



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

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

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

Date: October 4, 2022

Subject: *Request for a Minor Conditional Use Permit. The requested approval is for the transfer of twenty-four (24) permanent market rate Transferrable Rate of Growth Ordinance (ROGO) Exemptions (TREs), from the sender site property, legally described as Lots 5 thru 16, and a portion of Lots 4 and 17, Square 29, as shown on the Plat of "Stock Island Maloney Subdivision" as recorded in Plat Book 1 at Page 55, of the public records of Monroe County, Florida, having Parcel ID Number 00124140-000000, to the receiver site described as a parcel of land in Sections 36, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, having Parcel ID Number 00127480-000000. Additionally, the remaining 24 market rate permanent residential ROGO exemptions from the sender site shall be given to Monroe County at the time of transfer for the use as administrative relief ROGO allocations at the County's discretion. (File 2019-127)*

Meeting: October 25, 2022

I REQUEST:

The applicant is requesting approval of a minor conditional use permit in order to transfer twenty-four (24) permanent market rate TREs. The sender site is located at 5455 Macdonald Ave, Stock Island, approximate mile marker 4.9, having Parcel Identification Number 00124140-000000. The receiver site is located at 6000 Peninsular Avenue, Stock Island, with Parcel Identification Number 00127480-000000.

Additionally, the remaining 24 market rate permanent residential ROGO exemptions from the sender site shall be given to Monroe County at the time of transfer for the use as administrative relief ROGO allocations at the County's discretion, pursuant to the First Amended Development Agreement approved between Monroe County, a political subdivision of the State of Florida ("Monroe County"), and Banyan Grove Residences, LTD, a subsidiary of Spottswood Partners, Inc. ("Spottswood"). The development Agreement was approved by the BOCC, February 16, 2022, by Resolution 077-2022.

II BACKGROUND INFORMATION:

Sender Site:

Location: Stock Island, Mile Marker 4.9

Address: 5455 Macdonald Ave, Stock Island, approximate mile marker 4.9 (Atlantic Ocean side of US 1)

Property Description: legally described as Lots 5 thru 16, and a portion of Lots 4 and 17, Square 29, as shown on the Plat of "Stock Island Maloney Subdivision" as recorded in Plat Book 1 at Page 55, of the public records of Monroe County, Florida

Parcel ID Number: 00124140-000000

Property Owner/Applicant: Banyan Grove Residences, LTD.

Agent: Bart Smith & Jess Goodall/Smith Hawks

Size of Site: 2.4 acres (106,126 SF)

Land Use District: Mixed Use (MU)

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

Tier Designation: III Infill Area

Existing Use: Development of attached dwelling units

Existing Vegetation / Habitat: Developed

Community Character of Immediate Vicinity: Mixed Use, commercial retail, multi-family residential, light industrial and golf course

Flood Zone: AE 9

Receiver Site

Location: Stock Island, Mile Marker 5.5

Address: 6000 Peninsular Avenue

Property Description: The subject property is described as a parcel of land in Section 36, Township 67 East, Range 25 South, Stock Island, Monroe County, Florida

Parcel ID Number: 00127480-000000

Property Owner/Applicant: SH Marinas 6000, LLC

Agent: Bart Smith & Jess Goodall/Smith Hawks

Size of Site: 13.14 acres of upland and 18.9 acres of submerged land.

Land Use District: Destination Resort (DR)

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

Tier Designation: III Infill Area

Existing Use: Marina, light industrial, commercial retail, residential and boat storage

Existing Vegetation / Habitat: Predominately developed and scarified, with mangrove fringe along water on outer perimeter shorelines

Community Character of Immediate Vicinity: The property is surrounded with a mix of uses including marina, commercial retail, commercial fishing, industrial use and residential dwellings

Flood Zone: AE 9 and AE 10

III RELEVANT PRIOR COUNTY ACTIONS:

Sender Site (5455 Macdonald Ave, Stock Island):

Development Order #02-1989 was approved by the Director of Planning in 1989. The development order approved a minor conditional use permit for the redevelopment of 51 market-rate dwelling units, in the form of mobile homes.

Resolution #P38A-96 was approved by the Planning Commission in 1996. The resolution approved a major conditional use permit for the development of a 14,400 SF low to medium-intensity open air market and a 433 SF restroom facility on the subject property, as well as for additional development on a separate, non-contiguous parcel on MacDonald Avenue.

Resolution #070-1997 was approved by the BOCC in 1997. The BOCC adopted the resolution as evidence of its approval of the Orders of the Vested Rights Hearing Officers, promulgated pursuant to a Vested Rights Hearing held on November 21, 1996.

Resolution #P12-00 was approved by the Planning Commission in 2000. The resolution approved an amendment to a major conditional use permit approved under Resolution P38A-96 for the development of a 14,400 SF high-intensity open air market and a 433 SF restroom facility on the subject property, as well as for additional development on a separate, non-contiguous parcel on MacDonald Avenue.

Resolution #304A-2002 was approved by the BOCC in 2002. The resolution renounced and disclaimed any rights that the County was entitled to a portion of Fourth Street between MacDonald Avenue and US 1. Part of this abandoned portion of road is part of the subject property.

The open air market and restroom facility were never developed and the major conditional use permit approved under Resolution #P38A-96 and amended under Resolution #P12-00 was deemed null and void with no further action required by the County due to the subsequent approval of Resolution #P04-03.

Resolution #P04-03 was approved by the Planning Commission in 2003. The resolution approved an amendment to the major conditional use permit approved under Resolutions #P38A-96 and #P12-00 and permitted the construction of 7 market-rate dwelling units and a 14,129 SF Eckerd Drug Store on the property. Although filed as an amendment, the approval was significantly different than that approved under Resolutions #P38A-96 and #P12-00.

Resolution #P15-04 was approved by the Planning Commission in 2004. The resolution approved an amendment to a major conditional use permit approved under Resolution #P04-03 and permitted the construction of 10 market-rate dwelling units and a 14,129 SF Eckerd Drug Store on the property. The amendment also permitted several adjustments to the site plan and the removal of a drive-through from the proposed drug store.

The 10 market-rate dwelling units and Eckerd Drug Store were never constructed and the major conditional use permit approved under Resolution #P04-03 and amended under Resolution #P15-04 was deemed null and void with no further action required by the County due to the subsequent approval of Resolution #P32-05.

Resolution #P32-05 was approved by the Planning Commission in 2005. The resolution approved an amendment to a major conditional use permit for the construction of 46 market-rate dwelling units on the property.

Resolution #P24-08 was approved by the Planning Commission in 2008. The resolution approved a time extension and provided a new expiration date of April 27, 2009 to the major conditional use permit approved under Resolution #P32-05.

In 2009, the applicant applied for a major conditional use permit to construct a commercial retail building consisting of 14,129 SF non-residential floor area and 7 market-rate dwelling units. The application was reviewed by the Development Review Committee on August 18, 2009; however was never scheduled for a public hearing by the Planning Commission. The applicant subsequently withdrew the application in order to proceed with a modification to the approval granted by Resolution #P32-05.

The extended expiration date approved by Resolution #P24-08 passed and the project approved by Resolution #P32-05 was deemed null and void. However, Florida S.B. 360 allowed the expiration date for the project to be extended even if though its approved timeframe had technically expired.

On October 13, 2009, the applicant applied for a Florida S.B. 360 time extension to the project approved by Resolution #P32-05. On May 25, 2010, a time extension was granted and a new expiration date of April 27, 2011 was provided to acquire all required certificates of occupancy.

On July 16, 2010, the applicant applied for a Florida S.B. 1752 time extension to the project approved by Resolution #P32-05. On September 10, 2010, a time extension was granted and a new expiration date of April 27, 2013 was provided to acquire all required certificates of occupancy.

In October 12, 2010, the applicant applied for a major deviation to the site plan and the major conditional use permit approved by Resolution #P32-05. The Planning Commission approved the major deviation with Resolution P41-10, on December 14, 2010.

The applicant applied for a Development Agreement on October 12, 2010, for the development of the property with 48 affordable dwelling units. Included in section F.2. of the Development Agreement was a provision allowing “the transfer of 48 market rate permanent residential ROGO exemptions to one or more individual single-family lots in the unincorporated Lower Keys.” The agreement was approved by the BOCC January 19, 2011 and became effective March 16, 2011.

On December 27, 2012, building permits were issued for the construction of the 48-unit development. Certificates of Occupancy were issued on June 20, 2013.

A time extension to the Development Agreement has been applied for pursuant to Executive Order 20-52 and as extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, 20-316, 21-45 and 21-94. This request allows for the new expiration date of the Development Agreement as January 9, 2023.

On February 16, 2022, the BOCC of Monroe County conducted a public hearing and approved the 1st Amendment to the Development Agreement. The Amendment provided an extension of an additional 10 years; and allowed the property owner to transfer twenty-four (24) market-rate, Rate of Growth Ordinance (ROGO) exemptions, associated with 51 previously existing lawfully established dwelling units to a multifamily residential receiver site within Stock Island.

Receiver Site (6000 Peninsular Ave, Stock Island):

On December 1, 2006, the Planning & Environmental Resources Department issued a Letter of Development Rights Determination (LDRD) providing the amount of lawfully-established nonresidential floor area and dwelling units on the subject property. (Planning Department File #26112)

Lawfully-Established Non-residential Floor Area:

| <i>Building</i> | <i>RE Number</i> | <i>Existing Floor Area</i> | <i>Exempt Floor Area</i> |
|--------------------------|------------------|--------------------------------------|------------------------------|
| Two-Story CBS Building | 00127470.000000 | 3,000 ft ² | 3,000 ft ² |
| Attached Metal Buildings | 00127480.000000 | 5,303 ft ² | 5,303 ft ² |
| One-Story CBS Shed | 00127480.000000 | 1,023 ft ² | 1,023 ft ² |
| CBS Fish House | 00127480.000000 | 4,813 ft ² | 4,813 ft ² |
| Utility Shed | 00127480.000000 | 240 ft ² | 240 ft ² |
| Utility Shed | 00127480.000000 | 240 ft ² | 240 ft ² |
| Utility Shed | 00127480.000000 | 216 ft ² | 216 ft ² |
| Utility Shed | 00127480.000000 | 336 ft ² | 336 ft ² |
| Utility Shed | 00127480.000000 | 200 ft ² | 200 ft ² |
| Canopy | 00127480.000000 | 966 ft ² (footprint) | 0 ft ² * |
| Canopy | 00127480.000000 | 2,809 ft ² (footprint) | 0 ft ² * |
| total | | 19,146 ft² | 15,371 ft² |

* Pursuant to Administrative Interpretation No. 03-123 and MCC Sec. 9.5-124.2(d), canopies permitted before the adoption of NROGO may not be enclosed or converted to nonresidential floor area without a NROGO allocation. The 966 ft² and 2,809 ft² canopies may be replaced by new canopies, but not enclosed or converted to nonresidential floor area without a NROGO allocation.

Lawfully-Established Residential Dwelling Units:

| <i>Building</i> | <i>RE Number</i> | <i>Existing Dwelling Units</i> | <i>Exempt Dwelling Units</i> |
|-------------------------|------------------|--------------------------------|------------------------------|
| Two-Story CBS Residence | 00127470.000100 | 2 units | 2 units |
| One-Story CBS Residence | 00127470.000100 | 1 unit | 1 unit |
| Mobile Home | 00127480.000000 | 1 unit | 1 unit |
| Mobile Home | 00127480.000000 | 1 unit | 1 unit |
| total | | 5 units | 5 units |
| Live-Aboard Vessels | n/a | n/a | 50 vessels* |
| total | | n/a | 50 vessels |

* Live-aboard vessels are considered as dwelling units for density purposes. A live-aboard vessel may be deemed permanent or transient, depending on the nature of how the live-aboard vessel's wet slip has been lawfully used. However, a live-aboard vessel may only be replaced by another live-aboard vessel and thereby cannot be transferred upland.

In 2007, Key West Marina Investments received approval for an amendment to the property's major conditional use permit in order to redevelop the existing marina. The approval was memorialized in Planning Commission in Resolution #P11-07, recorded in the official records of Monroe County on May 25, 2007. (Planning Department File #26093)

In addition, in 2007, Key West Marina Investments concurrently received approval for a variance to the off-street parking requirements in order to carry out the scope of work for the major conditional use permit. The approval was memorialized in Planning Commission Resolution #P10-07. (Planning Department File #27009)

On September 13, 2007, a minor deviation to the major conditional use permit was approved revising the architectural details and expanding the footprint of the ship store approved under Resolution #P11-07. The deviation increased the total nonresidential floor area of the ship store by 1,809 SF to a total floor area of 3,051 SF. The ship store was completed under Building Permit #071-1987 and received its Certificate of Occupancy on June 20, 2008.

On April 21, 2008, a minor deviation to the major conditional use permit was approved revising the site plan to install a swimming pool between the attached market rate dwelling units and the clubhouse building. This swimming pool was completed under Building Permit #081-1336.

On September 15, 2008, a minor deviation to the major conditional use permit was approved revising the site plan to include a private 400 SF tiki hut/bar, a 355 SF bathroom facility building, and associated improvements at the end of the jetty in the southern portion of the parcel. The tiki bar and bathroom facilities were permitted under Building Permit #081-2671. (Planning Department File #28078)

On December 29, 2008, a minor deviation to the major conditional use was approved revising the site plan to include 3,000 SF of automobile storage in an area previously approved for two tiki structures under Resolution #P11-07 which were permitted but never built (Building Permit #071-2103); and a pergola connecting the approved clubhouse building to the attached market rate dwelling units, which would serve as a covered walkway on the ground level and a 580 SF covered balcony outdoor seating area for the clubhouse on the second level.

A building permit associated with the pergola was applied for, Building Permit Application #081-3730, but it was never issued (void) and the pergola was never constructed. It is unknown if the 3,000 SF area approved for automobile storage continues to be used as such at this time. (Planning Department File #28096)

On April 30, 2014, the Planning Commission considered a proposed major conditional use application to develop a new hotel building consisting of 74 transient residential units, a rooftop pool, 2,500 square feet of hotel office space, 2,000 square feet of conference/meeting space, a 50-seat rooftop poolside bar and modification to the clubhouse building. The Planning Commission voted to approve the conditional use permit, with conditions that needed to be addressed before the approval resolution was signed; however, the applicant at the time failed to comply with the conditions imposed. Therefore, no development order or Planning Commission resolution was issued.

On February 16, 2022 the BOCC adopted the Land Use District (LUD) Amendment from Mixed Use (MU) to Destination Resort (DR), Ordinance 003-2022 becoming effective March 30, 2022.

On February 16, 2022 the BOCC voted to approve a Development Agreement between SH Marinas 6000, LLC and Monroe County BOCC Resolution 076-2022, recorded on April 21, 2022. (File 2020-147)

At a regularly scheduled meeting by the Planning Commission on May 25, 2022, the Major Conditional Use Permit was reviewed and approved by the Planning Commission, with the condition that prior to signing the Resolution, corrections were required and have since been addressed with the Resolution signed on June 15, 2022. (File 2021-195)

IV REVIEW OF APPLICATION:

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

(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.

(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.

In Compliance. The sender and receiver sites are located within the Lower Keys ROGO Subarea.

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

In Compliance. There are adequate facilities and services available.

(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.

In Compliance. The site has been redeveloped with 48 affordable dwelling units, that have received 48 affordable ROGO allocations.

(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.

In Compliance, subject to the approved Monroe County Development Agreements.

The receiver and sender sites are part of BOCC approved Development Agreements allowing the transfer of the ROGO Exemptions to multifamily development and recreational and commercial working waterfront. The affordable housing component is being met in two ways. First, the sender site has already developed 48 affordable dwelling units on site and through the redevelopment of a 280 multi-family affordable dwelling unit project known as Wreckers Cay, located at 6125 Second St., Stock Island, and Having Parcel Id 00124540-000000.

(5) Sender Site Criteria:

- a. Contains a documented lawfully-established sender dwelling unit pursuant to subsection (a) and recognized by the County; and

In Compliance. The BOCC approved by Resolution 032-2011 a Development Agreement on January 19, 2011 to redevelop the site with 48 affordable multifamily dwelling units. The agreement included that the site contained 51 existing lawfully established permanent market rate dwelling units, three of which were provided to the County for administrative relief or beneficial use, with the remaining 48 at that time to be transferred off on a one for one basis to single family lots.

On February 16, 2022, the BOCC of Monroe County conducted a public hearing and approved the 1st Amendment to the Development Agreement. The Amendment provided an extension of an additional 10 years; and allowed the property owner to transfer 24 permanent market rate, ROGO exemptions, associated with 51 previously existing lawfully established dwelling units to a multifamily residential receiver site within Stock Island.

The remaining 24 market rate permanent residential ROGO exemptions shall be given to Monroe County at the time of transfer for the use as administrative relief ROGO allocations at the County's discretion.

- 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. The properties are located within a Tier III designated area.

(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.

In Compliance. The current zoning of Destination Resort allows the requested use, receiver site that has an approved Major Conditional Use Permit for a resort, Planning Commission Resolution number P19-22. The density standards are not exceeded with this transfer. All infrastructure including potable water, adequate wastewater treatment and disposal wastewater meeting adopted LOS, paved roads will be met with the completion of the approved development. The site is located within Tier III. The market rate and transient residential structures are not proposed to be located within in a velocity (V) zone or within a CBRS unit. Additionally the receiver and sender sites are part of BOCC approved Development Agreements, BOCC Resolution 077-2022 for Banyan Grove Residencies LTD and Resolution 076-2022 for SH Marinas 6000, LLC, allowing the transfer of the ROGO Exemptions.

V RECOMMENDATION:

Staff recommends APPROVAL to the Director of Planning & Environmental Resources of a minor conditional use permit to transfer twenty-four (24) permanent market rate ROGO exemptions, located at 5455 Macdonald Ave, Stock Island, with Parcel Identification Number 00124140-000000, to the receiver site located at 6000 Peninsular Avenue, Stock Island, with Parcel Identification Number 00127480-000000, subject to the following condition:

1. The remaining 24 market rate permanent residential ROGO exemptions shall be given to Monroe County at the time of transfer for the use as administrative relief ROGO allocations at the County's discretion.
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 the dwelling units.