



**MEMORANDUM**  
**MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT**

**To:** Monroe County Planning Commission

**Through:** Emily Schemper, AICP, CFM, Senior Director of Planning and Environmental Resources

**From:** Cheryl Cioffari, AICP, Comprehensive Planning Manager

**Date:** February 12, 2019

**Subject:** An ordinance by the Monroe County Board of County Commissioners amending Policy 101.9.4 of the 2030 Monroe County Comprehensive Plan to allow for repair and replacement of single-family homes that are nonconforming to open space requirements (File #2018-211)

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**Meeting: February 27, 2019**

**I. REQUEST**

The Monroe County Planning & Environmental Resources Department is proposing amendments to the 2030 Comprehensive Plan to amend Policy 101.9.4 to allow for repair and replacement of single-family homes that are nonconforming to open space requirements.

**II. BACKGROUND INFORMATION**

Monroe County's current adopted Comprehensive Plan has an existing policy that allows for the substantial improvement of reconstruction of nonconforming single-family homes that are nonconforming to setback requirements set forth in Chapter 130 where strict compliance would result in a reduction of lot coverage as compared to the pre-destruction footprint of the house. Policy 101.9.4 allows the reduction in setback, provided the maximum shorelines setback is maintained and no less than ten (10) feet from the Mean High Water Line (MHWL).

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 in the pre-destruction footprint of the house because the property is nonconforming to open space provisions set forth in Chapter 131. In some cases, compliance with open space would mean the reduction in size of the single-family residence and/or removal of previously approved accessory structures.

**Community Meeting and Public Participation**

In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Comprehensive Plan text amendment was held on November 27, 2018 in Marathon and provided for public input.

1 There were five members of the public in attendance who posed general questions about the  
2 timeframe of implementation and who would benefit from the proposed of the proposed text  
3 amendment.  
4

5 **Development Review Committee and Public Input**

6 The Development Review Committee considered the proposed amendment at a regular meeting  
7 on January 15, 2019 and received public input.  
8

9 *The subject of this staff report is the amendment to the Comprehensive Plan.*  
10

11 **III. PROPOSED COMPREHENSIVE PLAN TEXT AMENDMENTS**

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13 Proposed Amendment (deletions are ~~stricken through~~; additions are shown in underlined):  
14

15 \*\*\*\*\*

16 **Policy 101.9.4**

17 With the following exception, nonconforming structures which are damaged or destroyed so as to  
18 require substantial improvement shall be repaired or restored in conformance with all applicable  
19 provisions of the current Monroe County Code.  
20

21 Substantial improvement or reconstruction of nonconforming single-family homes shall comply  
22 with the setback and open space provisions set forth in Policy 101.5.25 and in Chapters 130 and  
23 131 of the Monroe County Land Development Code except where strict compliance would result  
24 in a reduction in lot coverage as compared to the pre-destruction footprint of the house. In such  
25 cases, the previously approved open space ratio shall be applied; and the maximum shoreline  
26 setback shall be maintained and in no event shall the shoreline setback be less than ten (10) feet  
27 from mean high water.  
28

29 \*\*\*\*\*

30  
31 **IV. ANALYSIS OF PROPOSED AMENDMENT**

32  
33 The following definitions are provided in the Glossary of the Comprehensive Plan:

- 34 • *Nonconforming Structure*, as used in the Comprehensive Plan and LDC, means a structure  
35 which does not conform to a current provision or regulation provided in the  
36 Comprehensive Plan and/or LDC.
- 37 • *Nonconforming Structure, Lawful*, as used in the Comprehensive Plan and LDC, means a  
38 structure which does not conform to a current provision or regulation provided in the  
39 Comprehensive Plan and/or LDC, but was permitted, or otherwise in existence lawfully,  
40 prior to the effective date of the ordinance adopting the current provision or regulation  
41 that rendered the structure nonconforming.
- 42 • *Open Space* means (in relation to recreation) undeveloped lands that are suitable for  
43 passive recreation, landscape, preservation, or conservation uses.
- 44 • *Open Space* means (in relation to open space ratio calculations) that portion of any parcel  
45 or area of land or water that is required to be maintained such that the area within its

1 boundaries is open and unobstructed from the ground to the sky. (This definition is not  
2 intended to exclude vegetation).

3  
4 Monroe County's current adopted Comprehensive Plan and Land Development Code have  
5 regulations that allow for the substantial improvement of reconstruction of nonconforming single-  
6 family homes that are nonconforming to setback requirements where strict compliance would  
7 result in a reduction of lot coverage as compared to the pre-destruction footprint of the house.  
8 Comprehensive Plan Policy 101.9.4 and LDC Section 102-57(e)(2)c., allows the reduction in  
9 setback, provided the maximum shorelines setback is maintained and no less than ten (10) feet  
10 from the Mean High Water Line (MHWL); however, there is no similar mechanism for single-  
11 family homes that are nonconforming to open space.

12  
13 Setbacks and open space requirements are inherently intertwined, but not mutually exclusive.  
14 Setbacks and open space provide areas on a parcel that are to remain unobstructed from the ground  
15 upward/to the sky. Required setbacks and open space enhance aesthetics, protect native habitat and  
16 provide open areas for the movement and safety of the human population utilizing the  
17 development. However, in some future land use map categories and associated zoning (land use)  
18 districts, the open space requirements are much greater than any applicable setback requirements.

19  
20 During the 2016 update to the Land Development Code and Comprehensive Plan the open space  
21 requirement was increased in at least one future land use map category and land use (zoning)  
22 district. The Land Development Code and Comprehensive Plan were not updated to allow lawfully  
23 established single family residences the same flexibility with nonconforming single-family homes  
24 to open space, as provided for setbacks.

25  
26 Comprehensive Plan Objective 101.9 requires the County to reduce or eliminate the frequency of  
27 structures which are inconsistent with the land development regulations, zoning districts, Future  
28 Land Use categories and the Future Land Use Map, while recognizing that some nonconforming  
29 structures are an important part of the community character. The proposed amendment would allow  
30 for substantial improvement of single-family homes that are nonconforming to open space  
31 requirements, to utilize the previously approved open space ratio while maintaining the maximum  
32 shoreline setback.

33  
34 **V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE**  
35 **PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.**

36  
37 **A. The proposed amendment is consistent with the Goals, Objectives and Policies of the**  
38 **Monroe County 2030 Comprehensive Plan. Specifically, it furthers:**

39  
40 **GOAL 101**

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

43  
44 **Objective 101.1**

45 Monroe County shall ensure that all development and redevelopment taking place within its  
46 boundaries does not result in a reduction of the level-of-service requirements established and  
47 adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive

1 plan amendments include an analysis of the availability of facilities and services or demonstrate  
2 that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180, F. S.]  
3

4 **Objective 101.9**

5 Monroe County shall eliminate or reduce the frequency of structures which are inconsistent  
6 with the applicable provisions of the land development regulations, zoning districts, Future  
7 Land Use categories and the Future Land Use Map. In Monroe County, some nonconforming  
8 structures are an important part of the community character and the County desires to maintain  
9 such character and protect these lawfully established, nonconforming structures and allow them  
10 to be repaired or replaced. [§163.3177(6)(a)2.e., F.S.]  
11

12 **B. The amendment is consistent with the Principles for Guiding Development for the Florida  
13 Keys Area, Section 380.0552(7), Florida Statutes.**  
14

15 For the purposes of reviewing consistency of the adopted plan or any amendments to that plan  
16 with the principles for guiding development and any amendments to the principles, the principles  
17 shall be construed as a whole and no specific provision shall be construed or applied in isolation  
18 from the other provisions.  
19

- 20 (a) Strengthening local government capabilities for managing land use and development so that  
21 local government is able to achieve these objectives without continuing the area of critical  
22 state concern designation.
- 23 (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations,  
24 seagrass beds, wetlands, fish and wildlife, and their habitat.
- 25 (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native  
26 tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and  
27 beaches, wildlife, and their habitat.
- 28 (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound  
29 economic development.
- 30 (e) Limiting the adverse impacts of development on the quality of water throughout the Florida  
31 Keys.
- 32 (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural  
33 environment, and ensuring that development is compatible with the unique historic character  
34 of the Florida Keys.
- 35 (g) Protecting the historical heritage of the Florida Keys.
- 36 (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and  
37 proposed major public investments, including:  
38
- 39 1. The Florida Keys Aqueduct and water supply facilities;
  - 40 2. Sewage collection, treatment, and disposal facilities;
  - 41 3. Solid waste treatment, collection, and disposal facilities;
  - 42 4. Key West Naval Air Station and other military facilities;
  - 43 5. Transportation facilities;
  - 44 6. Federal parks, wildlife refuges, and marine sanctuaries;
  - 45 7. State parks, recreation facilities, aquatic preserves, and other publicly owned  
46 properties;
  - 47 8. City electric service and the Florida Keys Electric Co-op; and
  - 48 9. Other utilities, as appropriate.

- 1  
2 (i) Protecting and improving water quality by providing for the construction, operation,  
3 maintenance, and replacement of stormwater management facilities; central sewage  
4 collection; treatment and disposal facilities; and the installation and proper operation and  
5 maintenance of onsite sewage treatment and disposal systems.  
6 (j) Ensuring the improvement of nearshore water quality by requiring the construction and  
7 operation of wastewater management facilities that meet the requirements of ss.  
8 381.0065(4)(1) and 403.086(10), as applicable, and by directing growth to areas served by  
9 central wastewater treatment facilities through permit allocation systems.  
10 (k) Limiting the adverse impacts of public investments on the environmental resources of the  
11 Florida Keys.  
12 (l) Making available adequate affordable housing for all sectors of the population of the Florida  
13 Keys.  
14 (m) Providing adequate alternatives for the protection of public safety and welfare in the event  
15 of a natural or manmade disaster and for a postdisaster reconstruction plan.  
16 (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and  
17 maintaining the Florida Keys as a unique Florida resource.

18 Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent  
19 with the Principles for Guiding Development as a whole and is not inconsistent with any  
20 Principle.  
21

22 **C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute**  
23 **(F.S.). Specifically, the amendment furthers:**  
24

25 163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve  
26 and enhance present advantages; encourage the most appropriate use of land, water, and  
27 resources, consistent with the public interest; overcome present handicaps; and deal  
28 effectively with future problems that may result from the use and development of land within  
29 their jurisdictions. Through the process of comprehensive planning, it is intended that units  
30 of local government can preserve, promote, protect, and improve the public health, safety,  
31 comfort, good order, appearance, convenience, law enforcement and fire prevention, and  
32 general welfare; facilitate the adequate and efficient provision of transportation, water,  
33 sewerage, schools, parks, recreational facilities, housing, and other requirements and  
34 services; and conserve, develop, utilize, and protect natural resources within their  
35 jurisdictions.  
36

37 163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the  
38 legal status set out in this act and that no public or private development shall be permitted  
39 except in conformity with comprehensive plans, or elements or portions thereof, prepared  
40 and adopted in conformity with this act.  
41

42 163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards,  
43 and strategies for the orderly and balanced future economic, social, physical, environmental,  
44 and fiscal development of the area that reflects community commitments to implement the  
45 plan and its elements. These principles and strategies shall guide future decisions in a  
46 consistent manner and shall contain programs and activities to ensure comprehensive plans  
47 are implemented. The sections of the comprehensive plan containing the principles and  
48 strategies, generally provided as goals, objectives, and policies, shall describe how the local

1 government’s programs, activities, and land development regulations will be initiated,  
2 modified, or continued to implement the comprehensive plan in a consistent manner. It is not  
3 the intent of this part to require the inclusion of implementing regulations in the  
4 comprehensive plan but rather to require identification of those programs, activities, and land  
5 development regulations that will be part of the strategy for implementing the comprehensive  
6 plan and the principles that describe how the programs, activities, and land development  
7 regulations will be carried out. The plan shall establish meaningful and predictable standards  
8 for the use and development of land and provide meaningful guidelines for the content of  
9 more detailed land development and use regulations.

10  
11 163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory  
12 authority.—It is the intent of this act that adopted comprehensive plans or elements thereof  
13 shall be implemented, in part, by the adoption and enforcement of appropriate local  
14 regulations on the development of lands and waters within an area. It is the intent of this act  
15 that the adoption and enforcement by a governing body of regulations for the development  
16 of land or the adoption and enforcement by a governing body of a land development code for  
17 an area shall be based on, be related to, and be a means of implementation for an adopted  
18 comprehensive plan as required by this act.

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20 **VI. PROCESS**

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22 Comprehensive Plan Amendments may be proposed by the Board of County Commissioners, the  
23 Planning Commission, the Director of Planning, or the owner or other person having a contractual  
24 interest in property to be affected by a proposed amendment. The Director of Planning shall review  
25 and process applications as they are received and pass them onto the Development Review  
26 Committee and the Planning Commission.

27  
28 The Planning Commission shall hold at least one public hearing. The Planning Commission shall  
29 review the application, the reports and recommendations of the Department of Planning &  
30 Environmental Resources and the Development Review Committee and the testimony given at the  
31 public hearing. The Planning Commission shall submit its recommendations and findings to the  
32 Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the  
33 transmittal of the proposed comprehensive plan amendment, and considers the staff report, staff  
34 recommendation, and the testimony given at the public hearing. The BOCC may or may not  
35 recommend transmittal to the State Land Planning Agency. The amendment is transmitted to State  
36 Land Planning Agency, which then reviews the proposal and issues an Objections,  
37 Recommendations and Comments (ORC) Report. Upon receipt of the ORC report, the County has  
38 180 days to adopt the amendments, adopt the amendments with changes or not adopt the  
39 amendment.

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41 **VII. STAFF RECOMMENDATION**

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43 Staff recommends approval of the proposed amendment.