



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

We strive to be caring, professional and fair

To: Monroe County Planning Commission

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

From: Cheryl Cioffari, AICP, Principal Planner

Date: July 11, 2018

Subject: An Ordinance by the Monroe County Board of County Commissioners amending the Monroe County Land Use District (Zoning) Map from Sparsely Settled (SS) to Suburban Residential (SR), for property located at 10 Egret Lane, Geiger Key, approximately Mile Marker 11, legally described Lots 4-7, Block 6, Boca Chica Ocean Shores, Geiger Key, recorded in Plat Book 5 at Page 49 of the Public Records of Monroe County, Florida, having real estate # 00142020-000000, as proposed by Smith Hawks, PL on behalf of Debra S. Toppino, as Trustee of the Debra S. Toppino Living Trust and Richard Toppino (File 2018-091)

Meeting: July 24, 2018

I REQUEST

On May 2, 2018, the Planning and Environmental Resources Department received an application from Barton W. Smith of Smith Hawks PL on behalf of Debra S. Toppino, as Trustee of the Debra S. Toppino Living Trust and Richard Toppino “the Applicants,” to amend the Land Use District (Zoning) Map from Sparsely Settled to Suburban Residential (SR) for property located at 10 Egret Lane on Geiger Key.



Existing Zoning Map Designation



Proposed Zoning Map Designation

II BACKGROUND INFORMATION

Site Information:

Location: MM 11, Geiger Key

Address: 10 Egret Lane

Description: Lots 4-7, Block 6, Boca Chica Ocean Shores, Geiger Key, recorded in Plat Book 5 at Page 49 of the Public Records of Monroe County, Florida.

Real Estate Numbers: 00142020-000000

Owner/Applicant: Debra S. Toppino, as Trustee of the Debra S. Toppino Living Trust and Richard Toppino

Size of Property: 0.66 acres (28,800 SF per Monroe County Property Appraiser)

FLUM Designations: Residential Low (RL)

Land Use Districts: Sparsely Settled (SS)

Tier Designation: III

Flood Zones: AE (EL 10)

CBRS: No

Existing Use: Single-family residence and accessory uses and structures.

Existing Vegetation/Habitat: Developed Land

Community Character of Immediate Vicinity: Adjacent land uses include single-family uses to the north and west, and vacant land to the south and east across the canal.

The property currently has a Land Use District (Zoning) designation of Sparsely Settled (SS) and a Future Land Use Map (FLUM) designation of Residential Low (RL). The property was within the RU-1 (single-family residential) land use district prior to September 15, 1986. With the adoption of the Comprehensive Plan's FLUM in 1997, the property was given the current FLUM designation of Residential Low (RL).

The property is currently developed with accessory uses and structures associated with a home damaged by Hurricane Irma and now demolished, and has an active building permit



(#18102721) for a replacement single-family residence issued on May 18, 2018. The property received a determination of one (1) residential dwelling unit that is exempt from the Residential Rate of Growth Ordinance (ROGO) in May 2018. The property contains developed land habitat and canal shorelines. A vegetation survey/existing conditions report was not submitted with the application to confirm the habitats.

The Applicants state that the reason for the proposed amendment is to “allow for a change in Minimum Open Space Ratio from 0.80 in SS to 0.50 in SR which would allow the Applicant to rebuild the house on the Property and have hardscape and a pool without changing the density or the restricted usage of his property.”

The Applicants cite conformance with current Comprehensive Plan policies and Land Development Code regulations. Furthermore, the Applicants assert by amending the land use designation, the property will be brought into compliance with open space regulations, eliminating an existing legal nonconformity, while not increasing allocated density. The Applicants’ full explanation and justification of the proposed amendments is included in the file for the application (File #2018-091).

Staff has reviewed the Applicants’ position and supporting documentation, and concurs the request identifies a new issue and provides an opportunity to eliminate a lawfully existing nonconformity. Staff is also reviewing the proposed amendment for consistency with State Statutes, Rules, internal consistency with the Comprehensive Plan and balancing all these items and policy issues.

Community Meeting

In accordance with LDC Section 102-159(a), a community meeting was held on June 6, 2018 at 5:30 PM to discuss proposed LUD map amendment.

Development Review Committee and Public Input

At a regular meeting held on June 26, 2018, the Development Review Committee (DRC) considered the proposed LUD map amendment and provided for public comment.

III. AMENDMENT REVIEW

Maximum Allocated Density and Intensity by Land Use District (Zoning) Map Designation

Existing Zoning	Type	Adopted Standards	Development potential based upon density
Sparsely Settled Residential (SS) Total Upland Area: 0.66 acres 28,800 sf 0.13 buildable acres (0.66 ac – 0.8 open space ratio)	Residential Allocated Density	0.5 DU/gross acre	0 units
	TDR/Market Rate Residential Max Net Density	N/A	0 units
	Affordable Residential Max Net Density	N/A	0 units
	Transient Allocated Density	0 rooms or spaces /acre	0 rooms/spaces

	Nonresidential Maximum Intensity	0.2	5,760 sf
Proposed Zoning	Type	Adopted Standards	Development potential based upon density
Suburban Residential (SR) Total Upland Area: 0.66 acres 28,800 sf 0.33 buildable acres (0.66 ac – 0.5 open space ratio)	Residential Allocated Density	0.5 du/gross acre	0 units
	TDR/Market Rate Residential Max Net Density	5.0 DU/buildable acre	1 unit
	Affordable Residential Max Net Density	5.0 DU/buildable acre	1 unit
	Transient Allocated Density	0 rooms or spaces /acre	0 rooms/spaces
	Nonresidential Maximum Intensity	<2,500 SF (per 130-94)* 0.25 FAR	7,200 sf*
Net Change in Development Potential Based on Zoning	Residential Market Rate Allocated: 0 units (no change)		
	TDR/Market Rate Residential Max Net: +1 unit		
	Affordable Residential Max Net: +1 unit affordable		
	Transient Allocated: 0 rooms/spaces (no change)		
	Nonresidential: +1,440 sf*		
*Per Land Development Code Section 130-94, only lawfully established nonresidential uses in the SR land use district which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs, Section 9-206) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III.			

The above table provides an approximation of the development potential for residential, transient and commercial development. Section 130-156(b) of the Land Development Code states: “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.”

As shown in the blue portion of the table, the proposed Zoning amendment would result in no increase in permanent allocated residential development potential; an increase in one (1) unit maximum net density residential potential for market rate units with the use of TDRs; an increase in

one (1) unit of affordable residential development potential; maintain a development potential of 0 rooms or spaces for transient units; and an increase in nonresidential development potential of 1,440 square feet.

Any proposed new residential use would be subject to the requirements of Chapter 138 of the Land Development Code related to the Residential Rate of Growth Ordinance (ROGO/NROGO) permit process. Any proposed affordable dwelling units would need to obtain a ROGO allocation (affordable ROGO allocations may be available) prior to issuance of a building permit. The property received a determination of one (1) residential dwelling unit that is exempt from the Residential Rate of Growth Ordinance (ROGO) in May 2018.

Pursuant to Land Development Code Section 130-163, property owners whose land contains a lawfully established dwelling unit that was in existence before January 4, 1996, are permitted to replace the unit and it shall not be considered nonconforming to density. Therefore, regardless of the zoning district, the previously existing would be permitted to be replaced under either the existing or proposed land use district.

Compatibility with the Surrounding Area

- a. Existing Vegetation/Habitat: Developed Land
- b. Existing Tier Designation: III
- c. Number of Listed Endangered or Threatened Species: One – marsh rabbit buffer
- d. Existing Use: single-family residence and accessory uses and structures
- e. Community Character of Immediate Vicinity: Adjacent land uses include single-family uses to the north and west, and vacant land to the south and east across the canal.

The proposed Zoning amendment is not anticipated to adversely impact the community character of the surrounding area.

IV. CONSISTENCY WITH THE MONROE COUNTY YEAR 2030 COMPREHENSIVE PLAN AND THE MONROE COUNTY LAND DEVELOPMENT CODE

A. The proposed amendment is consistent with the Goals, Objectives and Policies of the Monroe County Year 2030 Comprehensive Plan, assuming the corresponding FLUM and Subarea Policy are adopted and become effective. 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.

Objective 101.5

Monroe County shall regulate future development and redevelopment to maintain and enhance the character of the community and protect natural resources by providing for the compatible distribution of land uses consistent with the designations shown on the Future Land Use Map.

Policy 101.5.2

The principal purpose of the Residential Low (RL) future land use category is to provide for low-density residential development in partially developed areas with substantial native vegetation. Low intensity public and low intensity institutional uses are also allowed.

Policy 101.5.25

Monroe County hereby adopts the following density and intensity standards for the future land use categories, which are shown on the FLUM and described in Policies 101.5.1 - 101.5.20.

Future Land Use Densities and Intensities				Minimum Open Space Ratio ^(c)
Future Land Use Category And Corresponding Zoning	Residential ^(d)		Nonresidential	
	Allocated Density ^(a) (per upland acre)	Maximum Net Density ^{(a) (b)} (per buildable acre)	Maximum Intensity (floor area ratio)	
* * *				
Residential Low (RL) (SS, SR, and SR-L zoning)	0.50 du 0 rooms/spaces	3 du (SR-L) 5 du (SR) or 1 du/lot (SR) ^(m) N/A (SS) N/A	0.25	0.50 (SR, SR-L) 0.80 (SS)

Notes:

- (a) The allocated densities for submerged lands, salt ponds, freshwater ponds, and mangroves shall be 0 and the maximum net density bonuses shall not be available.
- (b) The Maximum Net Density is the maximum density allowable with the use of TDRs, or for qualifying affordable housing development. TDRs can be utilized to attain the density between the allocated density standard up to the maximum net density standard. Deed restricted affordable dwelling units may be built up to the maximum net density without the use of TDRs. "N/A" means that maximum net density bonuses shall not be available. Buildable acres means the portion of a parcel of land that is developable and is not required open space.
- (c) Additional open space requirements may apply based on environmental protection criteria; in these cases, the most restrictive requirement shall apply.
- (d) Future land use categories of Agriculture/Aquaculture, Education, Institutional, Preservation, Public Buildings/Lands, and Public Facilities, which have no directly corresponding zoning, may be used with new or existing zoning districts as appropriate.
- (e) Within the Mainland Native future land use district, campground spaces and nonresidential buildings shall only be permitted for educational, research or sanitary purposes.
- (f) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/ Commercial and Mixed Use/ Commercial Fishing future land use categories, the maximum floor area ratio shall be 0.10 and the maximum net density bonuses shall not be available.
- (g) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6.
- (h) In the RV zoning district, commercial apartments shall be allowed, not to exceed 10% of total spaces allowed or in existence on the site, whichever is less.
- (i) The allocated density for the CFSD-20 zoning district (Little Torch Key) shall be 1 dwelling unit per acre, or 1 dwelling unit per parcel for those parcels existing as of September 15, 1986, whichever is less, and the maximum net

density bonuses shall not be available. Residential density shall be allowed in addition to the permitted nonresidential uses and intensity (i.e., density and intensity shall not be counted cumulatively).

- (j) Within IS subdivisions with primarily single family residential units, IS-D zoning may be used with a RM future land use designation for platted lots which have a duplex that was lawfully established prior to September 15, 1986.
- (k) The maximum net density shall be 25 du/buildable acre for the UR zoning district and shall be 18 du/buildable acre for the MU and SC zoning district for development where all units are deed restricted affordable dwelling units. For the UR zoning district market rate housing may be developed as part of an affordable or employee housing project with a maximum net density not exceeding 18 du/buildable acre.
- (l) Vessels, including live-aboard vessels, or associated wet slips are not considered dwelling units and do not count when calculating density.

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.

Goal 102: Monroe County shall direct future growth to lands which are most suitable for development and shall encourage conservation and protection of environmentally sensitive lands (wetlands, beach berm and tropical hardwood hammock).

Policy 105.2.1

Monroe County shall designate all lands outside of mainland Monroe County, except for the Ocean Reef planned development, into three general categories for purposes of its Land Acquisition Program and smart growth initiatives in accordance with the criteria in Policy 205.1.1. These three categories are: Natural Area (Tier 1); Transition and Sprawl Reduction Area (Tier II) on Big Pine Key and No Name Key only; and Infill Area (Tier III). The purposes, general characteristics, and growth management approaches associated with each tier are as follows:

* * *

- 3. Infill Area (Tier III): Any defined geographic area, where a significant portion of land area is not characterized as environmentally sensitive as defined by this Plan, except for dispersed and isolated fragments of environmentally sensitive lands of less than four acres in area, where existing platted subdivisions are substantially developed, served by complete infrastructure facilities, and within close proximity to established commercial areas, or where a concentration of nonresidential uses exists, is to be designated as an Infill Area. New development and redevelopment are to be highly encouraged, except within tropical hardwood hammock or pineland patches of an acre or more in area, where development is to be discouraged. Within an Infill Area are typically found: platted subdivisions with 50 percent or more developed lots situated in areas with few sensitive environmental features; full range of available public infrastructure in terms of paved roads, potable water, and electricity; and concentrations of commercial and other nonresidential uses within close proximity. In some Infill Areas, a mix of nonresidential and high-density residential uses (generally 8 units or more per acre) may also be found that form a Community Center.

Policy 105.2.2

Monroe County shall maintain overlay map(s) designating geographic areas of the County as one of the Tiers in accordance with the guidance in Policy 105.2.1, which shall be incorporated as an overlay on the zoning map(s) with supporting text amendments in the Land Development Regulations. These maps are to be used to guide the Land Acquisition Program and the smart growth initiatives in conjunction with the Livable CommuniKeys Program (Policy 101.19.1).

Objective 108.2

Monroe County shall consider the protection of public health, safety and welfare as a principal objective of compatible land use planning on lands adjacent to or closely proximate to the Boca Chica airfield of NASKW. (Ord. No. 012-2012, DEO 12-1ACSC-NOI-4401-(A)—(I), eff. 7-19-2012)

Policy 108.2.2

Density and intensity standards and land uses established by the Future Land Use Element and Future Land Use Map, on the effective date of this policy, for properties located within the MIAI overlay shall be recognized and allowed to develop to the maximum development potential pursuant to the standards existing on the effective date of this policy. (Ord. No. 012-2012, DEO 12-1ACSC-NOI-4401-(A)—(I), eff. 7-19-2012)

B. The proposed amendment is consistent with the provisions and intent of the Monroe County Code Land Development Code.

In accordance with MCC §102-158(d)(5)b., the BOCC may consider the adoption of an ordinance enacting the proposed change based on one or more of the following factors:

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

Per the Applicants: There are no changed projections.

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

Per the Applicants: There are no changed assumptions.

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

Per the Applicants:

The purpose of Sparsely Settled (SS) is to establish areas of low-density residential development where the predominant character is native or open lands. However, the designation of the Property with a land use of SS was a data error because the Property was developed with just under 50% being hardscape and impervious at the time the land use was overlaid for the Property.

The purpose of Suburban Residential (SR) is to establish low- to medium-intensity residential uses characterized principally by single-family detached dwellings which is more appropriate for the Property given the location and characteristics of the neighborhood in which the Property is located.

Therefore, SR is more appropriate as opposed to SS for the development of the Property that existed at the time the land use maps were adopted.

4. New issues;

Per the Applicants:

The new issue is impeding the ability of the Applicant to rebuild the house which was destroyed by Hurricane Irma in September 2017 because the house was in existence for decades and was built pre-Code. The Property should be designated as SR instead of SS to allow the Applicant to rebuild the house and have the same impervious surface as before while simultaneously allowing the Property to comply with the Code. Please see Section II of the cover letter dated May 2, 2018 submitted with the Application.

The proposed land use district of SR would allow for the property to be brought into compliance with open space regulations without necessitating the removal of previously lawfully existing accessory uses and structures. Although the proposed amendment would not bring the property into compliance with the density standards of LDC Section 130-157, pursuant to Section 130-163, *property owners whose land contains a lawfully established dwelling unit that was in existence before January 4, 1996, are permitted to replace the unit and it shall not be considered nonconforming to density.* The proposed amendment would not increase the development potential on the parcel beyond the existing market-rate single-family dwelling unit.

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

Per the Applicants: Please see Section II of the cover letter dated May 2, 2018 submitted with the Application.

A. Basis for Amendment.

The Property is currently used by the Applicant as the Applicant's residence, and the Applicant's house located on the Property was destroyed by Hurricane Irma in September 2017. The house located on the Property have been in existence for decades and were built pre-Code. The Applicant

would like to rebuild the house but has an issue because the Property consists of a total of 28,800 square feet. The existing open space on the Property is 16,894 square feet and the remainder consists of their home, driveways, paving a pool a hardscape; however, in SS the minimum open space required for the Property is 23,040 square feet. Per Sec. 102-58(b) of the Land Development Code (“Code”), when the principal use or structure is demolished, the accessory structures must come into compliance with the land use district, which would require the Applicant remove 6,146 square feet of hardscape, including his pool, driveways and many of the features that existed at the home. Even if he removed these features they would not be permitted to be replaced unless there was a significant reduction in the hardscape.

The LUD Amendment would allow for a change in Minimum Open Space Ratio from 0.80 in SS to 0.50 in SR which would allow the Applicant to rebuild the house on the Property and have hardscape and a pool without changing the density or the restricted usage of his property.

The amendment would not change the allowable development because SS-designated properties have an Allocated Density of 0.5 units per acre, and SR-designated properties have an Allocated Density of 0.5 units per acre.

Therefore, the Amendment will allow the Applicant to rebuild the house and guesthouse within the original footprint and the necessary amount of open space to comply with the Code.

Redevelopment of previously existing residential density is permitted, provided the property comes into compliance with all other applicable regulations, including open space. The proposed amendment to SR would allow for the property to be brought into compliance with open space regulations without necessitating the removal of previously lawfully existing accessory uses and structures. Although the proposed amendment would not bring the property into compliance with the density standards of LDC Section 130-157, pursuant to Section 130-163, *property owners whose land contains a lawfully established dwelling unit that was in existence before January 4, 1996, are permitted to replace the unit and it shall not be considered nonconforming to density.* The proposed amendment would not increase the development potential on the parcel beyond the existing market-rate single-family dwelling unit.

6. Data updates.

Per the Applicants: Not applicable.

In accordance with MCC §102-158(d)(5)c., 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.

Per the Applicants:

The LUD Amendment will not result in an adverse community change in the planning area or surrounding community. The Property is used for residential purposes with the intention of rebuilding 1 house and 1 guest house on the Property with the same footprint. The Property is adjacent to neighboring residential properties zoned as SS which is a compatible use with the Property and will not create any significant impacts. The Property is located on a point lot and is surrounded by other residences and water.

The densities for SS and SR are the same. Moreover, the permitted uses are the same for SS and SR, except SR allows for parks and vacation rentals while SS does not. For minor conditional uses, SR allows institutional uses, but SS does not. SS allows public buildings while SR does not. Neither SS nor SR allow hotel/motel/RV uses. Furthermore, the setbacks for SS and SR are the same.

The land area which is the subject of the requested LUD Amendment is designated as Tier III, classified as developed land, and is not classified as habitat for any protected species.

The property is located within the Military Installation Area of Impact, however, the request is not an amendment to the Future Land Use Map and therefore Policy 108.2.5 is inapplicable. Regardless of its application, the permitted density is not changing and the property becomes conforming as to density.

The principal use of the property will remain residential and is not anticipated to result in an adverse community change to the planning area in which the property is located.

V. RECOMMENDATION

Staff recommends approval of the proposed LUD amendment from SS to SR.