted in the zoning district in which the property is located. The proposed amendment would allow the replacement of existing lawfully established residential uses, not including mobile homes and not including transient uses, with the same type of dwelling units and would not be considered a nonconforming use. The replacement dwelling unit would still be required to comply with regulations set forth in the Land Development Code and Florida Building Code.

Comprehensive Plan Objective 101.8 requires the County to reduce or eliminate the frequency of uses 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 uses are important part of the community character.

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.]

Objective 101.3

Monroe County shall regulate new residential development based upon the finite carrying capacity of the natural and man-made systems and the growth capacity while maintaining a maximum hurricane evacuation clearance time of 24 hours.

Objective 101.8

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

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.