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MEMORANDUM
MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

9 **To:** Monroe County Planning Commission
10
11 **Through:** Emily Schemper, AICP, CFM, Senior Director of Planning and Environmental Resources
12
13 **From:** Cheryl Cioffari, AICP, Comprehensive Planning Manager
14
15 **Date:** February 12, 2019
16
17 **Subject:** An ordinance by the Monroe County Board of County Commissioners amending Policy
18 101.5.29 of the 2030 Monroe County Comprehensive Plan to address existing lawfully
19 established nonconforming residential uses, not including mobile homes and not
20 including transient uses, to allow for repair and replacement. (File #2018-209)
21

22 **Meeting: February 27, 2019**

23
24 **I. REQUEST**

25
26 The Monroe County Planning & Environmental Resources Department is proposing amendments
27 to the 2030 Comprehensive Plan to amend Policy 101.5.29 to address existing lawfully established
28 nonconforming residential uses, not including mobile homes and not including transient uses, to
29 allow for repair and replacement of such dwelling units with the same type of dwelling unit, and it
30 shall not be considered a nonconforming use.
31

32 **II. BACKGROUND INFORMATION**

33
34 Monroe County's current adopted Comprehensive Plan has an existing policy that protects
35 nonconforming lawfully established residential density. This policy allows the density to be
36 replaced, regardless of the density limitations established in Policy 101.5.25. Most nonconforming
37 single-family residences can be replaced in footprint, but only if it is located in a FLUM and zoning
38 district that permits residential uses.
39

40 Following the impacts of Hurricane Irma and the subsequent rebuilding of dwelling units, it has
41 come to the attention of staff that some property owners are prevented from rebuilding because the
42 residential dwelling unit is considered a nonconforming use within certain Future Land Use Map
43 (FLUM) categories and land use (zoning) districts.
44

45 **Community Meeting and Public Participation**

46 In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Comprehensive
47 Plan and Land Development Code text amendments was held on November 27, 2018 in Marathon
48 and provided for public input. There were five members of the public in attendance who posed

1 general questions about the timeframe of implementation and who would benefit from the
2 proposed of the proposed text amendment.

3
4 **Development Review Committee and Public Input**

5 The Development Review Committee considered the proposed amendment at a regular meeting
6 on January 15, 2019 and received public input.

7
8 *The subject of this staff report is the amendment to the Comprehensive Plan.*

9
10 **III. PROPOSED COMPREHENSIVE PLAN TEXT AMENDMENTS**

11
12 Proposed Amendment (deletions are ~~stricken through~~; additions are shown in underlined):

13
14 *****

15 **Policy 101.5.29**

16 Notwithstanding the density limitations set forth in Policy 101.5.25, land upon which a lawfully
17 established residential dwelling unit exists shall be entitled to a density of one dwelling unit per
18 each recognized lawfully established unit. Such lawfully-established dwelling unit(s) shall not be
19 considered ~~as nonconforming as~~ to the density provisions of Policy 101.5.25 and the Monroe
20 County Land Development Code. Notwithstanding the nonconforming use provisions of Policy
21 101.8.4, existing lawfully established residential uses, not including mobile homes, and not
22 including transient uses, shall be entitled to repair and/or replace such dwelling units with the same
23 type of dwelling unit and shall not be considered a nonconforming use(s).

24
25 *****

26
27 **IV. ANALYSIS OF PROPOSED AMENDMENT**

28
29 The following definitions are provided in the Glossary of the Comprehensive Plan:

- 30
- 31 • *Nonconforming Use* means a use which does not conform to a current provision or
32 regulation provided in the Comprehensive Plan and/or LDC.
 - 33 • *Nonconforming Use, Lawful* means a use which does not conform to a current provision
34 or regulation provided in the Comprehensive Plan and/or LDC, but was permitted, or
35 otherwise in existence lawfully, prior to the effective date of the ordinance adopting the
36 current provision or regulation that rendered the use nonconforming.
 - 37 • *Redevelopment* means the rehabilitation, improvement, and/or demolition and
replacement of existing development on a site.

38
39 Monroe County's current adopted Comprehensive Plan has an existing policy that protects
40 nonconforming lawfully established residential density. This policy allows the density to be
41 replaced, regardless of the density limitations established in Policy 101.5.25.

42 **Policy 101.5.29**

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

1
2 Most nonconforming single-family residences can be replaced in footprint, but only if it is located
3 in a FLUM and zoning district that permits residential uses.
4

5 Following the impacts of Hurricane Irma and the subsequent rebuilding of dwelling units, it has
6 come to the attention of staff that some property owners are prevented from rebuilding because the
7 residential dwelling unit is considered a nonconforming use within certain Future Land Use Map
8 (FLUM) categories and land use (zoning) districts.
9

10 The County’s current adopted Comprehensive Plan contains a policy that protects nonresidential
11 uses and transient uses within the RC, RL, RM and RH future land use map categories; however,
12 these protections do not extend to residential uses.
13

14 **Policy 101.5.5**

15 Monroe County shall maintain Land Development Regulations which allow
16 nonconforming nonresidential and transient uses in the RC, RL, RM and RH future
17 land use categories that lawfully existed on such lands on January 4, 1996 to
18 develop, redevelop, reestablish and/or substantially improve provided that the use
19 is limited in density, intensity, floor area, and to the type of use that existed on
20 January 4, 1996.
21

22 Comprehensive Plan Objective 101.8 requires the County to reduce or eliminate the frequency of
23 uses which are inconsistent with the land development regulations, zoning districts, Future Land
24 Use categories and the Future Land Use Map, while recognizing that some nonconforming uses
25 are important part of the community character. Policy 101.8.4 currently requires substantially
26 damaged structures to come into conformance with the permitted uses of the FLUM and Zoning
27 categories.
28

29 **Policy 101.8.4**

30 With the exception of nonconforming uses located in the Mixed Use/Commercial
31 Fishing Future Land Use category or within a Community Center Overlay, if a
32 structure in which a nonconforming use is located is damaged or destroyed so as to
33 require substantial improvement, then **the structure shall be repaired or restored
34 only for uses which conform to the provisions of the Future Land Use category
35 and zoning district in which it is located.** Improvements to historic sites, and
36 improvements to meet health, sanitary or safety code specifications are not
37 considered substantial improvements.
38

39 The proposed amendment would allow the replacement of existing lawfully established residential
40 uses, not including mobile homes and not including transient uses, with the same type of dwelling
41 units and would not be considered a nonconforming use. The replacement dwelling unit would still
42 be required to comply with regulations set forth in the Land Development Code and Florida
43 Building Code.
44

1 **V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE**
2 **PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.**
3

4 **A. The proposed amendment is consistent with the Goals, Objectives and Policies of the**
5 **Monroe County 2030 Comprehensive Plan. Specifically, it furthers:**
6

7 **GOAL 101**

8 Monroe County shall manage future growth to enhance the quality of life, ensure the safety of
9 County residents and visitors, and protect valuable natural resources. [§163.3177(1), F.S.]
10

11 **Objective 101.1**

12 Monroe County shall ensure that all development and redevelopment taking place within its
13 boundaries does not result in a reduction of the level-of-service requirements established and
14 adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive
15 plan amendments include an analysis of the availability of facilities and services or demonstrate
16 that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180, F. S.]
17

18 **Objective 101.3**

19 Monroe County shall regulate new residential development based upon the finite carrying
20 capacity of the natural and man-made systems and the growth capacity while maintaining a
21 maximum hurricane evacuation clearance time of 24 hours.
22

23 **Objective 101.8**

24 Monroe County shall eliminate or reduce the frequency of uses which are inconsistent with the
25 applicable provisions of the land development regulations, zoning districts, Future Land Use
26 categories and the Future Land Use Map. In Monroe County, some nonconforming uses are an
27 important part of the community character and the County desires to maintain such character and
28 protect these lawfully established, nonconforming uses and allow them to be repaired or replaced.
29 [§163.3177 (6)a.2.e.]
30

31 **B. The amendment is consistent with the Principles for Guiding Development for the Florida**
32 **Keys Area, Section 380.0552(7), Florida Statutes.**
33

34 For the purposes of reviewing consistency of the adopted plan or any amendments to that plan
35 with the principles for guiding development and any amendments to the principles, the principles
36 shall be construed as a whole and no specific provision shall be construed or applied in isolation
37 from the other provisions.
38

- 39 (a) Strengthening local government capabilities for managing land use and development so that
40 local government is able to achieve these objectives without continuing the area of critical
41 state concern designation.
42 (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations,
43 seagrass beds, wetlands, fish and wildlife, and their habitat.
44 (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native
45 tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and
46 beaches, wildlife, and their habitat.
47 (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound
48 economic development.

- 1 (e) Limiting the adverse impacts of development on the quality of water throughout the Florida
2 Keys.
- 3 (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural
4 environment, and ensuring that development is compatible with the unique historic character
5 of the Florida Keys.
- 6 (g) Protecting the historical heritage of the Florida Keys.
- 7 (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and
8 proposed major public investments, including:
9
- 10 1. The Florida Keys Aqueduct and water supply facilities;
 - 11 2. Sewage collection, treatment, and disposal facilities;
 - 12 3. Solid waste treatment, collection, and disposal facilities;
 - 13 4. Key West Naval Air Station and other military facilities;
 - 14 5. Transportation facilities;
 - 15 6. Federal parks, wildlife refuges, and marine sanctuaries;
 - 16 7. State parks, recreation facilities, aquatic preserves, and other publicly owned
17 properties;
 - 18 8. City electric service and the Florida Keys Electric Co-op; and
 - 19 9. Other utilities, as appropriate.
- 20
- 21 (i) Protecting and improving water quality by providing for the construction, operation,
22 maintenance, and replacement of stormwater management facilities; central sewage
23 collection; treatment and disposal facilities; and the installation and proper operation and
24 maintenance of onsite sewage treatment and disposal systems.
- 25 (j) Ensuring the improvement of nearshore water quality by requiring the construction and
26 operation of wastewater management facilities that meet the requirements of ss.
27 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by
28 central wastewater treatment facilities through permit allocation systems.
- 29 (k) Limiting the adverse impacts of public investments on the environmental resources of the
30 Florida Keys.
- 31 (l) Making available adequate affordable housing for all sectors of the population of the Florida
32 Keys.
- 33 (m) Providing adequate alternatives for the protection of public safety and welfare in the event
34 of a natural or manmade disaster and for a postdisaster reconstruction plan.
- 35 (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and
36 maintaining the Florida Keys as a unique Florida resource.
- 37 Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent
38 with the Principles for Guiding Development as a whole and is not inconsistent with any
39 Principle.
40

41 **C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute**
42 **(F.S.). Specifically, the amendment furthers:**
43

44 163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve
45 and enhance present advantages; encourage the most appropriate use of land, water, and
46 resources, consistent with the public interest; overcome present handicaps; and deal
47 effectively with future problems that may result from the use and development of land within
48 their jurisdictions. Through the process of comprehensive planning, it is intended that units

1 of local government can preserve, promote, protect, and improve the public health, safety,
2 comfort, good order, appearance, convenience, law enforcement and fire prevention, and
3 general welfare; facilitate the adequate and efficient provision of transportation, water,
4 sewerage, schools, parks, recreational facilities, housing, and other requirements and
5 services; and conserve, develop, utilize, and protect natural resources within their
6 jurisdictions.
7

8 163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the
9 legal status set out in this act and that no public or private development shall be permitted
10 except in conformity with comprehensive plans, or elements or portions thereof, prepared
11 and adopted in conformity with this act.
12

13 163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards,
14 and strategies for the orderly and balanced future economic, social, physical, environmental,
15 and fiscal development of the area that reflects community commitments to implement the
16 plan and its elements. These principles and strategies shall guide future decisions in a
17 consistent manner and shall contain programs and activities to ensure comprehensive plans
18 are implemented. The sections of the comprehensive plan containing the principles and
19 strategies, generally provided as goals, objectives, and policies, shall describe how the local
20 government’s programs, activities, and land development regulations will be initiated,
21 modified, or continued to implement the comprehensive plan in a consistent manner. It is not
22 the intent of this part to require the inclusion of implementing regulations in the
23 comprehensive plan but rather to require identification of those programs, activities, and land
24 development regulations that will be part of the strategy for implementing the comprehensive
25 plan and the principles that describe how the programs, activities, and land development
26 regulations will be carried out. The plan shall establish meaningful and predictable standards
27 for the use and development of land and provide meaningful guidelines for the content of
28 more detailed land development and use regulations.
29

30 163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory
31 authority.—It is the intent of this act that adopted comprehensive plans or elements thereof
32 shall be implemented, in part, by the adoption and enforcement of appropriate local
33 regulations on the development of lands and waters within an area. It is the intent of this act
34 that the adoption and enforcement by a governing body of regulations for the development
35 of land or the adoption and enforcement by a governing body of a land development code for
36 an area shall be based on, be related to, and be a means of implementation for an adopted
37 comprehensive plan as required by this act.
38

39 **VI. PROCESS**

40
41 Comprehensive Plan Amendments may be proposed by the Board of County Commissioners, the
42 Planning Commission, the Director of Planning, or the owner or other person having a contractual
43 interest in property to be affected by a proposed amendment. The Director of Planning shall review
44 and process applications as they are received and pass them onto the Development Review
45 Committee and the Planning Commission.
46

47 The Planning Commission shall hold at least one public hearing. The Planning Commission shall
48 review the application, the reports and recommendations of the Department of Planning &

1 Environmental Resources and the Development Review Committee and the testimony given at the
2 public hearing. The Planning Commission shall submit its recommendations and findings to the
3 Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the
4 transmittal of the proposed comprehensive plan amendment, and considers the staff report, staff
5 recommendation, and the testimony given at the public hearing. The BOCC may or may not
6 recommend transmittal to the State Land Planning Agency. The amendment is transmitted to State
7 Land Planning Agency, which then reviews the proposal and issues an Objections,
8 Recommendations and Comments (ORC) Report. Upon receipt of the ORC report, the County has
9 180 days to adopt the amendments, adopt the amendments with changes or not adopt the
10 amendment.

11 **VII. STAFF RECOMMENDATION**

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13
14 Staff recommends approval of the proposed amendment.