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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  
12 Resources

13

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

15

16 **Date:** February 12, 2019

17

18 **Subject:** An ordinance by the Monroe County Board of County Commissioners amending the  
19 Monroe County Land Development Code as directed by the BOCC on October 17,  
20 2018, to create Article III *Post Disaster Procedures*, Section 134-26 *Purpose*, and  
21 Section 134-27 *Accessory Structures*, to allow accessory structures to remain in certain  
22 circumstances after the associated principal use or structure has been discontinued, and  
23 amending Monroe County Code Section 102-58 *Nonconforming Accessory Uses and*  
24 *Accessory Structures*, for consistency with Code Chapter 134 (File #2018-212)

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26 **Meeting:** February 27, 2019

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28 **I. REQUEST**

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30 The Monroe County Planning & Environmental Resources Department is proposing amendments  
31 to the Land Development Code, as directed by the BOCC on October 17, 2018, to create Article  
32 III *Post Disaster Procedures*, Section 134-26 *Purpose*, and Section 134-27 *Accessory Structures*,  
33 to allow accessory structures to remain in certain circumstances after the associated principal use  
34 or structure has been discontinued, and amending Monroe County Code Section 102-58  
35 *Nonconforming Accessory Uses and Accessory Structures*, for consistency with Code Chapter  
36 134.

37

38 **II. BACKGROUND INFORMATION**

39

40 On September 10, 2017, Hurricane Irma made landfall near Cudjoe Key as a Category 4  
41 Hurricane with maximum sustained winds of 130 mph causing significant damage to existing  
42 housing stock. Following the impacts of Hurricane Irma and the subsequent rebuilding of  
43 dwelling units, it has come to the attention that there exist certain accessory structures that  
44 property owners wish to maintain until they are able to reestablish a principal use or structure.

45

46 Currently, the Code requires the removal of accessory uses and structures once the principal use  
47 or structure is discontinued or removed. The Code contains a provision to allow an accessory use  
48

1 or structure to continue if its principal use or structure is discontinued or removed for  
2 redevelopment, provided that the property owner is moving forward with continual development  
3 and with active concurrent permits for redevelopment of a principal use or structure [Ref. LDC  
4 Section 101-1].  
5

6 However, if a property owner is not moving forward with active concurrent permits for  
7 redevelopment of a principal use or structure, then the regulations in the Code require accessory  
8 uses and structures to be discontinued or removed.  
9

10 On October 17, 2018, the BOCC directed staff to start processing a text amendment that would  
11 allow accessory structures to remain in certain circumstances after the associated principal use or  
12 structure has been destroyed after a man-made or natural disaster.  
13

#### 14 **Community Meeting and Public Participation**

15 In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Land  
16 Development Code text amendment was held on November 27, 2018 in Marathon and provided  
17 for public input. There were five members of the public in attendance who posed general  
18 questions about the timeframe of implementation, who would benefit from the proposed of the  
19 proposed text amendment and what criteria would be utilized.  
20

#### 21 **Development Review Committee**

22 On January 15, 2019, the Monroe County Development Review Committee (DRC) held a public  
23 meeting to discuss the proposed amendment, and provided for public comment.  
24

25 *The subject of this staff report is the amendment to the Land Development Code.*  
26

### 27 **III. PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS**

28  
29 Proposed Amendment (deletions are ~~stricken through~~; additions are shown in underlined).  
30

31 \*\*\*\*\*

#### 32 **Chapter 134. Miscellaneous.**

33 \*\*\*\*\*

#### 34 **Article III. Post-Disaster Procedures.**

35 \*\*\*\*\*

#### 36 **Section 134-26. Purpose.**

37 It is the purpose of this Article to establish specific policies and procedures related to this Land  
38 Development Code that shall apply following a man-made or natural disaster. Such policies and  
39 procedures shall become effective when the County is within a state of emergency declared by  
40 the Monroe County Mayor.  
41

#### 42 **Section 134-27. Accessory Structures.**

43 Notwithstanding the definition of *Accessory use* or *accessory structure* in Section 101-1 and the  
44 provisions of Section 102-58, Nonconforming Accessory Uses and Accessory Structures, when a  
45 principal structure and/or use is discontinued or removed as a result of damage from a man-made  
46 or natural disaster, lawfully established accessory structures associated with the discontinued use  
47 may remain with approval from the Planning Director if all of the following criteria are met:

1. The principal structure is determined to be a lawfully established dwelling unit per Section 138-22;
2. The lawfully established accessory structure is conforming to all other provisions of the Land Development Code; and
3. In the absence of an active concurrent permit for redevelopment of a principal use or structure on the site, the accessory structure may remain for up to five (5) years from the date of the disaster event.

\*\*\*\*\*

**Sec. 102-58. Nonconforming Accessory Uses and Accessory Structures.**

- (a) A nonconforming accessory use shall not continue after the principal use has terminated.
- (b) A nonconforming accessory structure shall not continue after the principal use or structure is demolished or otherwise eliminated unless the structure is modified to conform to the provisions of the land use (zoning) district in which it is located and is associated with a new principal use.
- (c) Notwithstanding subsection (a) and (b), when a principal structure and/or use is discontinued or removed as a result of damage from a man-made or natural disaster, lawfully established accessory structures associated with the discontinued use may remain with approval from the Planning Director pursuant to Section 134-27.

\*\*\*\*\*

#### **IV. ANALYSIS OF PROPOSED AMENDMENT**

The following definitions are provided in LDC Section 101-1:

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

Accessory uses include the utilization of yards for home gardens, provided that the produce of the garden is for a non-commercial purpose. In no event shall an accessory use or structure be established prior to the principal use to which it is accessory. With approval from the Planning Director, an accessory use or structure may continue if its principal use or structure is discontinued or removed for redevelopment, provided that the owner is moving forward with continual development and with active concurrent permits for redevelopment of a principal use or structure. Accessory uses shall not

1 include second dwelling units or any other habitable structures that are occupied by a  
2 separate and independent resident.

- 3
- 4 • *Principal use* means the primary land use established on a parcel.
- 5
- 6 • *Redevelopment* means the rehabilitation, improvement, and/or demolition and  
7 replacement of existing development on a site.

8 The current LDC does not provide a mechanism for property owners to retain certain accessory  
9 structures and uses, following damage or destruction of a principal use or structure caused by a  
10 man-made or natural disaster. Rather, the current LDC allows property owners to maintain  
11 accessory uses or structures, when approved by the Planning Director and when the property  
12 owner can demonstrate an intent to redevelop with active permits for the principal use or  
13 structure.

14

15 Following the impacts of Hurricane Irma, some property owner’s principal uses and/or  
16 principal structures were destroyed. Some property owners are unable to move forward with  
17 redevelopment for a variety of reasons including a limited availability of contractors and design  
18 professionals, backlog on mobile home purchases and limited cash funds.

19

20 The proposed amendment would allow property owners to maintain an accessory concrete slab  
21 for a limited time, provided certain criteria is met.

22

23 **V. CONSISTENCY WITH THE MONROE COUNTY LAND DEVELOPMENT CODE**

24

25 The proposed amendment is consistent with one or more of the required provisions of LDC Section  
26 102-158(d)(7)(b):

- 27
- 28 1. Changed projections (e.g., regarding public service needs) from those on which the text or  
29 boundary was based;

30 N/A

- 31
- 32 2. Changed assumptions (e.g., regarding demographic trends);

33 N/A

- 34
- 35 3. Data errors, including errors in mapping, vegetative types and natural features described in  
36 volume 1 of the plan;

37 N/A

- 38
- 39 4. New issues;

40 The current LDC does not provide a mechanism for property owners to retain certain accessory  
41 structures and uses, following damage or destruction of a principal use or structure caused by a  
42 man-made or natural disaster. Rather, the current LDC allows property owners to maintain  
43 accessory uses or structures, when approved by the Planning Director and when the property

1 owner can demonstrate an intent to redevelop with active permits for the principal use or  
2 structure.

3  
4 Following the impacts of Hurricane Irma, some property owner's principal uses and/or  
5 principal structures were destroyed. Some property owners are unable to move forward with  
6 redevelopment for a variety of reasons including a limited availability of contractors and design  
7 professionals, backlog on mobile home purchases and limited cash funds.

8  
9 The proposed amendment would allow property owners to maintain an accessory structure for a  
10 limited time, provided certain criteria is met.

11  
12 5. Recognition of a need for additional detail or comprehensiveness; or

13 N/A

14  
15 6. Data updates;

16 N/A

17  
18 **In no event shall an amendment be approved which will result in an adverse community**  
19 **change to the planning area in which the proposed development is located or to any area in**  
20 **accordance with a livable community master plan pursuant to findings of the board of**  
21 **county commissioners.**

22 The proposed text amendment is not anticipated to result in an adverse community change. All  
23 development shall be required to comply with level of service, concurrency, the regulations set  
24 forth in the Land Development Code and the Florida Building Code.

25  
26 **VI. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE**  
27 **PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.**

28  
29 **A. The proposed amendment is consistent with the Goals, Objectives and Policies of the**  
30 **Monroe County 2030 Comprehensive Plan. Specifically, it furthers:**

31  
32 **GOAL 101**

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

35  
36 **Objective 101.1**

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

42  
43 **Policy 101.8.9**

44 Accessory uses or structures associated with a lawful nonconforming principal use may be  
45 permitted if in compliance with the LDC.

1  
2 **B. The amendment is consistent with the Principles for Guiding Development for the Florida**  
3 **Keys Area, Section 380.0552(7), Florida Statutes.**  
4

5 For the purposes of reviewing consistency of the adopted plan or any amendments to that plan  
6 with the principles for guiding development and any amendments to the principles, the  
7 principles shall be construed as a whole and no specific provision shall be construed or applied  
8 in isolation from the other provisions.  
9

- 10 (a) Strengthening local government capabilities for managing land use and development so that  
11 local government is able to achieve these objectives without continuing the area of critical  
12 state concern designation.
- 13 (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations,  
14 seagrass beds, wetlands, fish and wildlife, and their habitat.
- 15 (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native  
16 tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and  
17 beaches, wildlife, and their habitat.
- 18 (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound  
19 economic development.
- 20 (e) Limiting the adverse impacts of development on the quality of water throughout the Florida  
21 Keys.
- 22 (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural  
23 environment, and ensuring that development is compatible with the unique historic  
24 character of the Florida Keys.
- 25 (g) Protecting the historical heritage of the Florida Keys.
- 26 (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and  
27 proposed major public investments, including:  
28
- 29 1. The Florida Keys Aqueduct and water supply facilities;
  - 30 2. Sewage collection, treatment, and disposal facilities;
  - 31 3. Solid waste treatment, collection, and disposal facilities;
  - 32 4. Key West Naval Air Station and other military facilities;
  - 33 5. Transportation facilities;
  - 34 6. Federal parks, wildlife refuges, and marine sanctuaries;
  - 35 7. State parks, recreation facilities, aquatic preserves, and other publicly owned  
36 properties;
  - 37 8. City electric service and the Florida Keys Electric Co-op; and
  - 38 9. Other utilities, as appropriate.
- 39
- 40 (i) Protecting and improving water quality by providing for the construction, operation,  
41 maintenance, and replacement of stormwater management facilities; central sewage  
42 collection; treatment and disposal facilities; and the installation and proper operation and  
43 maintenance of onsite sewage treatment and disposal systems.
- 44 (j) Ensuring the improvement of nearshore water quality by requiring the construction and  
45 operation of wastewater management facilities that meet the requirements of ss.  
46 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by  
47 central wastewater treatment facilities through permit allocation systems.

- 1 (k) Limiting the adverse impacts of public investments on the environmental resources of the  
2 Florida Keys.
- 3 (l) Making available adequate affordable housing for all sectors of the population of the  
4 Florida Keys.
- 5 (m) Providing adequate alternatives for the protection of public safety and welfare in the event  
6 of a natural or manmade disaster and for a postdisaster reconstruction plan.
- 7 (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and  
8 maintaining the Florida Keys as a unique Florida resource.
- 9

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

13  
14 **C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute**  
15 **(F.S.). Specifically, the amendment furthers:**

16  
17 163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve  
18 and enhance present advantages; encourage the most appropriate use of land, water, and  
19 resources, consistent with the public interest; overcome present handicaps; and deal  
20 effectively with future problems that may result from the use and development of land  
21 within their jurisdictions. Through the process of comprehensive planning, it is intended  
22 that units of local government can preserve, promote, protect, and improve the public  
23 health, safety, comfort, good order, appearance, convenience, law enforcement and fire  
24 prevention, and general welfare; facilitate the adequate and efficient provision of  
25 transportation, water, sewerage, schools, parks, recreational facilities, housing, and other  
26 requirements and services; and conserve, develop, utilize, and protect natural resources  
27 within their jurisdictions.

28  
29 163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the  
30 legal status set out in this act and that no public or private development shall be permitted  
31 except in conformity with comprehensive plans, or elements or portions thereof, prepared  
32 and adopted in conformity with this act.

33  
34 163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards,  
35 and strategies for the orderly and balanced future economic, social, physical, environmental,  
36 and fiscal development of the area that reflects community commitments to  
37 implement the plan and its elements. These principles and strategies shall guide future  
38 decisions in a consistent manner and shall contain programs and activities to ensure  
39 comprehensive plans are implemented. The sections of the comprehensive plan containing  
40 the principles and strategies, generally provided as goals, objectives, and policies, shall  
41 describe how the local government’s programs, activities, and land development regulations  
42 will be initiated, modified, or continued to implement the comprehensive plan in a  
43 consistent manner. It is not the intent of this part to require the inclusion of implementing  
44 regulations in the comprehensive plan but rather to require identification of those programs,  
45 activities, and land development regulations that will be part of the strategy for  
46 implementing the comprehensive plan and the principles that describe how the programs,  
47 activities, and land development regulations will be carried out. The plan shall establish  
48 meaningful and predictable standards for the use and development of land and provide

1 meaningful guidelines for the content of more detailed land development and use  
2 regulations.  
3

4 163.3201, F.S. – Relationship of comprehensive plan to exercise of land development  
5 regulatory authority. – It is the intent of this act that adopted comprehensive plans or  
6 elements thereof shall be implemented, in part, by the adoption and enforcement of  
7 appropriate local regulations on the development of lands and waters within an area. It is  
8 the intent of this act that the adoption and enforcement by a governing body of regulations  
9 for the development of land or the adoption and enforcement by a governing body of a land  
10 development code for an area shall be based on, be related to, and be a means of  
11 implementation for an adopted comprehensive plan as required by this act.  
12

## 13 **VII. PROCESS**

14  
15 Land Development Code Amendments may be proposed by the Board of County Commissioners,  
16 the Planning Commission, the Director of Planning, private application, or the owner or other  
17 person having a contractual interest in property to be affected by a proposed amendment. The  
18 Director of Planning shall review and process applications as they are received and pass them onto  
19 the Development Review Committee and the Planning Commission.  
20

21 The Planning Commission shall hold at least one public hearing. The Planning Commission shall  
22 review the application, the reports and recommendations of the Department of Planning &  
23 Environmental Resources and the Development Review Committee and the testimony given at the  
24 public hearing. The Planning Commission shall submit its recommendations and findings to the  
25 Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the  
26 adoption of the proposed amendment, and considers the staff report, staff recommendation,  
27 Planning Commission recommendation and the testimony given at the public hearing. The BOCC  
28 may adopt the proposed amendment based on one or more of the factors established in LDC  
29 Section 102-158(d)(7).  
30

## 31 32 **VIII. STAFF RECOMMENDATION**

33  
34 Staff recommends approval of the proposed amendment.