



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

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

From: Janene Sclafani, Senior Planner

Date: October 1, 2018

Subject: **Priscilla Ceja, 26959 Old State Road 4A, Ramrod Key**: An appeal, pursuant to Section 102-185 of the Monroe County Land Development Code, by the property owner to the Planning Commission concerning an administrative decision of the Acting Assistant Planning Director dated February 9, 2018, in which the Planning & Environmental Resources Department was able to determine that one (1) of two (2) dwellings units requested was lawfully established and found exempt from the Residential Rate of Growth Ordinance (ROGO). The subject property is legally described as Lot 10, Block 4, Ramrod Shores, recorded in Official Records Book 4, Page 6, of the Public Records of Monroe County, Florida, having real estate number 00207530-000000. (File # 2018-053)

---

**Meeting: February 27, 2019**

---



Subject Property (2015 Aerial)

3 I. DECISION BEING APPEALED:

4 The appellant and subject property owner, Priscilla Ceja (the “Appellant”), is appealing to the  
5 Planning Commission an administrative decision made by Kevin Bond, in his capacity as  
6 Acting Assistant Planning Director (the “Planning Director”), in which the Planning &  
7 Environmental Resources Department (the “Department”) was unable to approve the  
8 Appellant’s application for a ROGO Exemption Request of a second dwelling unit pursuant to  
9 Section 138-22(a) of the Monroe County Land Development Code (the “Code”).

10  
11 The Appellant’s application for the ROGO Exemption Request is **Attachment A**. The  
12 Planning Director’s decision dated February 9, 2018 is **Attachment B**. Monroe County Code  
13 Section 138-22, Type of Development Not Affected is **Attachment C**.

14  
15 II. BACKGROUND INFORMATION:

16 **Location:** Ramrod Key, near Mile Marker 27 Gulf side

17 **Address:** 26959 Old State Road 4A

18 **Legal Description:** Lot 10, Block 4, Ramrod Shores, recorded in Official Records Book 4,  
19 Page 6, of the Public Records of Monroe County, Florida

20 **Real Estate Number (RE):** 00207530-000000

21 **Property Owner/Appellant:** Priscilla Ceja

22 **Agent:** N/A

23 **Size of Site:** 8,966 square feet / 0.2058 acres

24 **Land Use Map (Zoning) District:** Improved Subdivision (IS)

25 **Future Land Use Map (FLUM) Designation:** Residential Medium (RM)

26 **Tier Designation:** III – Infill Area

27 **Flood Zone:** AE-7

28 **Existing Uses:** Detached residential dwelling units.

29 **Existing Vegetation / Habitat:** Developed/disturbed.

30 **Community Character of Immediate Vicinity:** Residential and commercial

31  
32 III. RELEVANT PRIOR COUNTY ACTIONS:

33  
34 On November 1, 2007, the County issued a ROGO exemption letter to the property owner at  
35 that time. The owner requested a determination for two (2) residential dwelling units, the  
36 County found one unit was lawfully established and exempt from the ROGO allocation system,  
37 an appeal was not filed. **Attachment D**

38  
39 On November 14, 2017, the Department received the Appellant’s request for two (2) residential  
40 dwelling units to be exempted from the ROGO allocation system.

41  
42 On February 9, 2018, the Planning Director sent the Appellant notice that the Department was  
43 able to determine that one (1) of two (2) residential dwellings units requested was lawfully  
44 established. The notice informed the Appellant that the Planning Director’s decision may be  
45 appealed within 30 calendar days.

46  
47 On March 9, 2018, the Department received the Appellant’s application for appeal to the  
48 Planning Commission.

49 IV. REVIEW OF APPLICATION:

50  
51 Pursuant to Section 138-22 of the Monroe County Land Development Code (LDC), the  
52 redevelopment, rehabilitation or replacement of any lawfully established dwelling unit or space  
53 that does not increase the number of dwelling units above that which existed on the site prior  
54 to the redevelopment, rehabilitation or replacement shall be exempt from the residential ROGO  
55 system.

56  
57 For dwelling units that were established prior to the effective date of the ROGO and therefore  
58 did not receive a ROGO allocation through the ROGO permit allocation system, the Monroe  
59 County Land Development Code requires a body of evidence to support the lawful existence  
60 of the dwelling unit on or about July 13, 1992, the effective date of the original ROGO system.  
61 Any Monroe County building permit(s) for the original construction of the structure  
62 confirming the existence of the dwelling unit and its use(s) on or about July 13, 1992 can stand  
63 as the only piece of evidence for a ROGO exemption.

64  
65 The Land Use Districts establish the permitted and conditional uses for each district. Pursuant  
66 to Code Section 130-83(a)(1), detached dwellings and accessory uses are permitted as-of-right  
67 in the Improved Subdivision (IS) Land Use District. Density is governed by Chapter 130,  
68 Article V of the Monroe County Land Development Code. Pursuant to Code Section 130-157,  
69 the allocated density for the Improved Subdivision (IS) Land Use District is one (1) dwelling  
70 unit per platted lot.

71  
72 The following are uses permitted as of right in the IS district in LDC Sec. 130-83:

- 73  
74 (a) The following uses are permitted as of right in the improved subdivision district:
- 75 (1) In those improved subdivision districts with no subdistrict indicator, detached  
76 dwellings of all types;
  - 77 (2) IS-M: In those improved subdivision districts with an M subdistrict indicator, only  
78 detached dwellings of masonry appearance;
  - 79 (3) IS-D: In those improved subdivision districts with a D subdistrict indicator:
    - 80 a. Detached dwellings; and
    - 81 b. Duplexes;
  - 82 (4) Home occupations—Special use permit required;
  - 83 (5) Accessory uses;
  - 84 (6) Collocations on existing antenna-supporting structures, pursuant to section 146-  
85 5(c);
  - 86 (7) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant  
87 to section 146-5(f); and
  - 88 (8) Wastewater nutrient reduction cluster systems that serve less than ten residences.
- 89

90 The following relevant terms are defined in LDC Section 101-1:

91  
92 *Accessory use* or *accessory structure* means a use or structure that:

- 93 (1) Is subordinate to and serves an existing principal use or principal structure; and

- 94 (2) Each individual accessory use or accessory structure as well as in total/combined,
- 95 is subordinate in area (for this definition docks, pools, pool decks, driveways are
- 96 excluded from the total area), extent and purpose to an existing principal use or
- 97 principal structure served; and
- 98 (3) Contributes to the comfort, convenience or necessity of occupants of the principal
- 99 use or principal structure served; and
- 100 (4) Is located on the same lot/parcel or on a lot/parcel that is under the same ownership
- 101 as the lot/parcel on which the principal use or principal structure is located; and
- 102 (5) Is located on the same lot/parcel or on a contiguous lot/parcel as an existing
- 103 principal use or principal structure, excluding accessory docking facilities that may
- 104 be permitted on adjacent lots/parcels pursuant to section 118-12; and
- 105 (6) Is located in the same land use (zoning) district as the principal use or principal
- 106 structure, excluding off-site parking facilities pursuant to section 114-67.

107  
 108 Accessory uses include the utilization of yards for home gardens, provided that the produce of  
 109 the garden is for a non-commercial purpose. In no event shall an accessory use or structure be  
 110 established prior to the principal use to which it is accessory. With approval from the Planning  
 111 Director, an accessory use or structure may continue if its principal use or structure is  
 112 discontinued or removed for redevelopment, provided that the owner is moving forward with  
 113 continual development and with active concurrent permits for redevelopment of a principal use  
 114 or structure. Accessory uses shall not include second dwelling units or any other habitable  
 115 structures that are occupied by a separate and independent resident.

116  
 117 *Density, allocated* means the number of dwelling units or rooms/spaces which may be  
 118 permitted to be developed per gross acre of upland without the use of Transferable  
 119 Development Rights (TDRs).

120  
 121 *Dwelling, detached*, means an individual dwelling unit that is developed with open yards on  
 122 all sides of the dwelling unit. The term includes single family residences but does not include  
 123 mobile homes or recreational vehicles.

124  
 125 *Dwelling, single-family, or single-family residence* means a one-family dwelling unit that is  
 126 developed with open yards on all sides of the building.

127  
 128 *Lot* means a duly recorded lot as shown on a plat approved by the County. (Also described as  
 129 platted lot.)

130  
 131 *Platted lot* means a lot that is identified on a plat that was approved by the board of county  
 132 commissioners and duly recorded.

133  
 134 The Appellant submitted the following as proof of a second dwelling unit (the “cottage”) with  
 135 the application:

- 136
- 137 1. Property record card, aka “green card” for lot 10, block 4, having RE number
- 138 00207530-000000,
- 139 2. Monroe County issued Building Permit 32429 for lot 10 having RE number 00207530-
- 140 000000 for the construction of a “new res.”,

- 141 3. Property record card, aka “green card” for lot 11, block 4 having RE number 00207540-  
142 000000,  
143 4. Monroe County issued Building Permit 2086 for lot 11, block 4 having RE number  
144 00207540-000000 for 312 sf addition,  
145 5. Monroe County issued Building Permit 9610142 for lot 10, block 4 having RE number  
146 00207530-000000 for 600 sf re-roof,  
147 6. Monroe County issued Building Permit 9610009 for lot 10, block 4 having RE number  
148 00207530-000000 to replace rotten floor, door and tile in bathroom,  
149 7. Two real estate listing for 26959 Old State Road 4A having RE number 00207530-  
150 000000,  
151 8. A letter from the Appellant dated February 21, 2018.  
152

153 Staff reviewed the documents submitted with the application and found the following:  
154

- 155 1. Property record card, aka “green card” for lot 10, block 4, having RE number  
156 00207530-000000 assesses the property under a property classification code of 01-  
157 Single Family Residence and their records indicate the lot was unimproved until 1975  
158 which is consistent with the Certificate of Occupancy issued December 9, 1974 for a  
159 residence. William G. Herold is listed as the property owner.  
160 2. Building Permit 32429, dated June 19, 1974 was for the construction of a new residence  
161 containing two bedrooms and one bathroom, the plans included with the building  
162 permit application indicate one structure with two bedrooms and one bathroom.  
163 Included in the building permit application file was an application/permit to the  
164 Department of Pollution Control for Individual Sewage Disposal Facilities, dated May  
165 30, 1974 (permit No. P1903), this application states the system is for two bedrooms  
166 only which is consistent with the submitted plans.  
167 3. Property record card, aka “green card” for lot 11, block 4 having RE number 00207540-  
168 000000 assesses the property under a property classification code of 01- Single Family  
169 Residence and their records indicate a structure has been existing since 1966. The  
170 property owner is listed as William Mayer, which is consistent with the phone directory  
171 entries for the years of 1974 and 1975.  
172 4. Monroe County issued Building Permit 2086 for lot 11 did not contain any pertinent  
173 information.  
174 5. Building Permit 9610142, issued January 26, 1996, was for a 600-foot re-roof to an  
175 existing single family residence. While plans were not submitted with the building  
176 permit application, under general remarks “building 1 of 2 built 1974” is stated. In  
177 addition, the property record card submitted indicates with handwritten descriptions  
178 building 1 of 2 as “house” (year built 1974) and building 2 of 2 as “shed” (year built  
179 1958). This permit was issued in 1996 and does not support the “cottage” as a lawfully  
180 established dwelling unit prior to the implementation of the ROGO allocation system  
181 in 1992.  
182 6. Building Permit 9610009, issued January 8, 1996, was to replace rotten floor, door and  
183 tile in bathroom. While plans were not submitted with the building permit application,  
184 under general remarks “building 2 of 2 built 1958” is stated. This permit was issued in  
185 1996 and does not support the existence of a lawfully established dwelling unit prior  
186 to the implementation of the ROGO allocation system in 1992. It should be noted that

187 accessory structures that do not create a second dwelling unit are permitted in the IS  
188 district. The permit does not indicate a kitchen which would make the “cottage” an  
189 accessory structure.

- 190 7. The two real estate listings dated February 21, 2018 state there are two livable buildings  
191 on the property that share the electric and water meters and septic system. One also  
192 states monthly rental income for each unit. While the listings indicate the two units are  
193 being used as independent residences, they do not support the use is lawful.
- 194 8. The letter from the Appellant dated February 21, 2018 states that lots 10 and 11 possibly  
195 overlap and that the cottage was moved from lot 11 to lot 10 sometime in 1977, and  
196 that two permits for repairs to the cottage were issued by the County. A review of the  
197 “green cards” for lots 10 and 11 did reveal they both indicate a cottage, but, a review  
198 of historic aerials does not show the cottage being moved from lot 11 to lot 10, aerial  
199 photography shows structures on lots 10 and 11 consistently in the same location.  
200 Aerial photography from 1959 to 1972 confirms the existence of one structure located  
201 at the Old State Road end of lot 10 (cottage, 1958) and one structure located at the Old  
202 State Road end of lot 11. Aerial photography from 1975 to 2018 confirms the  
203 continuous existence of two (2) structures on lot 10 and the continuous existence of  
204 one (1) structure on lot 11.  
205

206 A review independent from the prior ROGO exemption requests was performed by staff, one  
207 (1) dwelling unit was found lawfully established. **Attachment E**


208  
209 Additional documentation was submitted by Nick Batty, Esq., Smith/Hawks attorneys as law,  
210 on November 13, 2018. Mr. Batty was retained by the Appellant after submission of the  
211 application of appeal. The following documentation was submitted by Mr. Batty:  
212

- 213 1. A letter dated November 9, 2018 and signed by Nick Batty.  
214 2. Exhibit A, application of appeal.  
215 3. Exhibit B, ROGO exemption denial letter addressed to Ms. Ceja, dated February 9,  
216 2018.  
217 4. Exhibit C, 1992 property record card.  
218 5. Exhibit D, affidavit of Melinda Pampera.  
219 6. Exhibit E, permit 9610009.  
220 7. Exhibit F, Memorandum dated January 2, 1996 regarding Monroe County Housing  
221 CDBG (Community Development Block Grant) Program.  
222 8. Exhibit G, affidavit of Gregory Watler.  
223 9. Exhibit H, 1972 aerial.  
224 10. Exhibit I, 1996 property record card.  
225

226 The additional documentation is **Attachment F** in this report.  
227

228 Staff reviewed the letter and documents submitted from Mr. Batty and found the following:  
229

- 230 1. A letter dated November 9, 2018 and signed by Nick Batty. In the letter, Mr. Batty  
231 refers to building permits 32335, 32429, and 34324 which all indicate the parcel as  
232 vacant yet the 1974 aerial shows the structure in question at the south end of the

- 233 parcel. At the time of submission of the aforementioned permits, the Monroe County  
234 Code (1973-1986) defined vacant as the following: A building or parcel of land shall  
235 be deemed vacant when it is neither occupied nor used, or when it is in a  
236 nonoperative status for a period of one year. The referenced Exhibits were examined  
237 by staff and are addressed individually.
- 238 2. Exhibit A, application of appeal. No response required.
  - 239 3. Exhibit B, ROGO exemption denial letter addressed to Ms. Ceja, dated February 9,  
240 2018. No response required.
  - 241 4. Exhibit C, 1992 property record card. As mentioned in the letter from Mr. Batty, the  
242 property record card indicates building 2 of 2 (structure in question) as R1 S.F.R.  
243 which contains one bedroom, one 3-fixture bath and 3 Xfixture (i.e. hose bibs). While  
244 this is evidence  the structures use as a dwelling unit, it does not support its lawful  
245 establishment.
  - 246 5. Exhibit D, affidavit of Melinda Pampena. No response required.
  - 247 6. Exhibit E, permit 9610009. As mentioned in the letter from Mr. Batty, the Elderly  
248 Homeowner Rehabilitation Program was applied to this permit. It is unknown the  
249 requirements for qualification for the program at that time. Additionally, the  
250 “cottage” is located on the same parcel as the permitted single family residence and  
251 would’ve been recognized by the County as an accessory structure which may have  
252 qualified it for the program as being part of the development.
  - 253 7. Exhibit F, Memorandum dated January 2, 1996 regarding Monroe County Housing  
254 CDBG Program. No response required.
  - 255 8. Exhibit G, affidavit of Gregory Watler. No response required.
  - 256 9. Exhibit H, 1972 aerial. Aerials can only determine the number of structures present,  
257 not their use.
  - 258 10. Exhibit I, 1996 property record card. As mentioned in the letter from Mr. Batty, the  
259 property record card indicates building 2 of 2 (structure in question) as R1 S.F.R.  
260 which contains one bedroom, one 3-fixture bath and 3 Xfixture (i.e. hose bibs). While  
261 this is evidence of the “cottage” use as a dwelling unit, it does not support its lawful  
262 establishment or use.

263  
264 A review of all documents submitted and County records did not yield evidence that the  
265 “cottage” was ever lawfully established as a dwelling unit or its lawful use as a dwelling unit  
266 prior to, on or about July 13, 1992, the effective date of the original ROGO. On December 8,  
267 1959, Resolution No. Z-1 was passed which established zoning districts and regulations for  
268 unincorporated Monroe County. From 1986 to present, the property is located in an Improved  
269 Subdivision (IS) district, in which a detached single family residential dwelling is a permitted  
270 use. From 1973 to 1986 the zoning was RU-1, in which a detached single family residential  
271 dwelling was a permitted use. In addition, a review of County issued permits 32335, issued  
272 May 31, 1974 for installation of a septic tank and permit 34324, issued September 25, 1974  
273 for electrical wiring indicate the property as vacant, which at the time was defined by Monroe  
274 County Code as a building or parcel of land that is neither occupied nor used, or when it is in  
275 a nonoperative status for a period of one year. Therefore, at no time would a second dwelling  
276 unit have been lawfully permitted on the parcel. It should be noted that accessory structures  
277 were permitted in RU-1 and accessory structures that do not create a second dwelling unit are  
278 permitted in the Improved Subdivision (IS) zoning district. As previously mentioned, County

279 issued building permit 9610009 does not support the lawful establishment or use of the  
280 “cottage” as a dwelling unit. While evidence has been provided which indicate the “cottage”  
281 has been used a dwelling unit, it does not support its lawful establishment or use.  
282

283 V. BASIS OF APPEAL:  
284

285 The appeal is based upon affidavits from the property owner in 1992 and neighbor attesting to  
286 the use of the “cottage”, a 1992 property record card indicating the “cottage” as “R1 S.F.R.”,  
287 a Monroe County issued permit of which a homeowner rehabilitation program was applied to,  
288 and additional evidence of which the Appellant asserts supports the finding of two (2) ROGO  
289 exempt dwelling units.  
290

291 The Appellant provided the Notice of Appeal and exhibits in **Attachment F**, which is included  
292 in the Planning Commission package.  
293

294 VI. RECOMMENDATION:  
295

296 The decision by the Planning Director was based on the criteria provided in the Land  
297 Development Code and the findings of fact. Based on a review of all of the available  
298 information, staff recommends that the Planning Commission **UPHOLD** the decision of the  
299 Planning Director to not approve the Appellant’s application request for a second dwelling unit  
300 pursuant to Code Section 138-22.  
301

302 VII. EXHIBITS:

- 303 ▪ Attachment A – Appellant’s application for a ROGO Exemption Request
- 304 ▪ Attachment B – Planning Director’s decision dated February 9, 2018
- 305 ▪ Attachment C – Monroe County Land Development Code Section 138-22, Type of  
306 Development Not Affected
- 307 ▪ Attachment D – ROGO Exemption Letter dated November 1, 2007
- 308 ▪ Attachment E – Independent ROGO Exemption review
- 309 ▪ Attachment F – Additional documents submitted by Nick Batty, Esq.