

County of Monroe

Planning & Environmental Resources

Department

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April 16, 2018

VIA EMAIL TO lrllaw@bellsouth.net

Lee R. Rohe, Esq.
PO Box 420259
Summerland Key, Florida 33042

**Letter of Understanding (File # 2017-125), 1547 Narcissus Avenue, Big Pine Key
Lot 3, Block 19, Eden Pines Colony (PB4-158), Monroe County, Florida
Real Estate # 00268980-000000**

Dear Mr. Rohe:

You requested a Letter of Understanding (LOU) to establish the lawfulness of a nonconforming use on the above-described premises.

Pursuant to Section 102-55(a) of the Monroe County Land Development Code (LDC), all known, lawful nonconforming uses and structures may be registered with the Planning and Environmental Resources Department. In the course of its duties related to development review, staff of the department shall identify and recognize nonconforming uses and structures. Property owners may also independently apply to the department for such determinations.

Pursuant to LDC Section 102-55(b), the Planning Director, or his or her assigned designee, shall review available documents to determine if a body of evidence exists supporting the lawful establishment of a use or structure prior to the change in regulation that deemed the use or structure nonconforming. Any issued Monroe County building permit(s) for the original establishment or construction of the use or structure, confirming its approval and existence prior to the change in regulation that deemed the use or structure nonconforming, can stand as the only piece of evidence.

County building permit # A15786 issued on July 29, 1986 and Certificate of Occupancy # 92-3 issued on January 10, 1992 for a 1,518-square-foot duplex confirms the lawful existence of the two permanent residential dwelling units and the nonconforming duplex use on or about July 13, 1992.

No County permit or other development approval was found for the requested nonconforming vacation rental use of the property.

If there are no such building permit(s) available, additional evidence shall be documented and submitted to the Planning Director on a form provided by the Planning and Environmental Resources Department and shall include, at a minimum, at least two of the following documents:

- (1) *Any other issued Monroe County building permit(s) approving or supporting the existence of the structure(s) and/or use:*

The following table organizes relevant building permits by date issued:

<i>Permit No.</i>	<i>Date Issued</i>	<i>Description</i>
A15786	7/29/1986	1,518 sf duplex

County permits support the existence of the existing structure and its residential use as a two-unit duplex. No County permits or other development approvals were found for the requested vacation rental use of the property.

- (2) *Documentation from the Monroe County Property Appraiser's Office supporting the existence of the structure(s) and/or use:*

The Property Appraiser currently assesses the property under a property classification code of "Multi Family Less Than 10 Units (0800)." One building is listed as "M.F. – R2 / R2" type with 1,575 finished square feet and year built of 1991.

County Appraiser's Office documentation indicates residential use of two units. There is no mention of the requested vacation rental use in the Property Record Card.

- (3) *Aerial photographs and original dated photographs showing the structure or use existed on site:*

Aerial photography from 1994 to 2015 confirms the continuous existence of the structure on the property. As a note, aerial photography can only confirm the number of structures, not the number of dwelling units, in existence at any given time.

- (4) *State and/or county licenses, supporting the existence of the structure(s) and/or use:*

No state or county licenses were provided by the applicant for review. Staff found business tax receipts paid since 2011 for business tax account # 104889 for Edwin R & Ellen Handte. The business state date was 11/10/2010, lists business address as 1547 Narcissus Avenue. Receipts are for "apartments condos houses & commercial units" for two units with a "transient" flag.

County licenses do not support the lawful existence of the requested vacation rental use because they do not document that all required state and local permits and licenses were obtained prior to September 15, 1986, pursuant to LDC Sections 101-1, 102-56(a)(1) and 134-1(k). See attached LDC excerpts.

- (5) *Documentation from the utility providers indicating the type of service (residential or commercial) provided:*

No documentation from utility providers was provided by the applicant for review.

- (6) *Similar supporting documentation not listed above as determined suitable by the Planning Director:*

Land Use (Zoning) District:

Since September 15, 1986, the property is located in the Improved Subdivision (IS) Land Use (Zoning) District.

- Detached residential dwellings are a use permitted as-of-right, pursuant to LDC Section 130-83.
- Duplexes are permitted as-of-right in those IS Districts with a D subdistrict indicator (IS-D).
- Vacation rental use is prohibited in all IS districts and subdistricts, except in:
 - (1) IS-V districts (as set forth in LDC Section 130-84); and
 - (2) in gated communities that have:

- a. Controlled access; and
- b. A homeowner's or property owner's association that expressly regulates or manages vacation rental uses.

From 1973 to 1986, the property was zoned RU-2 (two-family residential district), which allowed duplexes.

Relevant portions of the Land Development Code (LDC):

Sections of the County LDC that are relevant to nonconforming vacation rental uses are attached as an exhibit to this LOU, including LDC Sections 101-1 (Definitions), 101-4 (Applicability of the LDC), 102-56 (Nonconforming Uses), 130-83 (Improved Subdivision District (IS)), and 134-1 (Vacation Rental Uses).

The effect of the LDC on nonconforming vacation rental uses is that vacation rental uses are prohibited in any zoning district where a vacation rental use is prohibited. Any pre-existing vacation rental uses cannot be considered a lawful nonconforming use and must be discontinued in any district that prohibits vacation rental uses, except that a vacation rental use that was established, and had obtained all of the required state and local permits and licenses, prior to September 15, 1986, or under any Code provisions that expressly allowed vacation rental uses, may remain pursuant to LDC Section 102-56 (nonconforming uses). No evidence of state or local vacation rental permits and licenses being obtained was submitted by the applicant for review, other than the Circuit Court Opinion below.

Pursuant to LDC Section 102-56(f)(1), *Abandonment or discontinuance*, "Where a nonconforming use of land or structure is voluntarily discontinued or abandoned, as defined in Sec. 101-1, for eighteen (18) consecutive months, then such use may not be reestablished or resumed and any subsequent use must conform to the provisions of this Land Development Code and the Comprehensive Plan. Leases, subleases, assignment or other occupancy agreement for compensation for less than 28 days in duration shall be discontinued and shall not be renewed, extended or entered into, in any district that prohibits vacation rental use after the effective date of the original ordinance from which this section is derived (September 15, 1986)."

Circuit Court Opinion/Order:

The applicant submitted a copy of an Opinion issued May 2, 2017 by Timothy J. Koenig, Circuit Judge, in Case No. 2016-AP-4-K that concluded "the Court finds that the Appellants' [Edwin Handte and Janice E. Handte] had a pre-existing non-conforming use which was "grandfathered in" on the subject property.

Based on a review of the records, the Planning & Environmental Resources Department has determined that:

Regarding the nonconforming duplex use, two (2) dwelling units are lawfully-established on the subject property, their replacement would thereby be exempt from the ROGO permit allocation system pursuant to LDC Section 138-22(a), and are not considered nonconforming as to density pursuant to LDC Section 130-163. However, the nonconforming duplex use cannot be expanded, replaced, resumed or substantially improved, except in accordance with LDC Section 102-56. Therefore, the two (2) ROGO-exempt dwelling units would have to be replaced or resumed as two detached dwellings, pursuant to LDC Section 130-83.

Regarding the nonconforming vacation rental uses, the Department hereby recognizes the nonconforming vacation rental use of the two existing dwelling units, pursuant to the Circuit Court Opinion issued May 2, 2017. In order to maintain the nonconforming use status, the property owner shall adhere to the following:

1. Obtain and maintain annual special vacation rental permits and vacation rental manager licenses from the County Planning and Environmental Resources Department, pursuant to LDC Section 134-1; and
2. If the nonconforming vacation rental use is terminated, abandoned or discontinued, then the vacation rental use may not be reestablished or resumed and any subsequent use must conform to the provisions of this Land Development Code and the Comprehensive Plan, pursuant to LDC Section 102-56(f)(1).

If the exempted dwelling units are replaced, all existing accessory structures must also be demolished unless written permission stating otherwise is provided by the Planning & Environmental Resources Department. This letter does not provide any vesting to existing regulations and the replacement dwelling units and any new accessory structures must be built in compliance with all applicable regulations of the Monroe County Code and Comprehensive Plan at the time of development approval. Furthermore, if the exempted dwelling units are not replaced, but substantially improved as defined in the Monroe County Code, they must be brought into compliance with all applicable regulations.

You may appeal any decision, determination or interpretation made in this letter pursuant to Monroe County Code Section 102-185. A notice of appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within 30 calendar days from the date of this letter. In addition, please submit a copy of your notice of appeal to the Planning Commission Coordinator, Monroe County Planning and Environmental Resources Department, 2798 Overseas Highway, Suite 410, Marathon, Florida 33050.

If you have any questions regarding the contents of this letter or if I may further assist you, please feel free to contact the Planning & Environmental Resources Department at (305) 289-2500.

Sincerely,



Emily Schemper, AICP, Acting Director of Planning & Environmental Resources

Encl: Relevant LDC excerpts

LDC Sec 101-1 Definitions:

Development means the carrying out of any building activity, the making of any material change in the use or appearance of any structure on land or water, or the subdividing of land into two or more parcels.

...

“(4) The term "development" also means the tourist housing use or vacation rental use of a dwelling unit, or a change to such a use (i.e., conversion of existing dwelling units to vacation rental use). Vacation rental use of a dwelling unit requires building permits, inspections and a certificate of occupancy.”

Vacation rental or unit means an attached or detached dwelling unit that is rented, leased or assigned for tenancies of less than 28 days duration. Vacation rental use does not include hotels, motels, and RV spaces, which are specifically addressed in each district.

LDC Sec 101-4 Applicability:

(d) **Vacation rental use.** Previous vacation rental uses shall be discontinued in any district that prohibits vacation rental uses, after the effective date of the ordinance from which this section is derived. All vacation rental uses shall obtain annual special rental permits regardless of when the use was first established.

LDC Sec 102-56 Nonconforming Uses:

(a) *Authority to continue.* Nonconforming uses of land or structures may continue in accordance with the provisions of this section. Notwithstanding any provision of this section or of this Land Development Code and/or the Comprehensive Plan:

(1) Leases, subleases, assignments or other occupancy agreements for compensation for less than 28 days in duration shall be discontinued and shall not be renewed, extended or entered into, in any district that prohibits vacation rental uses after the effective date of the original ordinance from which this section is derived (September 15, 1986) unless a vacation rental use was established and obtained all required state and local permits and licenses prior to September 15, 1986, under previous Monroe County Code provisions expressly allowing vacation rental uses; and

(f) *Termination.*

(1) *Abandonment or discontinuance.*

...

Leases, subleases, assignment or other occupancy agreement for compensation for less than 28 days in duration shall be discontinued and shall not be renewed, extended or entered into, in any district that prohibits vacation rental use after the effective date of the original ordinance from which this section is derived (September 15, 1986).

Sec. 130-83. Improved Subdivision District (IS).

(a) The following uses are permitted as of right in the improved subdivision district:

- (1) In those improved subdivision districts with no subdistrict indicator, detached dwellings of all types;
- (2) IS-M: In those improved subdivision districts with an M subdistrict indicator, only detached dwellings of masonry appearance;
- (3) IS-D: In those improved subdivision districts with a D subdistrict indicator:
 - a. Detached dwellings; and
 - b. Duplexes;

(b) **Vacation rental use is prohibited in all IS districts and subdistricts, except in:**

- (1) IS-V districts (as set forth in section 130-84); and
- (2) In gated communities that have:
 - a. Controlled access; and
 - b. A homeowner's or property owner's association that expressly regulates or manages vacation rental uses.

Sec. 134-1. Vacation Rental Uses.

(k) Prohibitions, enforcement, and penalties.

(1) It shall be unlawful for any landlord, tenant, agent or other representative of a landowner to rent, lease, advertise or hold out for rent any dwelling unit for vacation rental use in any district where a vacation rental use is prohibited, except as otherwise exempted under this section.

(2) It shall be unlawful for any landlord, tenant, agent or other representative of a landlord to rent, lease, advertise or hold out for rent any dwelling unit for a vacation rental use without a special vacation rental permit, except as otherwise exempted under this section.

(3) After the effective date of the ordinance from which this section is derived, leases, subleases, assignments or any other occupancy agreements, for compensation for less than 28 days in duration:

a. Shall not be entered into or renewed once they have expired or have terminated in any district in which tourist housing use is prohibited or in any district in which a vacation rental use is allowed unless a special vacation rental permit, building permit, inspection and certificate of occupancy for the vacation rental use (or for the conversion of an existing dwelling unit to vacation rental use) are first obtained; and

b. Any pre-existing vacation rental uses shall not be considered a lawful nonconforming use under section 102-56 and must be discontinued in any land use districts that prohibit vacation rental uses no later than 30 days after the effective date of the ordinance from which this section is derived. Except that a vacation rental use that was established, and had obtained all of the required state and local permits and licenses, prior to September 15, 1986, or under any Code provisions that expressly allowed vacation retail uses, may remain pursuant to section 102-56.

(4) Section 8-36 shall not bar code enforcement for new vacation rental violations occurring after the effective date of the ordinance from which this section is derived.

(5) Prima facie evidence of vacation rental uses of a dwelling unit shall include:

a. Registration or licensing for short-term rental or transient rental use by the state under F.S. chs. 212 (Florida Tax and Revenue Act) and 509 (public lodging establishments);

b. Advertising or holding out a dwelling unit for vacation rental use;

c. Reservations, booking arrangements or more than one signed lease, sublease, assignment, or any other occupancy or agreement for compensation, trade, or other legal consideration addressing or overlapping any period of 28 days or less; or

d. The use of an agent or other third person to make reservations or booking arrangements.